

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

In the Matter of)	File No.: EB-10-SE-055
)	
Fender Musical Instruments Corporation)	Acct. No.: 201232100035
)	
)	FRN: 002963429

CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Fender Musical Instruments Corporation, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into possible violations of Section 302(b) of the Communications Act of 1934, as amended,¹ and Sections 2.803, 2.1203, 2.1204, 2.1205, 15.19, 15.21, and 15.105 of the Commission’s rules² pertaining to the marketing of digital radio frequency devices, such as bass amplifiers, pre-amplifiers, tuners, and audio mixers.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq.
 - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which FMIC is subject by virtue of its business activities, including but not limited to, the Equipment Marketing Rules.
 - (f) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 9.
 - (g) “Covered Employees” means all employees and agents of FMIC who perform, or supervise, oversee, or manage the performance of, duties that relate to FMIC’s responsibilities under the Equipment Marketing Rules.
 - (h) “Digital Device” means an unintentional radiator (device or system) as defined in Section 15.3(k) of the Rules.³

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803, 2.1203, 2.1204, 2.1205, 15.19, 15.21, 15.105.

³ *Id.* § 15.3(k).

- (i) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (j) “Equipment Marketing Rules” means Section 302(b) of the Act,⁴ Sections 2.803, 2.1203, 2.1204, 2.1205, 15.19, 15.21, and 15.105 of the Rules,⁵ and other Communications Laws governing the marketing of radio frequency devices within the United States and its territories.
- (k) “FMIC” means Fender Musical Instruments Corporation, and its divisions, subsidiaries, predecessors-in-interest and successors-in-interest.
- (l) “Investigation” means the investigation commenced by the Bureau’s June 1, 2010, letter of inquiry regarding whether the marketing of certain Digital Devices by FMIC complies with the Equipment Marketing Rules.⁶
- (m) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by FMIC to implement the Compliance Plan.
- (n) “Parties” means FMIC and the Bureau, each of which is a “Party.”
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to Section 302(b) of the Act⁷ and Sections 2.803, 15.19, 15.21, and 15.105 of the Rules,⁸ certain Digital Devices may not be marketed in the United States unless the devices comply with the applicable technical standards as well as the administrative requirements relating to equipment labeling and consumer disclosure. Section 2.803(e)(4) of the Rules defines “marketing” as 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.”⁹

3. Pursuant to Sections 2.1203, 2.1204, and 2.1205 of the Rules, a Digital Device may not be imported into the United States unless the importer, ultimate consignee, or customs broker, files with the United States Customs and Border Protection an FCC Form 740 (or the electronic equivalent thereof) declaring that the device meets one of the import conditions set forth in Section 2.1204 of the Rules.¹⁰ FMIC markets Digital Devices, including bass amplifiers, pre-amplifiers, tuners, audio mixers, and wireless microphones, as well as products packaged with and/or including Digital Devices, used in connection with musical instruments. These Digital Devices are unintentional radiators subject to

⁴ See 47 U.S.C. § 302a(b).

⁵ 47 C.F.R. §§ 2.803, 2.1203, 2.1204, 2.1205, 15.19, 15.21, 15.105.

⁶ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to William Mendello, CEO, Fender Musical Instruments Corporation (June 1, 2010) (on file in EB-10-SE-055).

⁷ See 47 U.S.C. § 302a(b).

⁸ See 47 C.F.R. §§ 2.803, 15.19, 15.21, 15.105.

⁹ *Id.* § 2.803(e)(4).

¹⁰ See *id.* §§ 2.1203, 2.1204, 2.1205.

authorization prior to marketing, via either the Commission's equipment verification or declaration of conformity procedures.¹¹

4. On June 1, 2010, the Bureau's Spectrum Enforcement Division (Division) issued a letter of inquiry (LOI) to FMIC, directing FMIC to submit a sworn written response to a series of questions relating to FMIC's manufacture, importation, and marketing of Digital Devices.¹² FMIC responded to the LOI on July 30, 2010.¹³ In its LOI Response, FMIC submitted information concerning certain FENDER and SWR brand Digital Devices marketed by the company.¹⁴ According to FMIC, certain of its newer Digital Device models are substantially similar to older models that have been previously authorized.¹⁵ FMIC further stated that it was uncertain as to the labeling and user manual language requirements that were applicable to some of its Digital Devices.¹⁶ FMIC also provided information related to its importation of certain Digital Devices and its obligation to file customs Form 740s with the United States Customs and Border Protection in connection with the importation of such Digital Devices.¹⁷ In subsequent supplemental filings, FMIC supplied further information relevant to the Investigation.¹⁸ The Bureau and FMIC entered into tolling agreements to toll the statute of limitations.¹⁹

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

5. **Jurisdiction.** FMIC agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this

¹¹ See *id.* § 15.101.

