

Federal Communications Commission

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

In the Matter of)	
)	
Wesley Noe)	File No. EB-05-DT-047
d.b.a. GI Joe's Radio Electronics)	
and GI Joe's CB Radio)	NAL/Acct. No. 200632360002
Richmond, Kentucky)	FRN: 0014938096
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: April 19, 2006

By the District Director, Detroit Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Wesley ("Wes") Noe, d.b.a. GI Joe's Radio Electronics and GI Joe's CB Radio (collectively referred to herein as "GI Joe's")¹ apparently willfully and repeatedly violated Section 302(b) of the Communications Act of 1934 as amended, ("Act")², and Sections 2.803(a)(1), 2.815(b), and 2.815(c) of the Commission's Rules ("Rules")³ by offering for sale non-certified Citizens Band ("CB") transceivers and external radio frequency ("RF") power amplifiers. Specifically, Noe willfully and repeatedly violated Sections 2.803(a)(1), 2.815(b), and 2.815(c) of the Rules by offering for sale non-certified CB transceivers and RF power amplifiers on the GI Joe's Radio Electronics' web site. Noe also willfully violated Section 2.803(a)(1) of the Rules by offering for sale non-certified CB transceivers at the GI Joe's CB Radio store in Richmond, KY. We conclude, pursuant to Section 503(b) of the Act,⁴ that Wesley Noe apparently is liable for a forfeiture in the amount of twenty-one thousand dollars (\$21,000).

II. BACKGROUND

2. On June 17, 2003, in response to a complaint, an agent from the Enforcement Bureau's Detroit Office visited the GI Joe's web site. The agent observed that the web site displayed and offered for sale multiple makes and models of non-certified CB transceivers, including Galaxy models DX55V and DX66V, as well as the Connex 3300 model. These models previously had been tested by the Commission's Office of Engineering and Technology ("OET") and determined to be non-certified CB transceivers. The agent also observed numerous makes and models of external RF power amplifiers, including RM Costruzioni Elettroniche ("RM Italy") models KLV 60, KLV-200P, and KLV-300P.

3. On June 25, 2003, the Detroit Office issued a Citation to GI Joe's for violation of Section 302(b) of the Act and Sections 2.803(a)(1) and 2.815 of the Rules by offering for sale non-certified CB

¹ According to a search of the LexisNexis Business Reports, Noe is the owner of GI Joe's Radio Electronics and GI Joe's CB Radio.

² 47 U.S.C. § 302(b).

³ 47 C.F.R. § 2.803(a)(1), 2.815(b), 2.815(c).

⁴ 47 U.S.C. § 503(b).

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transceivers and external RF power amplifiers.⁵ The Citation outlined the marketing rules that were being violated and the possible penalties for future violations of those rules. In a response received by the Detroit Office on July 9, 2003, Noe stated that “[a]ll 10 meter radios have been identified and labeled as 10 meter radios and will only be sold as such in the United States.”⁶ Noe further stated that he had discontinued the sale of the external RF power amplifiers that operate between 24 MHz and 35 MHz.

4. On July 21, 2003, an agent from the Detroit Office conducted an on-scene investigation with Noe at GI Joe’s store in Richmond, KY. The agent observed that many of the same non-certified CB transceivers and external radio frequency power amplifiers offered for sale on the GI Joe’s web site also were displayed and offered for sale in the store. The agent orally warned Noe and issued written warnings to GI Joe’s regarding the sale of the non-certified CB transceivers and external radio frequency power amplifiers. Each warning letter stated that the sale of non-certified equipment must cease immediately and warned that future violations might subject GI Joe’s to monetary forfeitures and/or criminal sanctions.

5. In a response dated July 24, 2003, counsel for GI Joe’s disputed “all of the legal and factual contentions set forth in the citation and notices” and stated the expectation that the Citation and the warnings would be withdrawn within fourteen days. The Detroit Office did not withdraw or otherwise cancel the Citation as requested by GI Joe’s counsel.

