

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-05-SE-362
)	
Austin Hughes Solutions, Inc.)	NAL/Acct. No. 200732100029
)	
Union City, CA)	FRN: 0017194465

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 30, 2007**Released: December 3, 2007**

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Austin Hughes Solutions, Inc. (“Austin Hughes”) apparently liable for a forfeiture for marketing nine models of non-verified Class A digital devices in apparent willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”), and Section 2.803(a)(2) of the Commission’s Rules (“Rules”).¹ Based on the facts and circumstances before us, we conclude that Austin Hughes is apparently liable for a forfeiture in the amount of sixty-three thousand dollars (\$63,000).

II. BACKGROUND

2. Section 302 of the Act authorizes the Commission to make reasonable regulations, consistent with the public interest, governing the interference potential of equipment that emits radio frequency energy, and prohibits, among other things, the offering for sale of radio frequency devices to the extent that such activity does not comply with these regulations.² The purpose of this section is to ensure that radio transmitters and other electronic devices meet certain standards to control interference before they reach the market. Specifically, Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Section 2.803(a)(2) of the Commission’s implementing regulations provides that:

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device³ unless ... [i]n the case of a device that is not required to

¹ 47 U.S.C. § 302a(b) and 47 C.F.R. § 2.803(a)(2).

² 47 U.S.C. § 302a.

³ 47 C.F.R. § 2.801 defines a radio frequency device as “any device which in its operation is capable of emitting radio frequency energy by radiation, conduction, or other means.”

have a grant of equipment authorization issued by the Commission, but which must comply with the specified technical standards prior to use, such device also complies with all applicable administrative (including verification of the equipment or authorization under a Declaration of Conformity, where required), technical, labeling and identification requirements specified in this chapter.

3. Class A digital devices are digital devices such as computers and computer peripherals that are marketed for use in a commercial, industrial, or business setting.⁴ Section 15.101 of the Rules requires that Class A digital devices be authorized through the verification process prior to marketing.⁵ “Marketing” includes the sale or lease, offer for sale or lease (including advertising for sale or lease), importing, shipping, and/or distribution for the purpose of selling or leasing or offering for sale or lease.⁶

4. Austin Hughes is the U.S. subsidiary of Austin Hughes Electronics, Inc., a Hong Kong-based design and manufacturing company that offers a broad range of electro-mechanical products based on 19-inch rackmount technology.⁷ The Spectrum Enforcement Division (“Division”) of the Enforcement Bureau received a complaint alleging that Austin Hughes was marketing in the United States digital devices, such as rackmount keyboards, monitors, and keyboard-video-mouse switches and extenders (“KVMs”), without the proper testing and documentation to confirm compliance with the Commission’s requirements. On June 9, 2006, the Division sent Austin Hughes a letter of inquiry (“LOI”) seeking further information with regard to its devices.⁸

5. The Division received Austin Hughes’ response to the LOI on September 7, 2006.⁹ In its response, Austin Hughes indicated that the devices that were the subject of the LOI were manufactured in Hong Kong by its parent corporation, Austin Hughes Electronics Ltd.,¹⁰ that Austin Hughes began marketing the devices in the United States in November 2005,¹¹ and that Austin Hughes began importing the devices into the United States in December 2005 and that it “will continue to import these devices into the United States.”¹² Austin Hughes provided test reports demonstrating that certain of its devices had been verified as compliant with the Commission’s rules. Austin Hughes acknowledged, however, that

⁴ See 47 C.F.R. §§ 15.3(h) and 15.3(k).

⁵ 47 C.F.R. § 15.101(a). Verification is a procedure where the manufacturer makes measurements or takes the necessary steps to insure that the equipment complies with the appropriate technical standards. See 47 C.F.R. § 2.902(a).

⁶ 47 C.F.R. § 2.803(e)(4).

⁷ Letter from Austin Hughes Solutions, Inc. to Mr. Brian Butler, Assistant Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (September 1, 2006) (“Response”) at Document No.: REF-6001.

