

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

In the Matter of)	
)	
Johannus Orgelbouw b.v.)	File No. EB-03-TS-089
The Netherlands)	NAL/Acct. No. 200432100006
)	FRN # 0009-7508-60
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: November 4, 2003

Released: November 6, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture and Order* (“NAL”), we find Johannus Orgelbouw b.v. (“Johannus”) apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for importing and marketing radio frequency devices which do not comply with the Commission’s technical standards in repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Section 2.803(a) of the Commission’s Rules (“Rules”).² The noted violations involve Johannus’s importing and marketing digital electronic organs that do not comply with the technical requirements set forth in Part 15 of the Rules. In addition, we order Johannus, pursuant to Section 2.956(a)(1) of the Rules,³ to submit to the Enforcement Bureau a copy of the verification records for each model of organ which it imports into the United States in the next two years.

II. BACKGROUND

2. On March 27, 2003, the Enforcement Bureau received a complaint alleging that Johannus was importing digital electronic organs that were not in compliance with the Commission’s rules.⁴ The complainant asserted that other digital electronic organ companies were suffering competitive harm because Johannus, through its failure to comply with the Commission’s rules, was able to produce digital electronic organs less expensively.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a).

³ 47 C.F.R. § 2.956(a)(1).

⁴ Specifically, the complainant stated that it purchased a Johannus Rembrandt Model 370 organ, tested the device, and concluded that it did not comply with the radiated emission limits for Class B digital devices. The complainant also alleged that the Johannus organs do not comply with the Part 15 labeling and user manual requirements.

3. On June 18, 2003, the Enforcement Bureau issued a letter of inquiry to Johannus.⁵ Johannus submitted a response to the letter of inquiry on June 26, 2003,⁶ and submitted follow-up responses on July 10,⁷ July 30,⁸ and September 2, 2003.⁹ In its responses, Johannus stated that it imports about three to 13 organs a month into the U.S. and Canada.¹⁰ Johannus stated that it investigated as a result of the FCC inquiry and found that some of its organs were radiating signals in excess of the radiated emission limits in the Commission's rules due to a design change.¹¹ According to Johannus, this change was installed in organs manufactured between July and October, 2002,¹² and some of those organs have been recently imported and marketed in the United States.¹³ Johannus further indicated that this design change was a temporary one forced by a shortage of certain parts and that it no longer manufactures organs with this design change.¹⁴ Along with its September 2, 2003, letter, Johannus provided a copy of a partial report from a testing laboratory which indicates that, based on measurements made on August 19, 2003, the Johannus "Rembrandt 3900" digital organ is in conformance with the radiated and conducted emission limits for Class A digital devices set forth in the FCC rules.¹⁵ Johannus

⁵ Letter to Johannus Orgelbouw b.v. from Joseph P. Casey, Chief, Technical and Public Safety Division, Enforcement Bureau (June 18, 2003).

⁶ Letter to Enforcement Bureau, Technical and Public Safety Division, from Gert A. Van de Weerd, President, Johannus Orgelbouw b.v. (June 26, 2003).

⁷ Letter to Enforcement Bureau, Technical and Public Safety Division, from Gert A. Van de Weerd, President, Johannus Orgelbouw b.v. (July 10, 2003) ("July 10 Letter").

⁸ Letter to Enforcement Bureau, Technical and Public Safety Division, from Gert A. Van de Weerd, President, Johannus Orgelbouw b.v. (July 30, 2003) ("July 30 Letter").

⁹ Letter to Enforcement Bureau, Technical and Public Safety Division, from Gert A. Van de Weerd, President, Johannus Orgelbouw b.v. (September 2, 2003) ("September 2 Letter").

¹⁰ September 2 Letter ("We sell and install about 3-13 organs a month in the USA and Canada, mainly to churches, but also to concert halls and cemeteries.").

¹¹ July 30 Letter ("As far as we know today, the source of the violation is a modification on the CPU board. We added an extra track of 3,4 volt power supply. Unfortunately this track became an antenna. Neutral and Line Disturbance tests remained ok, while the test of the Horizontal Polarization showed only a small violation on 229,4 MHz of -1.54 dB. The Vertical Polarization test however showed the bad results.").