6. On April 21, 2005, in response to complaints that GI Joe’s continued to sell non-certified CB transceivers and illegal external RF power amplifiers, agents from the Detroit Office again visited GI Joe’s store in Richmond, KY. During the visit, the agents observed that GI Joe’s displayed and offered for sale non-certified CB transceivers, including Galaxy models DX55V, DX66V and Connex model 3300, among others.⁷

7. During the April 21, 2005 visit, the agents also found and inspected two CB stations located in GI Joe’s store. The CB stations used non-certified CB transceivers, Galaxy models DX99V and DX66V transceivers. The agents observed that both transceivers were equipped to operate on the frequencies assigned to the CB Radio Service as well as on other frequencies, including those assigned to the Amateur Radio Service (“ARS”) and the United States Government.

8. Also on April 21, 2005, an agent in the Detroit Office visited the GI Joe’s web site and observed the following non-certified CB transceivers being offered for sale: Connex model 3300 and Galaxy models DX55V, DX66V, DX99V, among others. The web site also offered for sale the following RM Italy linear amplifiers models: KL-60, KLV-200P, KLV-300P, kl-250, and KL-550, among others.⁸

9. On March 29, 2006, an agent visited GI Joe’s web site and observed that GI Joe’s continued to market non-certified CB transceivers and non-certified external RF power amplifiers,

⁵ See Citation to G.I. Joe’s CB & Export Radio, released June 25, 2003 (“Citation”). In 2003, the company name on the web site was GI Joe’s CB & Export Radio. The Citation identified the Internet domain name for GI Joe’s CB & Export Radio as www.cbshop.webtrix.net, which is still valid and leads to the GI Joe’s Radio Electronics’ web site.

⁶ Letter from Wes Noe, GI Joe’s CB Radio, to James A. Bridgewater, received July 9, 2003.

⁷ The agents also observed RF power amplifiers at the store, including RM Italy models KL 60, KL 200-P, KL 300-P, and KLV 250. Although these amplifiers were being offered for sale on GI Joe’s web site (*see infra* para. 8), they were not, at the time, being displayed for sale at the store.

⁸ The agent visited GI Joe’s web site at <http://www.gijoesradioelectronics.com>.

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including Galaxy models DX55V, DX66V, DX99V transceivers and RM Italy models KL-60, KLV-200P, KLV-300P external RF power amplifiers.

III. DISCUSSION

10. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁰

11. 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.”¹¹ Section 2.803(a)(1) of the Rules provides that “[e]xcept 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 device unless . . . in the case of a device subject to certification such device has been authorized by the Commission”¹² Section 2.815(b) of the Rules states that “. . .no 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 or amplifier kit capable of operation on any frequency or frequencies between 24 and 35 MHz.”¹³ Section 2.815(c) of the Rules provides 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 or amplifier kit capable of operation on any frequency below 144 MHz unless the device has received a grant of type acceptance [now under certification]”¹⁴

12. CB radio transceivers are subject to the equipment certification process and must be certified and properly labeled prior to being marketed or sold in the United States.¹⁵ Unlike CB radio transceivers, radio transmitting equipment that transmits solely on ARS frequencies is not subject to equipment authorization requirements prior to manufacture or marketing. However, some radio transmitters that transmit in a portion of the 10-meter band of the ARS (28.000 to 29.700 MHz) are

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act. . . .” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁰ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

¹¹ 47 U.S.C. § 302 (b).

¹² 47 C.F.R. § 2.803(a)(1).

¹³ 47 C.F.R. § 2.815(b).

¹⁴ 47 C.F.R. § 2.815(c).

