

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

<b>In the Matter of</b>	)	<b>File No. EB-01-MA-035</b>
	)	
<b>Lightning Electronics, Inc.</b>	)	<b>NAL/Acct. No. 200232700009</b>
	)	
<b>Miami, Florida</b>	)	<b>FRN 0006-2915-95</b>

**FORFEITURE ORDER**

**Adopted: September 30, 2002**

**Released: October 2, 2002**

By the Chief, Enforcement Bureau:

**I. Introduction**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) against Lightning Electronics, Inc. (“*Lightning*”), for willful and repeated violations of Section 302(b) of the Communications Act of 1934, as amended (“*Act*”)<sup>1</sup> and Section 2.803(a)(1) of the Commission’s Rules (“*Rules*”).<sup>2</sup> The noted violations involve *Lightning*’s marketing of unapproved long-range cordless telephones.

2. On May 21, 2002, the District Director of the Enforcement Bureau’s (“*Bureau*”) Tampa, Florida, Office (“*Tampa Office*”) released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) against *Lightning* in the amount of \$7,000.<sup>3</sup> *Lightning* filed a response to the *NAL* dated June 11, 2002.

**II. Background**

3. In February of 2001, the Federal Aviation Administration (“*FAA*”) reported to the Bureau that it was receiving sporadic interference to an aviation frequency in the Miami, Florida, area. In March of 2001, the Bureau’s Miami, Florida, Resident Agent Office (“*Miami Office*”) identified the source of the interference as a long-range cordless telephone being operated from an electronics store in Miami. As a result of the *FAA*’s concerns, the Bureau launched a nationwide investigation into the unlawful<sup>4</sup> marketing and use of long-range cordless telephones. During the investigation, the Bureau discovered that electronics dealers are marketing long-range cordless telephones in several states. Certain of the long-range cordless telephones marketed by electronics dealers cause interference by transmitting spurious emissions on aviation frequencies, while others are specifically designed to operate in the

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<sup>1</sup> 47 U.S.C. § 302a (b).

<sup>2</sup> 47 C.F.R. § 2.803(a)(1).

<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL Acct. No. 200232700009 (Enf. Bur., Tampa Office, released May 21, 2002).

<sup>4</sup> Section 302(b) of the Act and Section 2.803(a)(1) of the Rules prohibit marketing unapproved devices, such as long-range cordless telephones, in the United States. Section 301 of the Act prohibits their use.

aviation band. The investigation has resulted in the issuance of several citations, *NALs* and Forfeiture Orders by the Enforcement Bureau.<sup>5</sup>

4. On July 27, 2001, agents from the Miami Office visited Lightning's retail store located at 231 E. Flagler Street, Unit #1, Miami, Florida. The agents saw several long-range, cordless telephones on display at the store, including a Super Phone CT-9000, a Prolink CT-6000CID, and an Optima OP8810. A salesperson offered to sell one of the units to the agents. The long-range cordless telephones displayed at the store were capable of causing serious interference to aviation communications and were not approved<sup>6</sup> by the Commission for use in the United States. On August 24, 2001, the Miami Office issued a citation to Lightning for violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules, which prohibit the marketing of unapproved radio frequency devices.

5. On September 26, 2001, agents from the Miami Office and from the Tampa Office visited Lightning's retail store and purchased a Prolink BAO-6110CID long-range cordless telephone (with antenna) for \$669.80. The telephone the agents purchased was capable of causing serious interference to aviation communications and was not approved by the Commission.

6. On October 5, 2001, Lightning responded to the citation issued on August 24, 2001. In its response, Lightning stated that the long-range cordless telephones had been returned to the distributor.

7. On October 29, 2001, the Tampa Office issued a *NAL*<sup>7</sup> to Lightning for violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules. Lightning did not file a response to that *NAL*. On February 21, 2002, the Bureau issued a *Forfeiture Order*<sup>8</sup> affirming the forfeiture proposed by that *NAL*. On March 8, 2002, Lightning filed a petition for reconsideration of that *Forfeiture Order*. As indicated in the petition for reconsideration, certain information set forth in the *NAL* issued on October 29, 2001, did not pertain to Lightning. In a *Memorandum Opinion and Order*<sup>9</sup> released May 14, 2002, the Bureau, after reviewing the entire record, cancelled that *NAL* pursuant to Section 503(b)(4)(ii) and (iii) of the Act.<sup>10</sup>

8. On May 21, 2002, the Tampa Office issued a new *NAL* to Lightning for violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules, this time including the facts pertaining to Lightning. In its response to the new *NAL*, Lightning does not deny the violations alleged in the *NAL* but contends that, in view of the cancellation of Lightning's forfeiture in the earlier proceeding, this forfeiture proceeding is barred by the doctrines of *res judicata* and "law of the case."

