

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

In the Matter of)	
)	
DNJ Radio)	File No.: EB-FIELDWR-12-00005117
)	Citation No.: C201332960001
Fremont, California)	
)	

CITATION AND ORDER

Illegal Marketing of Unauthorized Radio Frequency Devices

Adopted: August 14, 2013

Released: August 15, 2013

By the District Director, San Francisco District Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. This is an official **CITATION AND ORDER** (Citation), issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (Communications Act or Act),¹ to DNJ Radio (DNJ). Specifically, DNJ is being cited for the marketing of unauthorized radio frequency devices in violation of Section 302(b) of the Communications Act² and Sections 2.803 and 2.815 of the Commission's rules (Rules).³

2. Notice of Duty to Comply With Law: DNJ should take immediate steps to come into compliance, to discontinue the marketing of unauthorized radio frequency devices, and to avoid any recurrence of this misconduct described herein. DNJ is hereby on notice that if it subsequently engages in any conduct of the type described in this Citation, including any violation of Section 302(b) of the Act or Sections 2.803 and 2.815 of the Rules, it may be subject to civil penalties, including but not limited to substantial monetary fines (forfeitures) and seizure of equipment. Such forfeitures may be based on both the conduct that led to this Citation and the conduct following it.⁴

3. Your Response Required: Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,⁵ we also direct DNJ to respond in writing, within thirty (30) calendar days after the release date of this Citation, and signed under penalty of perjury, with descriptions of the specific action(s) taken or plans

¹ 47 U.S.C. § 503(b)(5).

² 47 U.S.C. § 302a(b).

³ 47 C.F.R. §§ 2.803, 2.815.

⁴ See 47 U.S.C § 503(b)(5). See also S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability “*would attach not only for the conduct occurring subsequently but also for the conduct for which the citation was originally sent.*”) (emphasis added).

⁵ 47 U.S.C. §§ 154(i), 154(j), 403.

to cease the marketing of unauthorized radio frequency devices, to preclude recurrence of these violations, and also a timeline for completion of any corrective action(s).

II. BACKGROUND

4. The Enforcement Bureau's San Francisco Office received reports that DNJ Radio offered for sale non-certified Citizen Band (CB) and Amateur Radio Service (ARS) linear amplifiers in Fremont, California. DNJ Radio was reportedly offering for sale non-certified amplifiers and kits on the internet website www.dnjradio.com (DNJ Radio Website).⁶ A San Francisco agent investigated the reports and browsed the DNJ Radio Website on October 25, 2012, and again on August 2, 2013, and confirmed that DNJ Radio was offering for sale non-certified RM Italy linear amplifiers and amplifier kits capable of operation with both CB 11 meter transceivers and ARS 10 meter transceivers. A partial listing follows:

<u>Brand Name</u>	<u>Model</u>
RM Italy	AD 203 Stinger Board
RM Italy	PCN-60 Stinger Board
RM Italy	KLV 550 Linear Amplifier
RM Italy	KLV 1000 Linear Amplifier
RM Italy	HLA-150V Plus HF Professional Linear Amplifier
RM Italy	HLA-300V Plus HF Professional Linear Amplifier
RM Italy	KL 35 Mobile Unit Amplifier
RM Italy	KL 60 Mobile Unit Amplifier
RM Italy	KL 200 Mobile Unit Amplifier
RM Italy	KL 203 Mobile Unit Amplifier
RM Italy	KL 300 Mobile Unit Amplifier
RM Italy	KL 300P Mobile Unit Amplifier
RM Italy	KL 400 HF Amplifier
RM Italy	KL 500 Mobile Unit Amplifier
RM Italy	KL 501 HF Amplifier

According to Commission records, these devices have not received an FCC grant of certification, which is required for external radio frequency power amplifiers operating on frequencies below 144 MHz and marketed in the United States.⁷

III. APPLICABLE LAW AND VIOLATIONS

5. Federal law requires that radio frequency devices must be certified in accordance with the Commission's technical standards before they can be marketed in the United States.⁸ 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."⁹

⁶ Information was also obtained that DNJ offered these types of devices for sale on the websites www.amazon.com, www.ebay.com, and www.ioffer.com.

⁷ See 47 C.F.R. § 2.815(b).

⁸ See, e.g., *Revision of Part 2 of the Commission's Rules Relating to the Marketing and Authorization of Radio Frequency Devices*, Report and Order, 12 FCC Rcd 4533 (1997).

⁹ 47 U.S.C. § 302a(b).

