

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
ABC Fulfillment Services LLC d/b/a HobbyKing)	File No.: EB-SED-17-00023762
USA LLC and HobbyKing.com; and Indubitably,)	NAL/Acct. No.: 201832100015
Inc. d/b/a HobbyKing Corp., HobbyKing USA)	FRN: 0027528975
LLC, HobbyKing, and HobbyKing.com)	

MEMORANDUM OPINION AND ORDER

Adopted: June 17, 2021

Released: June 17, 2021

By the Commission: Acting Chairwoman Rosenworcel issuing a statement

1. In this Order we enforce our equipment marketing rules and deny the Petition for Reconsideration¹ filed by ABC Fulfillment Services LLC and Indubitably, Inc., d/b/a HobbyKing (collectively, HobbyKing or Company) seeking reconsideration of the Commission's underlying *Forfeiture Order*.² In the *Forfeiture Order*, the Commission imposed a forfeiture of \$2,861,128 against HobbyKing for: (i) violating section 302 of the Communications Act of 1934, as amended (Act)³ and section 2.803 of the Commission's rules⁴ by marketing noncompliant radio frequency equipment, and (ii) failing to respond to Commission orders in the investigation of the Company's practices.⁵

I. BACKGROUND

2. The Commission's equipment marketing rules, including the authorization requirements, are designed to ensure that equipment in the wireless ecosystem operates in a manner that minimizes the risks of harmful interference.⁶ Unauthorized radio frequency equipment poses a serious threat to any number of important uses of spectrum, including aviation safety, public safety communications, and mobile broadband communications, because unauthorized and untested devices may not adhere to the

¹ Petition for Reconsideration of Forfeiture Order of ABC Fulfillment Services LLC d/b/a HobbyKing USA LLC and HobbyKing.com, and Indubitably, Inc. d/b/a/ HobbyKing Corp., HobbyKing USA LLC, HobbyKing and HobbyKing.com, File No. EB-SED-17-00023762, (Aug. 24, 2020) (on file in EB-SED-17-00023762) (Petition for Reconsideration).

² *ABC Fulfillment Services LLC d/b/a HobbyKing USA LLC and HobbyKing.com, and Indubitably, Inc. d/b/a/ HobbyKing Corp., HobbyKing USA LLC, HobbyKing and HobbyKing.com*, Forfeiture Order, 35 FCC Rcd 7441 (2020) (*Forfeiture Order*); see also *ABC Fulfillment Services LLC d/b/a HobbyKing USA LLC and HobbyKing.com, and Indubitably, Inc. d/b/a/ HobbyKing Corp., HobbyKing USA LLC, HobbyKing and HobbyKing.com*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5530 (2018).

³ 47 U.S.C. § 302a.

⁴ 47 CFR § 2.803.

⁵ Companies that receive inquiries from the Commission must timely file complete and accurate responses. Failure to timely and fully respond to the Commission's inquiries violates the Act. See 47 U.S.C. §§ 154(i), 154(j), 403, 503(b)(1)(B); *Aura Holdings of Wisconsin, Inc.*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 3688, 3696, para. 21 (2018); *forfeiture order issued*, 34 FCC Rcd 2540 (2019); *SBC Commc'ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7599-600, paras. 23-28 (2002); *Net One Int'l, Net One, LLC, Farrahtel Int'l, LLC*, Forfeiture Order, 29 FCC Rcd 264, 267, para. 9 (EB 2014), *recons. denied*, Memorandum Opinion and Order, 30 FCC Rcd 1021 (EB 2015).

⁶ See *Forfeiture Order*, 35 FCC Rcd at 7442, para. 5.

technical requirements necessary to prevent harmful interference to other devices and services.⁷

3. The Enforcement Bureau's Spectrum Enforcement Division received complaints about HobbyKing's equipment marketing and investigated the Company's practices in 2016.⁸ After investigating, the Bureau issued HobbyKing a Citation and Order in 2016 for violations of section 302 of the Act,⁹ and sections 2.803 and 2.925 of the Commission's rules¹⁰ for illegally marketing noncompliant and unauthorized audio/video transmitters.¹¹ The Bureau subsequently received additional equipment marketing complaints regarding HobbyKing and initiated a second investigation.¹² HobbyKing failed to respond to the Bureau's Letter of Inquiry (LOI), and the Bureau thus issued a second Citation and Order ordering the Company to respond to the LOI,¹³ which HobbyKing also did not respond to.¹⁴

