

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

In the Matter of)	File No.: EB-SED-13-00008819 ¹
)	
Richfield Electronics (China) Ltd.)	NAL/Acct. No.: 201032100002
)	
)	FRN: 0019245927
)	

FORFEITURE ORDER

Adopted: November 1, 2013

Released: November 1, 2013

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. We issue a monetary forfeiture in the amount of eighteen thousand dollars (\$18,000) to Richfield Electronics (China) Ltd. (Richfield), a manufacturer of wireless electronics products based in Hong Kong, for willfully and repeatedly violating Section 302(b) of the Communications Act of 1934, as amended (Act),² and former Section 2.803(a)(1) of the Commission’s rules (Rules).³ The noted violations involve Richfield’s marketing of radio equipment in the United States that did not comply with the Commission’s technical and labeling requirements.

II. BACKGROUND

2. On October 29, 2009, the Enforcement Bureau’s Spectrum Enforcement Division (Division) released a *Notice of Apparent Liability for Forfeiture (NAL)*⁴ against Richfield in the amount of \$18,000 for its apparent willful and repeated violations of Section 302(b) of the Act and former Section 2.803(a)(1) of the Rules, by marketing in the United States an intentional radiator⁵ (i.e., the Whole House FM Transmitter (WH Transmitter)) that did not comply with the emission limit specified in Section 15.239(b) and the labeling requirements set forth in Section 2.925(a)(1) of the Rules.⁶ The record evidence showed that Richfield manufactured the WH Transmitter and shipped a total of 18,371 units of

¹ File No. EB-SED-13-00008819 incorporates the contents of the file in EB-09-SE-083, the file number initially assigned to this case. Any future action or any correspondence with the FCC concerning this case should refer to the new case number.

² 47 U.S.C. § 302a(b).

³ 47 C.F.R. § 2.803(a)(1) (2008) (*recodified* at 47 C.F.R. § 2.803(b)(1) (2013)). Although Section 2.803(a)(1) has been recodified as Section 2.803(b)(1) of the Rules, the substance of the rule is unchanged. *See Radio Experimentation and Market Trials—Streamlining Rules*, 78 Fed. Reg. 25138, 25161 (Apr. 29, 2013) (*Radio Experimentation*).

⁴ *Richfield Elec. (China) Ltd.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 13247 (Enf. Bur. 2009) (*NAL*). A more complete recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

⁵ An intentional radiator is “[a] device that intentionally generates and emits radio frequency energy by radiation or induction.” 47 C.F.R. § 15.3(o).

⁶ *Id.* §§ 15.239(b) (emission limit requirement), 2.925(a)(1) (labeling requirement).

the transmitter to a Michigan-based company, TAW-Global, LLC (TAW), a seller and distributor of the transmitters in the United States.⁷ Although Richfield received FCC certification for the transmitter in 2002, Richfield later modified the device's antenna in an attempt (according to Richfield) to improve sound quality, but, in so doing, rendered the device noncompliant with the FCC's Rules and its authorization. In this regard, the Division found that the WH Transmitter, which operates in the 106.7–107.9 MHz frequency band, substantially exceeded the emission limit set forth in Section 15.239(b) of the Rules.⁸ Although Richfield could not quantify the precise number of noncompliant transmitters that it sold and shipped to TAW, it concedes that at least 2,500 transmitters had the modified antenna.⁹ Furthermore, in addition to the emission limit violation, the Division found that the devices that were available prior to December 2008 were not labeled in accordance with Section 2.925(a)(1) of the Rules.¹⁰

3. On November 25, 2009, Richfield submitted a response to the *NAL* seeking cancellation of the proposed forfeiture.¹¹ In its *NAL* Response, Richfield does not dispute that it manufactured, sold, and shipped noncompliant transmitters to TAW; that at least a few thousand of the WH Transmitters that were shipped to TAW exceeded the emission limit set forth in Section 15.239(b) of the Rules; and that it did not label the devices in accordance with Section 2.925(a)(1) of the Rules prior to December 2008.¹² In addition, Richfield does not dispute the apparent timing inconsistencies pointed out in the *NAL*¹³ relating to when the company claims to have modified the antenna that it asserts caused the transmitter to exceed the emission limits (December 2008) and when the Commission first became aware of the noncompliant transmitters (March 2008).¹⁴ That point is significant because it raises questions about the

⁷ See *NAL*, 24 FCC Rcd at 13249, para. 5. The Division's finding was based on Richfield's acknowledgement in its response to Division inquiries that it sold the WH Transmitter to its customer, TAW, and shipped the devices to TAW in the United States. See Letter from Flora Cho, Operations Manager, Richfield Electronics (China) Ltd., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (May 15, 2009) (on file in EB-SED-13-00008819) (LOI Response); Letter from Flora Cho, Operations Manager, Richfield Electronics (China) Ltd., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Aug. 6, 2009) (on file in EB-SED-13-00008819) (Second LOI Response). The Division issued a Citation to TAW for marketing the noncompliant and unlabeled WH Transmitter. See *Thomas Allen Webb, CEO*, Citation, 24 FCC Rcd 2404 (Enf. Bur. 2009) (TAW Citation).