6. The applicable implementing regulations for Section 302(b) are set forth in Section 2.803 of the Rules.¹⁰ Specifically, Section 2.803(a) of the Rules provides, in relevant part, that:

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 device unless[,] . . . [i]n the case of a device subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter.¹¹

Additionally, Section 2.803(g) of the Rules provides in relevant part that:

[R]adio frequency devices that could not be authorized or legally operated under the current rules . . . shall not be operated, advertised, displayed, offered for sale or lease, sold or leased, or otherwise marketed absent a license issued under part 5 of this chapter or a special temporary authorization issued by the Commission.¹²

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.”¹³

7. Section 2.815(a) of the Rules states that “. . . an external radio frequency power amplifier is any device which, (1) when used in conjunction with a radio transmitter as a signal source is capable of amplification of that signal, and (2) is not an integral part of a radio transmitter as manufactured.”¹⁴ The devices listed in paragraph 4 meet this definition. Section 2.815(b) states that “[n]o person shall manufacture, sell or lease, 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 external radio frequency power amplifier capable of operation on any frequency or frequencies below 144 MHz unless the amplifier has received a grant of certification in accordance with subpart J of this part . . .”¹⁵ The devices listed in paragraph 4 have not received a grant of certification from the FCC and they operate on frequencies below 144 MHz. Section 2.815(b)(1) states that an “. . . external radio frequency power amplifier shall not be capable of amplification in the frequency band 26 – 28 MHz.”¹⁶ All the devices listed in paragraph 4 have specifications that state they operate in this frequency band. Section 2.803(b)(4) in part states that “. . . an external radio frequency power amplifier . . . intended for use in the Amateur Radio Service . . .” must also have a grant of certification from the FCC.¹⁷ Again, there are no grants of certification from the FCC for the equipment listed in paragraph 4.

¹⁰ 47 C.F.R. § 2.803.

¹¹ 47 C.F.R. § 2.803(a).

¹² 47 C.F.R. § 2.803(g).

¹³ 47 C.F.R. § 2.803(e)(4).

¹⁴ 47 C.F.R. § 2.815(a).

¹⁵ 47 C.F.R. § 2.815(b).

¹⁶ 47 C.F.R. § 2.815(b)(1).

¹⁷ 47 C.F.R. § 2.815(b)(4).

8. DNJ Radio provides a disclaimer on its website for the devices listed in paragraph 4 that states that “[a]ll RM Italy Units are for industrial, scientific, medical, or export use only. It is a violation of US FCC regulations to use it on 11 meter band in US.”¹⁸ The amplifiers in question, however, are being offered for sale from within the United States and anyone within the United States could buy the devices regardless of the disclaimer.

9. The record in this case shows that, on October 25, 2012, and August 2, 2013, DNJ Radio offered for sale on the DNJ Radio Website, to customers in the United States, non-certified linear amplifiers and amplifier kits capable of operation with both CB and ARS transceivers. Accordingly, DNJ Radio offered for sale multiple non-certificated radio frequency devices. Based on the foregoing evidence, we find that DNJ Radio violated Section 302(b) of the Communications Act and Sections 2.803 and 2.815 of the Rules by marketing and offering for sale in the United States unauthorized radio frequency devices that do not have valid FCC certifications.¹⁹

IV. REQUEST FOR INFORMATION

10. Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,²⁰ DNJ is directed to describe in writing the steps it has taken or plans to take to cease the marketing of unauthorized radio frequency devices and provide the information requested below, as well as a timeline for any corrective actions, within thirty (30) calendar days after the release date of this Citation. A failure to respond in writing, or an inadequate, incomplete, or misleading response, may subject DNJ to additional sanctions.²¹

- i. Provide a list of amplifiers manufactured, marketed, and/or imported by RM Italy which are capable of use with both CB and ARS transceivers. For each model, provide a technical specifications sheet which includes the frequencies the device operates on, power limits, and the manufacturer and/or importer of the device, if the manufacturer or importer is not RM Italy. For each model, provide any equipment certification, authorization, verification and/or declaration of conformity issued to RM Italy or the manufacturer and/or importer pursuant to the FCC’s equipment authorization rules for each model listed. For each model, also provide the supporting documentation and test reports submitted or created by RM Italy to support the equipment authorization grant.
- ii. Provide documents that RM Italy has created concerning the use of linear amplifiers on both CB and ARS transceivers and warnings to users as to the operation on both CB and

¹⁸ See DNJ Radio Website http://www.dnjradiocom/product_info.php?products_id=231 (last visited August 2, 2013).

¹⁹ 47 U.S.C. § 302a(b); 47 C.F.R. §§ 2.803, 2.815.

²⁰ 47 U.S.C. §§ 154(i), 154(j), 403.