4. On June 5, 2018, the Commission issued a Notice of Apparent Liability for Forfeiture (*Notice*) against HobbyKing in the amount of \$2,861,128 for its apparent willful and repeated violations of section 302 of the Act,¹⁵ section 2.803 of the Commission's rules,¹⁶ and two Commission orders¹⁷ by marketing noncompliant radio frequency devices and by refusing to provide full responses to Commission inquiries in the investigation.¹⁸ On July 5, 2018, HobbyKing filed a response to the *Notice*, making a number of arguments as to why the *Notice* should be canceled or the forfeiture amount reduced.¹⁹ Specifically, the Company argued: (i) the Company lacked notice that marketing AV transmitters that could operate on unauthorized frequencies was unlawful; (ii) the requirement to fully respond to the LOI violated the Company's Fifth Amendment right against self-incrimination; (iii) the forfeiture amount should be reduced based on various downward adjustment factors, including inability to pay; (iv) that ABC Fulfillment Services LLC was no longer involved in HobbyKing's business; and (v) the Commission does not have marketing rules that specifically address so-called "versatile" drone equipment that can operate on both amateur and non-amateur frequencies.²⁰

5. The Commission issued the *Forfeiture Order* on July 23, 2020, rejecting all of HobbyKing's arguments and affirming the \$2,861,128 forfeiture proposed in the *Notice*.²¹ On August 24, 2020, HobbyKing filed a Petition for Reconsideration seeking reconsideration of the *Forfeiture Order*.²²

⁷ *Id.*

⁸ *Notice*, 33 FCC Rcd 5530, 5531, para. 4.

⁹ 47 U.S.C. § 302a.

¹⁰ 47 CFR §§ 2.803, 2.925.

¹¹ See *HobbyKing USA LLC*, Citation and Order, 31 FCC Rcd 12581 (EB 2016) (*Marketing Citation*).

¹² *Notice*, 33 FCC Rcd 5530, 5531-32, para. 5.

¹³ See *ABC Fulfillment Services LLC d/b/a HobbyKing USA LLC and HobbyKing.com; and Indubitably, Inc. d/b/a HobbyKing Corp., HobbyKing USA LLC, HobbyKing, and HobbyKing.com*, Citation and Order, 32 FCC Rcd 7300 (EB 2017) (*LOI Citation*).

¹⁴ *Id.*

¹⁵ 47 U.S.C. § 302a.

¹⁶ 47 CFR § 2.803.

¹⁷ See generally *Marketing Citation*; *LOI Citation*.

¹⁸ *Notice*, 33 FCC Rcd at 5537-38, para. 15 & n.54-55.

¹⁹ *ABC Fulfillment Services LLC and Indubitably, Inc., Response to Notice of Apparent Liability (July 5, 2018)* (on file in EB-SED-17-00023762).

²⁰ *Id.*

²¹ See generally *Forfeiture Order*.

II. STANDARD OF REVIEW

6. Petitions for Reconsideration under section 405 of the Act and section 1.106 of the Commission's rules are granted only in limited circumstances.²³ In general, reconsideration is appropriate only when the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.²⁴ A petition that simply repeats arguments previously considered and rejected will be denied.²⁵

III. DISCUSSION

7. Upon review of HobbyKing's Petition for Reconsideration and the entire record, we find no basis for reconsideration because the petition fails to present new information warranting reconsideration. Rather, HobbyKing again raises the very same arguments already considered and rejected in the *Forfeiture Order*: (i) that HobbyKing had no notice of the Commission's authorization requirements;²⁶ (ii) that the Fifth Amendment relieved HobbyKing of its duty to respond;²⁷ (iii) that the forfeiture amount is inappropriate because Indubitably, Inc. lacks the ability to pay to the *Forfeiture Order*;²⁸ and (iv) that the Commission is time-barred from taking action against ABC Fulfillment Services LLC because it was not part of HobbyKing's business.²⁹ We therefore find that the Commission already decided the matters raised, and with no new arguments or facts for consideration we reaffirm the *Forfeiture Order* for the reasons stated therein.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 405 of the Act, and section 1.106 of the Commission's rules, the Petition for Reconsideration filed by HobbyKing is hereby **DENIED**.³⁰

(Continued from previous page) _____

²² See generally *Petition for Reconsideration*.

²³ 47 U.S.C. § 405; 47 CFR § 1.106.