⁸ See *NAL*, 24 FCC Rcd at 13249–50, paras. 5–6. The Division's investigation was initiated in response to a complaint that the WH Transmitter exceeded the emission limit specified in Section 15.239(b) of the Rules, which was subsequently confirmed by the Commission's Office of Engineering and Technology (OET). See *id.* at 13247, para. 2.

⁹ See *id.* at 13248, para. 5.

¹⁰ See *id.* at 13251, para. 6.

¹¹ See Letter from Flora Cho, Operations Manager, Richfield Electronics (China) Ltd., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Nov. 25, 2009) (on file in EB-SED-13-00008819) (*NAL* Response).

¹² See *id.* at 1–2.

¹³ See *NAL*, 24 FCC Rcd at 13251, para. 6.

¹⁴ According to Commission records, Richfield obtained an equipment certification for an FM transmitter on November 5, 2002. The Commission first received a complaint about Richfield's noncompliant device in March 2008. Tests conducted by OET in May 2008 determined that the device was operating outside the parameters of its certification. In response to the Division's letters of inquiry (LOIs), Richfield asserted that in December 2008 it modified the device's antenna to improve sound quality. Richfield surmised that the modifications made to the antenna at that time caused the increased field strength emission levels. Given that the FCC first received a complaint 10 months before the antenna modification was alleged to have occurred, and that Commission staff tested a noncompliant Richfield device seven months prior, Richfield's assertions are problematic. One of two possibilities is most likely: (i) the device's antenna was modified in December 2008, but the device was previously noncompliant for another reason, or (ii) Richfield modified the device's antenna earlier than it claimed in its (continued . . .)

accuracy of Richfield's representations, and it suggests that the number of noncompliant transmitters likely was significantly higher than what Richfield was willing to acknowledge. Nonetheless, Richfield insists that it did not market the transmitters in the United States and, therefore, should not be held responsible for the violations.¹⁵ In addition, although it does not dispute the Division's finding that Richfield failed to label the devices that were available before December 2008, it asks that we take into consideration, as a mitigating factor, its lack of familiarity with the FCC's labeling requirements.¹⁶ Finally, Richfield notes that it plans to better educate its staff about FCC rules to prevent any future violation.¹⁷

III. DISCUSSION

4. The proposed forfeiture was assessed in accordance with Section 503(b) of the Act,¹⁸ Section 1.80 of the Rules,¹⁹ and the Commission's *Forfeiture Policy Statement*.²⁰ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account 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."²¹ As discussed below, we are unpersuaded by Richfield's legal and equitable arguments and, thereby, affirm our conclusion in the *NAL* that Richfield violated Section 302(b) of the Act and former Section 2.803(a)(1) of the Rules by marketing noncompliant and unlabeled devices in the United States.

5. 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."²² Former Section 2.803(a)(1) of the Rules prohibits the marketing²³ of radio frequency devices,²⁴ such as wireless FM transmitters, unless, in the

(Continued from previous page . . .) _____
 responses to the Division's LOIs. Neither possibility suggests that Richfield was conducting its business operations consistent with the Commission's grant of authorization. See 47 C.F.R. § 2.1053(b)(3) (requiring field strength measurements for all equipment where "the antenna is an integral part of, and attached directly to the transmitter"); *id.* § 2.1043(a) (stating that "changes to the . . . field strength ratings shall not be performed without application for and authorization of a new grant of certification"); *id.* § 2.1043(c) (explaining that "a grantee desiring to make [such a] change shall file an application on FCC Form 731 accompanied by the required fees).

¹⁵ See *NAL Response* at 1.

¹⁶ See *id.* at 1–2.

¹⁷ See *id.* at 2.

¹⁸ 47 U.S.C. § 503(b).

¹⁹ 47 C.F.R. § 1.80.

²⁰ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

²¹ 47 U.S.C. § 503(b)(2)(E).

²² *Id.* § 302a(b).

²³ Marketing "includes the sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease." 47 C.F.R. § 2.803(e)(4) (2008) (*recodified* at 47 C.F.R. § 2.803(a) (2013)). Although Section 2.803(e)(4) has been recodified as Section 2.803(a) of the Rules, the substance of the rule is unchanged. See *Radio Experimentation*, 78 Fed. Reg. at 25161.

