

Federal Communications Commission

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

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| In the Matter of |) | |
| |) | |
| Princess K Fishing Corporation |) | File Number: EB-08-HL-0044 |
| |) | |
| Licensee of Ship Radio Station WDB8248 |) | NAL/Acct. No.: 200832860001 |
| Fishing Vessel PRINCESS K |) | FRN: 0011032422 |
| Honolulu, Hawaii |) | |
| Documentation # 511130 |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 29, 2008

By the Resident Agent, Honolulu Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Princess K Fishing Corporation, licensee of ship radio station WDB8248, in Honolulu, Hawaii, apparently willfully and repeatedly violated Section 80.89(a) of the Commission's Rules ("Rules")¹ by falsely activating an Emergency Position Indicating Radio Beacon ("EPIRB"), thereby engaging in superfluous communications resulting in the transmission of false distress communications. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Princess K Fishing Corporation is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. On February 26, 2008, the Enforcement Bureau's Honolulu Resident Agent Office received a violation report ("USCG Report") from the U. S. Coast Guard Fourteenth District Command Center ("D14CC"). The USCG Report detailed that on February 25, 2008, the DC14CC was notified of an active 406.025 MHz EPIRB in their area of responsibility via the Search and Rescue Satellite ("SARSAT") system. The D14CC determined that the EPIRB was registered to the fishing vessel PRINCESS K, home ported in Honolulu, Hawaii. Princess K Fishing Corporation is the owner of the fishing vessel PRINCESS K, and the licensee of ship radio station WDB8248, in Honolulu, Hawaii. The SARSAT fix located the EPIRB to open seas approximately 150 nautical miles north by northeast of Oahu, Hawaii. USCG D14CC efforts to contact the fishing vessel PRINCESS K, which had five people aboard, including an executive of the Princess K Fishing Corporation on board, through urgent broadcasts on several HF frequencies, were unavailing. In accordance with their protocol, the D14CC launched an HC-130 aircraft from Barber's Point Air Station, Hawaii. The aircraft located the fishing vessel PRINCESS K approximately 18 nautical miles away from where the EPIRB had been located. Upon contacting the fishing vessel on the VHF marine channel 16, after a low pass, the master of fishing vessel PRINCESS K stated that they had thrown the old EPIRB (the one detected by the SARSAT system)

¹ 47 C.F.R. § 80.89(a).

² 47 U.S.C. § 503(b).

overboard because they had purchased and installed a new one. There was no actual distress.

3. The USCG reported the false activation by the fishing vessel PRINCESS K to the Honolulu Office. According to the USCG Report, the D14CC expended 3.5 fixed wing aircraft hours and 6 Command Center hours at a cost of over \$35,000 to determine that this was a false alert. The D14CC also reported to the Honolulu Office that the old EPIRB was not retrieved and continued transmitting until March 1, 2008, potentially masking an actual search and rescue alert.

4. On March 26, 2008, when the fishing vessel PRINCESS K was back in port in Honolulu, agents from the Honolulu Office, along with Coast Guard personnel, interviewed the Princess K Fishing Corporation executive, who was onboard the fishing vessel PRINCESS K during the incident detailed in the USCG Report. The Princess K Fishing Corporation executive stated that a new EPIRB was purchased on Oahu and installed while they were ported in Hilo, Hawaii. The executive stated that he did not have time to return the old EPIRB, so he placed it in a plastic bag and put it in storage on the vessel. Later while at sea, he advised a crew member to take care of the bag and the crew member threw it overboard, thereby activating the unit. The executive stated that he did not realize this incident occurred until the Coast Guard aircraft, while hovering over his vessel, contacted him during their search. He explained that he was not able to retrieve the old EPIRB even though Coast Guard advised that the EPIRB was still continuing to transmit.

III. DISCUSSION

5. 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.³ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁴

6. Section 80.89(a) of the Rules states that "stations must not engage in superfluous radio communication."⁵ An EPIRB station is "a station in the maritime mobile service the emissions of which are intended to facilitate search and rescue operations."⁶ A distress alert, such as one from an EPIRB, is considered false "if it was transmitted without any indication that a mobile unit or person was in distress and required immediate assistance."⁷ The Rules require that "[i]f for any reason an EPIRB is activated inadvertently [the licensee shall] immediately contact the nearest U.S. Coast Guard unit or appropriate rescue coordination center by telephone, radio or ship earth station and cancel the distress alert."⁸

³ 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).

⁴ 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."

⁵ 47 C.F.R. § 80.89(a).

⁶ 47 C.F.R. § 80.5.

⁷ 47 C.F.R. § 80.334.

⁸ 47 C.F.R. § 80.335(e).

7. False activations of EPIRBs and other emergency locating devices, such as emergency locator transmitters (“ELTs”)⁹ have the potential to severely impact the search and rescue network, resulting in responder resources being wasted and misdirected. Air searches for false EPIRB and ELT activations cost the Coast Guard thousands of dollars per search hour, as demonstrated by the USCG Report. Additional costs are incurred by rescue coordination centers, support personnel, and ground search and rescue responders. False activations also can cause harmful interference to the SARSAT system and to airplanes and vessels in the vicinity of the signal. Additionally, a false activation may conceal or prevent timely response to a legitimate distress signal.¹⁰

8. On February 25, 2008, Princess K Fishing Corporation’s fishing vessel PRINCESS K activated an EPIRB by dumping it off the fishing vessel and into the ocean 150 nautical miles north by northeast of Oahu, Hawaii. The transmissions emanating from this EPIRB caused the U.S. Coast Guard to expend valuable resources to locate the fishing vessel PRINCESS K only to find that there was no emergency and that the EPIRB station was engaging in superfluous communications caused by the actions of those onboard the fishing vessel PRINCESS K, including an executive of the Princess K Fishing Corporation. Additionally, the fishing vessel PRINCESS K took no action to contact the Coast Guard concerning this false distress alert. Consequently, we find that the Princess K Fishing Corporation’s violation was willful. These superfluous communications continued to be located by the SARSAT system until March 1, 2008, therefore we find these violations were repeated. Based on the evidence before us, we find that Princess K Fishing Corporation apparently willfully and repeatedly violated Section 80.89(a) of the Rules by engaging in superfluous radio communications resulting in the transmission of false distress communications.

9. 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 transmitting false distress communications is \$8,000.¹¹ In assessing the monetary forfeiture amount, we must also 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, and history of prior offenses, ability to pay, and other such matters as justice may require.¹² Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Princess K Fishing Corporation is apparently liable for an \$8,000 forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Princess K Fishing Corporation is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for violations of Section 80.89(a) of the Rules.¹³

11. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Princess K Fishing Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

⁹ See 47 C.F.R. §§ 87.193 – 87.199.

¹⁰ See, e.g., *Grant Lam*, 22 FCC Rcd 6341 (EB 2007); *AMERI-KING Corporation*, 23 FCC Rcd 2616 (EB 2008); *Compatible Electronics*, 23 FCC Rcd 2621 (EB 2008).

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

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 80.89(a).

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12. 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁴ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Princess K Fishing Corporation shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

13. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Honolulu Office, P.O. Box 971030, Waipahu, Hawaii, 96797-1030 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-Response@fcc.gov.

14. 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.

15. 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 Princess K Fishing Corporation.

FEDERAL COMMUNICATIONS COMMISSION

Ryan Hagihara
Resident Agent
Honolulu Office
Western Region
Enforcement Bureau

¹⁴ See 47 C.F.R. § 1.1914.