### III. Discussion

9. The Bureau assessed the proposed forfeiture amount in this case in accordance with Section 503 of the Act,<sup>11</sup> Section 1.80 of the Rules,<sup>12</sup> and *The Commission's Forfeiture Policy Statement and*

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<sup>5</sup> To date, we have issued 26 citations and five *NALs* totaling \$45,000, resulting in three *Forfeiture Orders*. See *CTI of Miami, Inc.*, 17 FCC Rcd. 8724 (Enf. Bur. 2002); *New Image Electronics*, 17 FCC Rcd. 3594 (Enf. Bur. 2002); and *Electronics Unlimited*, 17 FCC Rcd. 3109 (Enf. Bur. 2002).

<sup>6</sup> See 47 C.F.R. § 15.201.

<sup>7</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232700002 (Enf. Bur., Tampa Office, released October 29, 2001).

<sup>8</sup> *Lightning Electronics, Inc.*, 17 FCC Rcd 3131 (Enf. Bur. 2002).

<sup>9</sup> *Lightning Electronics, Inc.*, 17 FCC Rcd 8694 (Enf. Bur. 2002).

<sup>10</sup> 47 U.S.C. §§ 503(b)(4)(ii) and (iii).

<sup>11</sup> 47 U.S.C. § 503.

*Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). Section 503(b) of the Act<sup>13</sup> requires that, in examining Lightning’s response, the Commission 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 other such matters as justice may require.<sup>14</sup>

10. Section 302(b) of the Act provides that no 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. Section 2.803(a)(1) of the Rules provides that:

- (a) Except 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: (1) [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[.]

We find that, by marketing long-range cordless telephones (first on July 27, 2001, and again on September 26, 2001, after the issuance of a citation on August 24, 2001), Lightning willfully and repeatedly violated Section 302(b) of the Act and 2.803(a)(1) of the Rules.

11. Lightning contends, without citing any legal authority or presenting any legal or factual analysis, that the doctrine of *res judicata* bars this proceeding. Under the doctrine of *res judicata*, also known as claim preclusion, “a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.”<sup>15</sup> A second suit is barred by claim preclusion if: “(1) there is identity of parties (or their privies); (2) there has been an earlier final judgment on the merits of a claim; and (3) the second claim is based on the same set of transactional facts as the first.”<sup>16</sup> The claim involved in the earlier forfeiture proceeding against Lightning was based, in part, on facts that did not pertain to Lightning. The claim involved in this proceeding is based on a different set of transactional facts. We find, therefore, that claim preclusion does not bar this proceeding.<sup>17</sup>

12. Similarly, Lightning contends, again without citing any legal authority or presenting any legal or factual analysis, that the “law of the case” bars this proceeding. Under the doctrine of law of the case, “a court should not reopen issues decided in earlier stages of the same litigation.”<sup>18</sup> This doctrine

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<sup>12</sup> 47 C.F.R. § 1.80.

<sup>13</sup> 47 U.S.C. § 503(b).

<sup>14</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>15</sup> *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n. 5 (1979).

<sup>16</sup> *Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1362, (Fed.Cir.2000).

<sup>17</sup> We question whether the earlier forfeiture proceeding contained any judgment or law of the case that could preclude us from bringing this proceeding. In this instance, the Bureau’s *Memorandum Opinion and Order* vacated the *Forfeiture Order* which found Lightning liable for violations of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules because the factual basis for the *NAL* and *Forfeiture Order* did not pertain to Lightning. However, in view of the arguments set forth in paragraphs 11 and 12, we need not reach this question.

<sup>18</sup> *Agostini v. Felton*, 521 U.S. 203, 236 (1997) (“*Agostini*”); *Kimberlin v. Quinlan*, 199 F.3d 496, 500 (D.C. Cir. 1999), *cert. denied*, 531 U.S. 871 (2002).

cannot apply here because the earlier proceeding was a separate proceeding and not an “earlier stage” of this proceeding. Furthermore, none of the issues involved in this proceeding were decided in the earlier proceeding.

13. We have examined Lightning’s response to the *NAL* in light of the above statutory factors and the factors set forth in the *Policy Statement*. Taking all of these factors into account, we conclude that neither cancellation nor reduction of the proposed forfeiture is warranted and that the proper forfeiture amount is \$7,000.

#### IV. Ordering Clauses

14. **ACCORDINGLY, IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>19</sup> Lightning **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$ 7,000 for repeated and willful violation of the Section 302(b) the Act and Section 2.803(a)(1) of the Rules.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>20</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the “Federal Communications Commission,” to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232700009 and FRN 0006-2915-95. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>21</sup>

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail -- Return Receipt Requested -- to Lightning Electronics, Inc., at 231 E. Flagler Street, Unit #1, Miami, Florida 33131, and to Lightning’s attorney, Ira S. Silver, Esquire, Silver & Silver, 108 S. Miami Avenue, 2<sup>nd</sup> Floor, Miami, Florida 33130.

#### FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>19</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>20</sup> 47 U.S.C. § 504(a).

<sup>21</sup> See 47 C.F.R. § 1.1914.