²⁴ A radio frequency device is "any device which in its operation is capable of emitting radiofrequency energy by radiation, conduction, or other means." 47 C.F.R. § 2.801.

case of a device subject to certification,²⁵ the device has first been properly authorized, identified, and labeled in accordance with the Rules.²⁶ As an intentional radiator, and pursuant to Section 15.201 of the Rules,²⁷ the WH Transmitter must be authorized in accordance with the equipment certification procedures described in Sections 2.1031–2.1060 of the Rules²⁸ prior to marketing the device in the United States. The device also is subject to the emission limit specified in Section 15.239(b) of the Rules and the labeling requirements of Section 2.925(a)(1) of the Rules.²⁹

6. As we found in the *NAL*, Richfield violated the foregoing sections of the Act and Rules by marketing in the United States transmitters that did not comply with the Commission’s technical and labeling requirements.³⁰ In its *NAL* Response, Richfield, however, disputes that it marketed the noncompliant equipment in the United States. Richfield contends that it was TAW that asked Richfield to manufacture the transmitters based on TAW’s product designs, and also to ship the transmitters; and that, therefore, it was TAW—not Richfield—that marketed and sold the transmitters in the United States.³¹ While we agree that TAW violated the Act and our rules by marketing the unauthorized and noncompliant transmitters in the United States (which already resulted in enforcement action against TAW³²), we disagree with Richfield’s contention that it did not also violate the equipment marketing rules. Richfield’s argument turns on whether its conduct falls within the Rule’s definition of marketing, which we find it does.

7. Pursuant to former Section 2.803(e)(4) of the Rules, the term “marketing” includes the sale or lease, offer for sale or lease (including advertising for sale or lease), distribution for the purpose of selling or leasing (or offering for sale or lease), and importation or shipment of a radio frequency device.³³ Several critical facts are undisputed: Richfield applied for and received equipment authorization in 2002 for the transmitters and thus could sell the equipment in the United States; Richfield manufactured and sold 18,371 units of the WH Transmitter (at least 2,500 of which were noncompliant with the emission limit requirement and, therefore, the company’s authorization) to TAW, a U.S. company; and Richfield shipped the equipment to TAW in the United States.³⁴ Therefore, under the Rules, Richfield “marketed” the WH Transmitter in the United States in multiple ways: by offering the noncompliant equipment that it manufactured for sale, selling the equipment, and shipping the equipment to TAW in the United States. Furthermore, because the FCC certification for the WH Transmitter was granted to Richfield, it remained responsible for ensuring that the transmitters were in compliance with applicable rules and its authorization. Yet Richfield decided to modify the transmitters, causing the transmitters to substantially

²⁵ A “[c]ertification is an equipment authorization issued by the Commission, based on representations and test data submitted by the applicant.” *Id.* § 2.907(a).

²⁶ *See id.* § 2.803(a)(1) (2008).

²⁷ *See id.* § 15.201.

²⁸ *See id.* §§ 2.1031–2.1060.

²⁹ *See id.* §§ 2.925(a)(1), 15.239(b).

³⁰ *See NAL, supra* note 4.

³¹ *See NAL* Response at 1. Richfield also argues that it was not the importer of the WH Transmitter because TAW paid the shipping costs from Hong Kong to the United States and Richfield handed the devices to TAW’s “assigned forwarder.” *See id.* Because the *NAL* made no legal finding that Richfield engaged in the importation of the transmitters, we find it unnecessary to address this argument. In any event, the record establishes that Richfield violated our equipment marketing rules in other respects.

³² *See TAW Citation, supra* note 7.

³³ 47 C.F.R. § 2.803(e)(4) (2008).

³⁴ *See NAL*, 24 FCC Rcd at 13249, para. 5.

exceed the applicable emission limit, in violation of the Rules. Accordingly, we decline to cancel the forfeiture based on Richfield's misplaced argument that it did not market—as “marketing” is defined under former Section 2.803(e)(4)—the WH Transmitters in the United States.

8. As previously noted, Richfield does not dispute that the WH Transmitter failed to comply with the labeling requirements set forth in Section 2.925(a)(1) of the Rules.³⁵ Richfield nonetheless seeks cancellation of the proposed forfeiture based on its asserted unfamiliarity with the labeling requirements.³⁶ This claimed ignorance of the Rules, however, is not a valid basis for cancellation of the forfeiture. As the Commission has repeatedly held, administrative oversight, inadvertence, and unfamiliarity with the Rules are not mitigating factors.³⁷ Accordingly, we decline to cancel or reduce the forfeiture on this basis.