²¹ See, e.g., *SBC Communications, Inc., Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 7589, 7599–7600, ¶¶ 23–28 (2002) (\$100,000 forfeiture for egregious and intentional misconduct, i.e., refusing to attest to truthfulness and accuracy of responses to a Letter Inquiry (LOI)); *Connect Paging, Inc. d/b/a Get A Phone*, Forfeiture Order, 22 FCC Rcd 15146 (Enf. Bur. 2007) (\$4,000 forfeiture for failure to respond to an LOI); *BigZoo.Com Corporation*, Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005) (\$20,000 forfeiture for failure to respond to a USF LOI); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003) (\$4,000 forfeiture for failure to respond to an LOI); *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (Enf. Bur. 2003) (proposing \$10,000 forfeiture for a non-responsive reply to an LOI); *Digital Antenna, Inc., Sunrise, Florida*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7600 (Enf. Bur. 2008) (proposing \$11,000 forfeiture for failure to provide complete responses to an LOI).

ARS frequency bands. Provide any documents created by RM Italy in which it notifies the sellers, buyers or users of its linear amplifiers of the potential violations of FCC regulations for use with CB and ARS transceivers, and/or an offer to sell the devices in the United States.

- iii. Provide any and all information and documents received, created or obtained, as part of the DNJ Radio investigation to determine if RM Italy is licensed or authorized to sell, 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 certified or non-certified linear amplifiers.

V. RESPONDING TO THIS CITATION

11. In addition to the required written information described in paragraphs 3 and 10, above, DNJ may, if it so chooses, respond to this Citation—challenging the factual and legal findings herein—within thirty (30) days from the release date of this Citation either through (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to your place of business.

12. If you would like to arrange a teleconference or personal interview, please contact David Hartshorn at (925) 416-9717. The nearest Commission Field Office is located in Pleasanton, California. Such teleconference or interview must take place within thirty (30) calendar days of the date of this Citation. If you would like to submit a written response, including any supporting documentation, you must send the response within thirty (30) calendar days of the date of this Citation to the contact and address provided in paragraph 13, below.

13. All written communications, including the information requested in paragraphs 3 and 10, above, should be provided to the address below.

Federal Communications Commission
San Francisco District Office
5653 Stoneridge Drive, Suite 105
Pleasanton, California 94588-8543
Re: EB-FIELDWR-12-00005117

14. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, and include as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five (5) business days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

15. Please be advised that it is a violation of Section 1.17 of the Commission's rules (47 C.F.R. § 1.17) for any person or a staff member of that person to make any false or misleading written or oral statement of fact. Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.²²

16. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

17. If you violate Section 1.17 of the Commission's rules or the criminal statute referenced above, you may be subject to further legal action, including monetary fines pursuant to Section 503 of the Communications Act.²³

18. Under the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

VI. FUTURE VIOLATIONS

19. If, after receipt of this Citation, DNJ again violates Section 302(b) of the Act or Sections 2.803 or 2.815 of the Rules by engaging in conduct of the type described herein, the Commission may impose monetary forfeitures not to exceed \$16,000 for each such violation or each day of a continuing violation, and up to \$112,500 for any single act or failure to act.²⁴ For instance, the Commission could impose separate forfeitures for each day on which a non-certificated CB transmitter or external RF amplifier is sold or for each day on which a non-certified RF device is advertised or otherwise offered for sale. Further, as discussed above, such forfeitures may be based on both the conduct that led to the Citation and the conduct following it.²⁵ In addition, violations of the Communications Act or the Rules also can result in seizure of equipment through *in rem* forfeiture actions,²⁶ as well as criminal sanctions, including imprisonment.²⁷

²² 47 C.F.R. § 1.17.

²³ 47 U.S.C. § 503.

²⁴ See 47 U.S.C. §§ 401, 501, 503; 47 C.F.R. § 1.80(b)(7). This amount is subject to further adjustment for inflation (see 47 C.F.R. § 1.80(b)(9)), and the forfeiture amount applicable to any violation will be determined based on the statutory amount designated at the time of the violation.

²⁵ See paragraph 2, *supra*.

²⁶ See 47 U.S.C. § 510.

²⁷ See 47 U.S.C. §§ 401, 501.

VII. ORDERING CLAUSES

20. **IT IS ORDERED** that pursuant to Sections 4(i), 4(j), and 403 of the Communications Act, DNJ must provide the written information requested in paragraphs 3 and 10, above. The response to the request for information must be provided in writing, signed under penalty of perjury by an authorized official at DNJ with personal knowledge of the information and representations provided in the written response, and must be received by the FCC within thirty (30) calendar days after the release date of this Citation and Order.

21. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent by First Class U.S. Mail and by Certified Mail, Return Receipt Requested, to DNJ Radio at 3920 Argonaut Way, #333, Fremont, California, 94538-1304.

FEDERAL COMMUNICATIONS COMMISSION

David K. Hartshorn
District Director
San Francisco District Office
Western Region
Enforcement Bureau