¹⁵ See 47 C.F.R. §§ 2.907, 2.927(a).

equipped with rotary, toggle, or pushbutton switches mounted externally on the unit, which allow operation in the CB bands after completion of minor and trivial internal modifications to the equipment. To address these radios, the Commission adopted changes to the CB type acceptance requirements by defining a “CB Transmitter” as “a transmitter that operates or is intended to operate at a station authorized in the CB.”¹⁶ Section 95.655(a) of the Rules also states that no transmitter will be certificated for use in the CB service if it is equipped with a frequency capability not listed in Section 95.625 of the Rules (CB transmitter channel frequencies).¹⁷ Also, the Commission’s Office of General Counsel (“OGC”) released a letter on the importation and marketing of ARS transmitters, which clarified that transmitters that “have a built-in capacity to operate on CB frequencies and can easily be altered to activate that capacity, such as by moving or removing a jumper plug or cutting a single wire” fall within the definition of “CB transmitter” under Section 95.603(c) of the Rules and therefore require certification prior to marketing or importation.¹⁸ Additionally, OET has evaluated the models at issue here and has determined that these devices could easily be altered for use as CB transceivers and therefore require certification.

13. The Detroit Office issued GI Joe’s a Citation on June 25, 2003, and written warnings on July 21, 2003, concerning GI Joe’s marketing of non-certified CB transceivers and external radio frequency power amplifiers. During a visit to GI Joe’s store in Richmond, Kentucky on April 21, 2005, agents from the Detroit Office observed that GI Joe’s offered for sale non-certified CB transceivers. On that same day, an agent visited GI Joe’s web site and observed that GI Joe’s offered for sale non-certified CB transceivers and non-certified external RF power amplifiers. As of March 29, 2006, the GI Joe’s web site continued to market non-certified CB transceivers and non-certified external RF power amplifiers. Based on the evidence before us, we find that GI Joe’s apparently willfully and repeatedly violated Section 302 of the Act and Sections 2.803(a)(1), 2.815(b) and 2.815(c) of the Rules by offering for sale non-certified CB transceivers and linear amplifiers.

14. Pursuant to The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, (“Forfeiture Policy Statement”), and Section 1.80 of the Rules, the base forfeiture amount for importation or marketing of unauthorized equipment is seven thousand dollars (\$7,000).¹⁹ In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.²⁰ Applying the Forfeiture Policy Statement, Section 1.80, and the statutory factors to the instant case, we find that GI Joe’s offered for sale on its web site non-certified CB transceivers and non-certified RF power amplifiers in violation of Sections 2.803(a)(1), 2.815(b), and 2.815(c) of the Rules and offered for sale at its store in Richmond, KY non-certified CB transceivers in violation of Section 2.803(a)(1) of the Rules. We therefore conclude that Wes Noe apparently is liable for a \$21,000 forfeiture.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications

¹⁶ 47 C.F.R. § 95.603(c).

¹⁷ 47 C.F.R. § 95.655(a).

¹⁸ Letter from Christopher Wright, General Counsel, FCC to John Wood, Chief Intellectual Property Rights, US Customs Service, 14 FCC Rcd 7797 (OGC, 1999).

¹⁹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

²⁰ 47 U.S.C. § 503(b)(2)(D).

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Act, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Wesley Noe, d.b.a. GI Joe's Radio Electronics and GI Joe's CB Radio, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-one thousand dollars (\$21,000) for violation of Section 302(b) of the Act and Sections 2.803(a)(1), Section 2.815(b), and 2.815(c) of the Rules.²¹

16. **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, Wesley Noe, d.b.a. GI Joe's Radio Electronics and GI Joe's CB Radio, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

17. 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.

18. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Detroit Office, 24897 Hathaway Street, Farmington Hills, MI 48335-1552, and must include the NAL/Acct. No. referenced in the caption.

19. 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 ("GAAP"); 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.

20. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.²²

21. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail to Wesley Noe at his address of record and to counsel for Wesley Noe at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office
Northeast Region
Enforcement Bureau

²¹ 47 U.S.C. §§ 503(b), 302(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 2.803(a)(1), 2.815(b) and 2.815(c).

²² See 47 C.F.R. § 1.1914.