9. Richfield also seeks cancellation of the proposed forfeiture based on its intention to undertake remedial measures to ensure future compliance with the Rules.³⁸ Although we have adjusted forfeitures downward when a company subject to our rules makes voluntary disclosures to Commission staff and takes corrective measures after discovering its violations but *prior* to any Commission inquiry or initiation of enforcement action,³⁹ we have not cancelled or reduced forfeitures based on a company's remedial conduct after the initiation of an investigation.⁴⁰ The Commission has long held that corrective action taken to come into compliance with the Rules is expected, and such corrective action does not nullify or mitigate prior violations or associated forfeiture liability.⁴¹ Richfield's stated intention to take steps to ensure future compliance, while laudable, does not negate its willful and repeated violations of the Rules. Accordingly, we decline to cancel or reduce the forfeiture on this basis as well.

10. In sum, we have examined Richfield's response to the *NAL* pursuant to the statutory factors described above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Richfield willfully⁴² and repeatedly⁴³ violated Section 302(b) of the Act and

³⁵ See NAL Response at 12.

³⁶ See *id.* at 2.

³⁷ See, e.g., *Emery Tel.*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23859, para. 12 (1998) (by issuing forfeitures for apparently inadvertent violations, the Commission “impels licensees to be more familiar with the applicable rules in structuring future conduct”), *recons. dismissed in part and denied in part*, Memorandum Opinion and Order, 15 FCC Rcd 7181 (1999); *Lakewood Broad. Serv., Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438, para. 6 (1972) (denying a mitigation claim based on a licensee's assertion of unfamiliarity with station identification requirements, reasoning that “[i]f ignorance of [the Rules] were accepted as an excuse, we would be encouraging licensees to know as little as possible”).

³⁸ See NAL Response at 2.

³⁹ See, e.g., *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission will generally reduce the assessed forfeiture “based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation”).

⁴⁰ See, e.g., *Behringer USA, Inc.*, Forfeiture Order, 22 FCC Rcd 10451, 10459, para. 19 (2007) (forfeiture paid).

⁴¹ See *id.* (“[T]he Commission has repeatedly found that corrective measures implemented after [the] Commission has initiated an investigation or taken enforcement action do not nullify or mitigate past violations.”).

⁴² 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 clarifies that this definition of willful applies to both Sections 312 and 503 of the Act, H.R. Rep. No. 97-765 (1982) (Conf. Rep.), and the Commission has so interpreted the term in the Section 503(b) context, see *So. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387–88, para. 5 (1991) (*So. Cal.*), *recons. denied*, 7 FCC Rcd 3454 (1992).

former Section 2.803(a)(1) of the Rules by marketing noncompliant and unlabeled FM transmitters in the United States. Considering the entire record and the statutory factors, we find that a forfeiture in the amount of \$18,000 is warranted.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.80 of the Commission's rules,⁴⁴ Richfield Electronics (China) Ltd. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eighteen thousand dollars (\$18,000) for willful and repeated violations of Section 302(b) of the Communications Act of 1934, as amended, and former Section 2.803(a)(1) of the Commission's rules.⁴⁵

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules by November 13, 2013.⁴⁶ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended.⁴⁷ Richfield Electronics (China) Ltd. shall send electronic notification of payment to Jason Koslofsky at Jason.Koslofsky@fcc.gov, Daudeline Meme at Daudeline.Meme@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

13. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁴⁸ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that Richfield Electronics (China) Ltd. should follow based on the form of payment it selects:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.

(Continued from previous page . . .) _____

⁴³ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). *See, e.g., So. Cal.*, 6 FCC Rcd at 4388, para. 5.

⁴⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁴⁵ 47 U.S.C. § 302a(b); 47 C.F.R. § 2.803(a)(1) (2008).

⁴⁶ *See* 47 C.F.R. § 1.80.

⁴⁷ 47 U.S.C. § 504(a).

⁴⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

14. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁴⁹ If Richfield Electronics (China) Ltd. has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both Certified Mail, Return Receipt Requested, and UPS to Flora Cho, Operations Manager, Richfield Electronics (China) Ltd., 7/F., Unit 14&16, Shing Yip Ind. Bldg., 19-21 Shing Yip St., Kwun Tong, Kowloon, Hong Kong, SAR; and also sent to Ms. Cho via facsimile at 011 852 2344 4809.

FEDERAL COMMUNICATIONS COMMISSION

Robert H. Ratcliffe
Acting Chief
Enforcement Bureau

⁴⁹ See 47 C.F.R. § 1.1914.