²⁴ See *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, 18257, para. 2 (EB 2000) (citing *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)); see also *Ely Radio, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 7608, 7610, para. 6 (EB 2012) (articulating the standard of review for Petitions for Reconsideration).

²⁵ See *Infinity Broadcasting Operations, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 4216, para. 2 (2004) (citing *Bennett Gilbert Gaines*, 8 FCC Rcd 3986 (Rev. Bd. 1993)).

²⁶ *Forfeiture Order*, 35 FCC Rcd at 7447-49, paras. 17-23 (rejecting HobbyKing's assertion that it lacked fair notice of its legal obligations).

²⁷ *Id.* at 7450-51, paras. 24-26 (rejecting HobbyKing's assertion that requiring it to respond fully to the Letter of Inquiry violated its constitutional rights against self-incrimination).

²⁸ *Id.* at 7451-55, paras. 27-39 (rejecting HobbyKing's arguments for lessening the proposed forfeiture amount and noting that even if HobbyKing had been able to support a claim of inability to pay, the Commission would decline to reduce the forfeiture amount because of HobbyKing's long history of marketing noncompliant radio frequency devices).

²⁹ *Id.* at 7451-52, para. 30 (noting that HobbyKing did not provide tax returns, financial statements, or any financial information, and therefore its claim that ABC Fulfillment Services LLC was involved in fulfillment services only until the end of 2015 was too vague to rule the company out as a source of payment where evidence exists that ABC Fulfillment Services LLC was an active company through 2017 and within the statute of limitations identified by the *Notice*).

³⁰ 47 U.S.C. § 405; 47 CFR § 1.106.

9. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules,³¹ ABC Fulfillment Services LLC and Indubitably, Inc. d/b/a HobbyKing **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two million eight hundred sixty-one thousand one hundred and twenty-eight dollars (\$2,861,128) for willfully and repeatedly violating section 302 of the Act,³² section 2.803 of the Commission's rules,³³ and Commission orders.³⁴

10. Payment of the forfeiture is required to be made in the manner provided for in section 1.80 of the Commission's rules.³⁵ ABC Fulfillment Services LLC and Indubitably, Inc. d/b/a HobbyKing is required to send electronic notification of payment to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, at EB-SED-Response@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified in the Forfeiture Order, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.³⁶

11. Payment of the forfeiture is required to be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),³⁷ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors are required to follow based on the form of payment selected:³⁸

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).³⁹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN.

³¹ 47 U.S.C. § 503(b); 47 CFR § 1.80.

³² 47 U.S.C. § 302a(b).

³³ 47 CFR § 2.803.

³⁴ 47 U.S.C. § 503(b); 47 CFR § 1.80.

³⁵ 47 CFR § 1.80.

³⁶ 47 U.S.C. § 504(a). Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

³⁷ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

³⁸ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

³⁹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.

- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

12. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.⁴⁰ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

13. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by first class mail and certified mail, return receipt requested, to Dennis P. Corbett, Esq., Telecommunications Law Professionals PLLC, Counsel to ABC Fulfillment Services LLC and Indubitably, Inc. d/b/a HobbyKing, 1025 Connecticut Avenue, NW, Suite 1011, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴⁰ See 47 CFR § 1.1914.

**STATEMENT OF
ACTING CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of ABC Fulfillment Services LLC d/b/a HobbyKing USA LLC and HobbyKing.com; and Indubitably, Inc. d/b/a HobbyKing Corp., HobbyKing USA LLC, HobbyKing, and HobbyKing.com*, Memorandum Opinion and Order, File No. EB-SED-17-00023762

Several years ago, the Federal Communications Commission issued a Notice of Apparent Liability against HobbyKing for marketing drone transmitters that did not comply with our rules. Failure to abide by our radiofrequency policies can lead to interference with other wireless users, including public safety authorities. Today we finally bring this proceeding to a conclusion by upholding an order directing forfeiture of more than \$2.8 million. This is the right thing to do with this company. Let it also be a notice to all others that we take our policies protecting our airwaves seriously and if you fail to do so, we will find you.

Thank you to the Enforcement Bureau for their work on this effort, including Rosemary Harold, Christopher Killion, Jason Koslofsky, Jeremy Marcus, Neal McNeil, Elizabeth Mumaw, Ashley Tyson, and Josh Zeldis. Thank you also to David Horowitz, Douglas Klein, Linda Oliver, and William Richardson from the Office of General Counsel; Kari Hicks from the Wireless Telecommunications Bureau; and Thomas Struble from the Office of Engineering and Technology.