¹² See *supra* note 6.

¹³ See Letter from Charles A. Zielinski, Esq., Bryan Cave, Counsel for Fender Musical Instruments Corporation, to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (July 30, 2010) (on file in EB-10-SE-055) (LOI Response). FMIC updated its LOI Response on September 29, 2010. See Letter from Charles A. Zielinski, Esq., Bryan Cave, Counsel for Fender Musical Instruments Corporation, to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Sept. 29, 2010) (on file in EB-10-SE-055).

¹⁴ See LOI Response at Spreadsheet A.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 4.

¹⁸ See Letter from Charles A. Zielinski, Esq., Bryan Cave, Counsel for Fender Musical Instruments Corporation, to Linda M. Nagel, Esq., Spectrum Enforcement Division, FCC Enforcement Bureau (Feb. 11, 2011) (on file in EB-10-SE-055); Letter from Charles A. Zielinski, Esq., Bryan Cave, Counsel for Fender Musical Instruments Corporation, to Linda M. Nagel, Esq., Spectrum Enforcement Division, FCC Enforcement Bureau (Nov. 18, 2011) (on file in EB-10-SE-055); Letter from Charles A. Zielinski, Esq., Bryan Cave, Counsel for Fender Musical Instruments Corporation, to John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (July 13, 2012) (on file in EB-10-SE-055).

¹⁹ See, e.g., Tolling Agreement Extension, executed by and between John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and Lee Holtry, Associate General Counsel, Fender Musical Instruments Corporation (Apr. 17, 2012) (on file in EB-10-SE-055).

Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, FMIC agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against FMIC concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against FMIC with respect to FMIC's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, FMIC shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that FMIC complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Equipment Marketing Rules prior to assuming his/her duties.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, FMIC agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Equipment Marketing Rules, FMIC shall implement the following procedures:

- (a) **Operating Procedures on Equipment Marketing.** Within sixty (60) calendar days after the Effective Date, FMIC shall establish Operating Procedures that all Covered Employees must follow to help ensure FMIC's compliance with the Equipment Marketing Rules. FMIC's Operating Procedures shall include internal procedures and policies specifically designed to ensure that (i) prior to the initiation of marketing (as such term is defined in Section 2.803 of the Rules²⁰), all Digital Devices and other radio frequency devices to be marketed by FMIC comply with applicable technical standards, have been properly authorized (via the certification, verification, or declaration of conformity procedures, as applicable), and comply with the applicable administrative requirements relating to equipment labeling and consumer disclosure; and (ii) FMIC complies with the requirements of Sections 2.1203, 2.1204 and 2.1205 of the Rules relating to the importation and entry of Digital Devices into the United States, including the filing with the United States Customs and Border Protection of an FCC Form 740 (or the electronic equivalent thereof) that accurately identifies the importation condition(s) satisfied for each such importation.²¹

²⁰ See *supra* para. 2.

²¹ See 47 C.F.R. §§ 2.1203, 2.1204, 2.1205.

- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Equipment Marketing Rules, including the obligations to secure an equipment authorization from the FCC prior to marketing a Digital Device and to meet all FCC requirements for the importation and entry of such Digital Device into the United States, and set forth the Operating Procedures that Covered Employees shall follow to help ensure FMIC's compliance with the Equipment Marketing Rules. FMIC shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. FMIC shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** FMIC shall establish and implement a Compliance Training Program on compliance with the Equipment Marketing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of FMIC's obligation to report any noncompliance with the Equipment Marketing Rules under paragraph 10 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. FMIC shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.
- (d) **Training of Original Equipment Manufacturers.**
- (i) In order to promote compliance with the Equipment Marketing Rules by original equipment manufacturers (OEMs) that provide Digital Devices for sale and use in the United States, but are located in foreign countries, FMIC shall develop and implement an on-line compliance training program (OEM Training Program) for all OEMs that manufacture Digital Devices for and on behalf of FMIC for distribution by FMIC in the United States under one or more FMIC brands (FMIC OEMs). The OEM Training Program shall address compliance with the Equipment Marketing Rules and the Operating Procedures relevant to the FMIC OEMs, and shall incorporate FMIC's Compliance Manual. FMIC shall make the OEM Training Program, including the Compliance Manual and any revisions thereto, available to FMIC OEMs in English, Korean and Mandarin. FMIC OEMs shall be trained pursuant to the OEM Training Program within one hundred twenty (120) calendar days after the Effective Date. OEMs that become FMIC OEMs at any time after the Effective Date shall be trained pursuant to the OEM Training Program as soon as practicable but no later than sixty (60) calendar days after becoming an FMIC OEM. FMIC shall repeat the OEM training on an annual basis, tailored as appropriate to the needs of the applicable FMIC OEM, and shall periodically review and revise the OEM Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