⁸ See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau to Austin Hughes Electronics, Ltd. (June 9, 2006). The LOI was inadvertently addressed to Austin Hughes’ parent corporation, Austin Hughes Electronics, Ltd., which is based in Hong Kong. Austin Hughes responded to the LOI.

⁹ See Response.

¹⁰ Austin Hughes is 100 percent owned by Austin Hughes Electronics Ltd, Response at Document No.: REF-6001.

¹¹ Specifically, the response indicates that, “AHS began marketing the devices listed in (a) through (g) of inquiry (1) from November, 2006.” Response at Document No.: REF-6003. However, because Austin Hughes’ response was submitted in September 2006, prior to November 2006, and several of the items in question were contained in Austin Hughes’ November 2005 product catalog, it is apparent that Austin Hughes began marketing the devices in November 2005.

¹² Response at Document No.: REF-6002.

certain other devices had not been verified as compliant. Specifically, Austin Hughes stated that it had not verified the following nine devices: the RP920 rackmount LCD monitor; the HRP615 rackmount LCD monitor; the HRP717 rackmount LCD monitor; the HRP819 rackmount LCD monitor; the HRKP115 LCD display-keyboard drawer; the HRKP117 LCD display-keyboard drawer; the IP-101 KVM extender; the CV-101 KVM extender; and the CV0S101 KVM extender.¹³ Austin Hughes asserted that these nine devices were not tested for compliance because they are “[i]mported in limited quantities for demonstration, testing and evaluation for compliance with technical requirements or marketing suitability.”¹⁴ Notably, however, these nine device are advertised in the November 2005 product catalog that Austin Hughes provided with its LOI response¹⁵ and that is found on Austin Hughes’ website, www.austin-hughes.com.¹⁶ Moreover, Austin Hughes’ LOI response indicated that it sold units of the following five devices: the RP920 rackmount LCD monitor; the HRP615 rackmount LCD monitor; the HRP717 rackmount LCD monitor; the HRKP117 LCD display-keyboard drawer; and the CV-101 KVM extender.¹⁷

6. Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁸ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.¹⁹ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or rule.²⁰

III. DISCUSSION

A. Marketing of Unauthorized Class A Digital Devices

7. We conclude that Austin Hughes is apparently liable for forfeiture for its apparent willful and repeated violations of Section 302(b) of the Act and Section 2.803(a)(2) of the Rules by marketing nine unauthorized Class A²¹ digital devices prior to performing the required verification testing.

¹³ *Id.* at Document No.: REF-6001.

¹⁴ *Id.*

¹⁵ *Id.* at Document No.: REF-EXH-03.

¹⁶ In December 2006, the Division observed that Austin Hughes continued to advertise the nine devices in the 2005 product catalog on its website.

¹⁷ Response at Document No.: REF-EXH-20.

¹⁸ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1). Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992) (“*Southern California*”). The term “repeated” means that the act was committed or omitted more than once, or lasts more than one day. *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

¹⁹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁰ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

²¹ The information provided by Austin Hughes indicates that the devices are marketed for use in a commercial or business environment and therefore are properly classified as Class A digital devices. *See supra* n. 4 and accompanying text.

Specifically, we find that Austin Hughes marketed the following nine devices in violation of the Act and the Commission's Rules: the RP920 rackmount LCD monitor; the HRP615 rackmount LCD monitor; the HRP717 rackmount LCD monitor; the HRP819 rackmount LCD monitor; the HRKP115 LCD display-keyboard drawer; the HRKP117 LCD display-keyboard drawer; the IP-101 KVM extender; the CV-101 KVM extender; and the CV0S101 KVM extender. Austin Hughes conceded in its LOI response that these nine devices were not verified for compliance with the FCC's rules.²² As the importer, Austin Hughes is the party responsible for ensuring that the devices were verified for compliance prior to marketing in the United States.²³ In addition, Austin Hughes advertised each of these nine devices through its product catalog on its website between November 2005 and at least December 2006.²⁴ Austin Hughes also admitted that it sold units of five of these devices.²⁵