¹² July 10 Letter ("We believe that the modifications which are the reason, that some of our organs were violating FCC rules, have been done between July and October 2002. The modifications have been built in limited numbers of organs. Some of them have been shipped to the US and probably you have seen a test of one of them.").

In its July 10 Letter, Johannus also provided test results for one of its organs which showed that the organ was not in compliance with the radiated emission limits for Class A digital devices. Johannus did not specify which organ model it tested, but it appears that the non-compliant organ was one of its Rembrandt model organs, which Johannus states is one of its best selling organs in the U.S.

¹³ July 30 Letter ("If necessary we will be able to modify the suspected organs by exchanging the CPU boards. Also the few organs (About 7-10 pieces are far I can find out at the moment. However, some of them must be ok.) who are on the way – on the ocean or in the USA -, can easily be modified when they arrive and we also have discovered, which of them are faulty.").

¹⁴ July 10 Letter.

stated that this organ is one of its largest models and asserted that its other organs, which use fewer interference causing components, must be in compliance as well.¹⁶

III. DISCUSSION

4. 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.” Section 2.803(a)(2) of the Rules provides that:

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 ... [i]n the case of a device that is not required to have a grant of equipment authorization issued by the Commission, but which must comply with the specified technical standards prior to use, such device also complies with all applicable administrative (including verification of the equipment or authorization under a Declaration of Conformity, where required), technical, labeling and identification requirements specified in this chapter.

It is undisputed that Johannus imports, and markets in the U.S., the Johannus organs at issue here. It is also undisputed that these devices are digital devices and therefore must comply with the technical requirements set forth in Part 15 of the Rules, including the radiated emission limits. Johannus admitted that it imported and marketed in the U.S. at least one model of organ (involving more than one organ) that did not comply with the FCC’s radiated emission limits as recently as July 2003.¹⁷ Accordingly, based on the evidence before us, we conclude that Johannus apparently repeatedly¹⁸ violated Section 302(b) of the Act and Section 2.803(a)(2) of the Rules by importing and marketing digital electronic organs which do not comply with the radiated emission limits set forth in Section 15.109 of the Rules.¹⁹

5. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.²⁰ In exercising such authority, we are to 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

¹⁵ September 2 Letter.

¹⁶ *Id.*

¹⁷ See footnotes 11-12, *supra*.

¹⁸ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

¹⁹ 47 C.F.R. § 15.109. Based on Johannus’s responses to our LOI, it appears that Johannus imported and marketed organs that did not comply with the radiated emission limits for Class A digital devices. However, as explained in paragraph 7, we find that Johannus’s organs are actually Class B digital devices and therefore must comply with the more stringent emission limits applicable to such devices.

²⁰ 47 U.S.C. § 503(b).

offenses, ability to pay, and such other matters as justice may require.”²¹

6. 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*”)²² and Section 1.80 of the Rules,²³ the base forfeiture amount for importation or marketing of unauthorized or non-compliant equipment is \$7,000. Accordingly, we are proposing a forfeiture in the amount of \$7,000. We caution Johannus that any subsequent importing and marketing of non-compliant digital electronic organs will result in further sanctions, including substantially higher forfeiture penalties.

7. Additionally, while Johannus suggested in its LOI responses that its digital electronic organs are Class A digital devices, we disagree. Rather, we believe that the devices are appropriately classified as Class B digital devices and therefore must comply with the more stringent emission limits applicable to Class B digital devices. Section 15.3(h) of the Rules defines a Class A digital device as “[a] digital device that is marketed for use in a commercial, industrial, or business environment, exclusive of a device which is marketed for use by the general public or is intended to be used in the home.”²⁴ Section 15.3(i) defines a Class B digital device as “[a] digital device that is marketed for use in a residential environment notwithstanding use in commercial, business and industrial environments. Examples of such devices include, but are not limited to, personal computers, calculators, and similar electronic devices that are marketed for use by the general public.”²⁵ Among other places, Johannus markets its organs on a web site, www.johannus.com. This web site contains information for eight series of organs. These series are named the Opus, Sweelinck, Rembrandt, Monarke, American Classic-V, Majestic, Sovereign, and Chamber organ. The Johannus web site states that the Opus series organs “are designed for living room and chapel”; the Monarch series organs “find a place in both living rooms and churches”; the Majestic and Sovereign series organs are “designed for both home practice purposes and church”; and the Chamber organ “has been designed for both small and medium sized churches (and home use).” Thus, Johannus is clearly marketing these devices for use in a residential environment. Accordingly, these devices are Class B digital devices and must comply with the more stringent Class B technical requirements.