- (ii) FMIC shall notify the Bureau within ten (10) calendar days after the date that FMIC has completed the initial OEM Training Program session(s) in accordance with paragraph 9(d)(i) of this Consent Decree. Such notification shall include a brief description of the training provided, comply with Section 1.16 of the Rules, and be subscribed to as true under penalty of perjury in substantially the form set forth therein.²² The notification shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Linda M. Nagel at Linda.Nagel@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

10. **Reporting Noncompliance.** FMIC shall report any noncompliance with the Equipment Marketing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that FMIC has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that FMIC has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Linda M. Nagel at Linda.Nagel@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

11. **Compliance Reports.** FMIC shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (a) Each compliance report shall include a detailed description of FMIC's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Equipment Marketing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of FMIC, stating that the Compliance Officer has personal knowledge that FMIC (i) has established and implemented the Compliance Plan; (ii) has completed (or, in the case of the initial 90-day Compliance Report, is on schedule to complete) the training of the FMIC OEMs as set forth in paragraph 9(d)(i) of this Consent Decree; (iii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iv) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 10 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.²³
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of FMIC, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that FMIC has taken or will take to remedy such

²² See 47 C.F.R. § 1.16.

²³ See *id.*

noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that FMIC has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

- (d) All Compliance Reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Linda M. Nagel at Linda.Nagel@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

12. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 8 through 11 of this Consent Decree shall expire twenty-four (24) months after the Effective Date.

13. **Voluntary Contribution.** FMIC agrees that it will make a voluntary contribution to the United States Treasury in the amount of two hundred sixty-five thousand dollars (\$265,000) (Voluntary Contribution), such Voluntary Contribution to be made in two equal payments (each an Installment Payment) of one hundred thirty-two thousand five hundred dollars (\$132,500). The first Installment Payment shall be made within thirty (30) calendar days after the Effective Date, with the second Installment Payment to be made within one hundred and eighty (180) calendar days after the Effective Date. FMIC acknowledges and agrees that upon execution of this Consent Decree the Voluntary Contribution and each Installment Payment shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).²⁴ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. In addition, FMIC agrees that it will make the first and all subsequent Installment Payments in United States Dollars without further demand or notice by the dates specified above. FMIC shall also send electronic notification of payment to Linda M. Nagel at Linda.Nagel@fcc.gov, Ricardo Durham at Ricardo.Durham@fcc.gov., and Samantha Peoples at Sam.Peoples@fcc.gov on the dates said payments are made.

14. Installment Payments 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.²⁵ 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 you should follow based on the form of payment you select:

- Payment by check or money order must be made payable in United States Dollars 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.
- 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.

²⁴ See Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

²⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. **Event of Default.** FMIC agrees that an Event of Default shall occur upon the failure by FMIC to pay the full amount of any Installment Payment on or before the due date specified in this Consent Decree.

16. **Waivers.** FMIC waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. FMIC shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither FMIC nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and FMIC shall waive any statutory right to a trial *de novo*. FMIC hereby agrees to waive any claims it may have under the Equal Access to Justice Act²⁶ relating to the matters addressed in this Consent Decree.

17. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

18. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which FMIC does not expressly consent) that provision will be superseded by such Rule or Commission order.

19. **Successors and Assigns.** FMIC agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

20. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

21. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

22. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

23. **Authorized Representative.** The individual signing this Consent Decree on behalf of FMIC represents and warrants that he is authorized by FMIC to execute this Consent Decree and to bind

²⁶ Equal Access to Justice Act, Pub L. No. 96-481, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504); *see also* 47 C.F.R. §§ 1.1501-1.1530.

FMIC to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

24. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Mark Van Vleet
Chief Legal Officer
Fender Musical Instruments Corporation

Date