8. Austin Hughes claimed in its LOI response that these nine devices are "[i]mported in limited quantities for demonstration, testing and evaluation for compliance with technical requirements or marketing suitability."²⁶ Section 2.803(e)(1) of the Rules provides that radio frequency devices "may be operated, *but not marketed*," prior to equipment authorization or a determination of compliance with applicable technical standards for the purpose of compliance testing, demonstration and evaluation, provided that certain conditions are met.²⁷ As noted above, however, Austin Hughes clearly marketed the nine devices. The nine devices were advertised in its product catalog between November 2005 and at least December 2006. These advertisements did not contain the disclaimer notice set forth in Section 2.803(c) of the Rules, indicating that the devices had not been authorized and that they could not be offered for sale or lease, or sold or leased, until authorization was obtained.²⁸ Indeed, we note that an FCC logo was included on the pages containing the advertisements for some of the nine devices, which is, at best, misleading.²⁹ Moreover, Austin Hughes sold units of five of the devices.³⁰

9. Accordingly, based on the preponderance of the evidence, we find that Austin Hughes apparently willfully and repeatedly violated Section 302(b) of the Act and Section 2.803(a)(2) of the Rules by marketing nine unauthorized Class A digital devices without proper verification.

B. Proposed Forfeiture Amount

10. Section 503(b) of the Act and Section 1.80(a) of the Rules provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the rules shall be liable for a forfeiture penalty. Based upon the record before us, it appears that Austin Hughes' violations of Section 302(b) of the Act and Section 2.803(a)(2) of the Rules were willful and repeated.

11. Section 1.80(b)(4) of the Rules establishes a base forfeiture amount of \$7,000 for each violation involving the marketing of unauthorized equipment.³¹ In determining the appropriate forfeiture

²² See *supra* n. 13 and accompanying text.

²³ 47 C.F.R. § 2.909(b).

²⁴ See *supra* n. 16 and accompanying text.

²⁵ See *supra* n. 17 and accompanying text.

²⁶ Response at Document No.: REF-6001.

²⁷ 47 C.F.R. § 2.803(e)(1).

²⁸ See 47 C.F.R. § 2.803(c).

²⁹ Response at Document No.: REF-EXH-03, at pages 25, 35 and 36.

³⁰ See *id.* at Documents No.: REF-EXH-16 and REF-EXH-20.

³¹ 47 C.F.R. § 1.80(b)(4).

amount, Section 503(b)(2)(E) of the Act directs the Commission to consider factors, such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”³² In the present case, we find that each instance of marketing of an unauthorized model constitutes a separate and continuing violation warranting a separate proposed forfeiture.

12. The record establishes that, within the past year, Austin Hughes has marketed in the United States nine models of Class A digital devices prior to completing verification testing. Consequently, we find that Austin Hughes is apparently liable for a base forfeiture of \$7,000 for each of the nine models of devices, for an aggregate proposed forfeiture of \$63,000.³³ Consistent with precedent, we have considered the statutory factors set forth above and conclude that no adjustment of the proposed forfeiture from the aggregate base amount is warranted.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act³⁴ and Sections 0.111, 0.311 and 1.80 of the Rules,³⁵ Austin Hughes Solutions, Inc., IS NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of sixty-three thousand dollars (\$63,000) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803(a)(2) of the Rules.

14. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Rules, within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, Austin Hughes Solutions, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.³⁶ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁷

³² 47 U.S.C. § 503(b)(2)(E). *See also* 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

³³ *See, e.g., San Jose Navigation, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 2873 (2006), *forfeiture ordered*, Forfeiture Order, FCC 07-3 (released January 16, 2007); *Samson Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 4221, 4225 (2004), *consent decree ordered*, 19 FCC Rcd 24509 (2004) (both finding that the marketing of each separate model of unauthorized equipment constitutes a separate violation).

³⁴ 47 U.S.C. § 503(b).

³⁵ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

³⁶ 47 U.S.C. § 504(a).

³⁷ *See* 47 C.F.R. § 1.1914.

16. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.³⁸

18. IT IS FURTHER ORDERED that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Austin Hughes Solutions Inc., 1636 Pacific Street, Union City, CA 94587.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁸ *Id.*