8. Furthermore, we note that compliance with the FCC rules is not simply a matter of importing equipment that meets the applicable technical standards. The rules also contain, among other things, requirements concerning labeling of radiofrequency devices²⁶ and requirements that certain information concerning radiofrequency devices be provided to the users in the user manual or instruction manual.²⁷ The complainant alleged that Johannus has not been in compliance with the labeling and user manual requirements. Our review of the user manual posted on Johannus’ website confirms that Johannus is not in compliance with the user manual requirements. We caution Johannus that, before importing or marketing any of its digital electronic organs in the U.S., it must ensure that it complies with

²¹ 47 U.S.C. § 503(b)(2)(D).

²² 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

²³ 47 C.F.R. § 1.80.

²⁴ 47 C.F.R. § 15.3(h).

²⁵ 47 C.F.R. § 15(i).

²⁶ *See* 47 C.F.R. § 15.19.

²⁷ *See* 47 C.F.R. § 15.105.

these requirements as well. Failure to do so may result in separate enforcement action.

9. Finally, pursuant to Section 2.956(a)(1) of the Rules, we order Johannus to submit to the Enforcement Bureau a copy of the verification records required to be maintained under Section 2.955 of the Rules²⁸ for each separate model of digital electronic organ, including both existing models and any new models, which it imports into the United States within the next two years following the release of this *NAL*. Such records must be submitted no later than fifteen (15) days from the date of importation of each model of digital electronic organ into the U.S. Each unit of equipment imported must be identical to the unit tested, within the variation which can be expected due to quantity production and testing on a statistical basis. Any modification or change that adversely affects the emanation characteristics of the modified equipment will require a new verification and the submission of that new verification to the Enforcement Bureau. Failure to submit these required verification records may result in further enforcement action.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80 of the Rules,²⁹ Johannus Orgelbouw b.v. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for repeatedly violating Section 302(b) of the Act and Section 2.803(a) of the Rules.

11. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture and Order*, Johannus Orgelbouw b.v. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the *NAL/Acct. No.* referenced in the caption.

13. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the *NAL/Acct. No.* referenced in the caption.

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; 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. Requests for payment of the full amount of this *NAL* under an installment plan should be

²⁸ 47 C.F.R. § 2.955.

²⁹ 47 C.F.R. § 0.111, 0.311 and 1.80.

sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.³⁰

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this *NAL*, either in your response to the *NAL* or in a separate filing to be sent to the Enforcement Bureau – Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (“OCBO”) set forth in Attachment A of this *NAL*. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. **IT IS FURTHER ORDERED** that, for two years from the date of release of this *Notice of Apparent Liability for Forfeiture and Order*, Johannus Orgelbouw b.v. must submit the records described in paragraph 9 no later than fifteen (15) days from the date of importation of each model of digital electronic organ into the U.S. These records must be submitted to: Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554, Attention: Kathryn Berthot, Room 7-C802.

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture and Order* shall be sent by first class mail and certified mail return receipt requested to Gert A. Van de Weerd, President, Johannus Orgelbouw b.v., Keplerlaan 2, 6726 BS EDE, The Netherlands.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

³⁰ See 47 C.F.R. § 1.1914.

Attachment A

FCC List of Small Entities

As described below, a “small entity” may be a small organization,
a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

<i>International Services</i>	
International Broadcast Stations	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
<i>Mass Media Services</i>	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	
<i>Wireless and Commercial Mobile Services</i>	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHz Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	

Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for

	the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
<i>Miscellaneous</i>	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)