

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT PIERCE DIVISION

CASE NO. \_\_\_\_\_

Paul Horner and David Byron, proposed class representatives and individually,

vs.

CLASS ACTION

Amcrest Industries, LLC. and Fujian Nan'an Baofeng Electronics Co., Ltd.,

Defendants.

\_\_\_\_\_ /

**PLAINTIFF'S COMPLAINT- JURY TRIAL DEMANDED**

The Plaintiffs, David Byron and Paul Horner, proposed class representative, by counsel, sue the Defendants, Amcrest Industries, LLC., and Fujian Nan'an Baofeng Electronics Co., alleging:

**COUNT I- BREACH OF CONTRACT**

**PARTIES, JURISDICTION AND VENUE**

1. The Plaintiff and proposed class representative, Paul Horner, is a resident of St. Lucie County, Florida.
2. The Plaintiff and proposed class representative, David Byron, is a resident of Seminole County, Florida.
3. The Defendant, Amcrest Industries, Inc., LLC., ("Amcrest") is a limited liability company located organized under the laws of Texas, with its principal office in Houston, Texas.
4. Fujian Nan'an Baofeng Electronics Co., Ltd., ("Fujian") is a limited company under the laws of China. Fujian Nan'an Baofeng Electronics Co., Ltd., manufactured all radio transceivers referred to in this complaint and sold them through distributors in Florida and nationwide.

5. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332(d) because the amount in controversy for the Class exceeds \$5,000,000 and putative class members are citizens of a different state than Defendants.
6. Jurisdiction is appropriate in this state pursuant to F.S. 48.193(1).
7. Venue is proper in this District because, as alleged in this Complaint, Defendants conducted and transacted business in this District, and a substantial portion of the events and conduct giving rise to the violations complained of in this action occurred in this District.

**COMMON STATEMENTS OF FACT**

8. The Defendant, Fujian, has manufactured and caused to be sold throughout Florida and throughout the United States, a series of radio transceivers under the general designation of UV-5 since 2013 and continues to do so. Sub-models are designated by suffixes.
9. The UV-5 was certified by Fujian solely under Federal Communications Commission (“FCC”) Part 90, Private and Mobile Radio Services. Operation outside FCC Part 90 is unlawful and thus the UV-5 series may not be sold or used in the United States pursuant to 47 U.S.C. 302(b) and FCC regulation 2.803(b).
10. The UV-5 radio series manufactured by Fujian are unlawful to be sold in the United States for the following reasons, each independent of one another, as the UV-5 series may not have the capability to transmit on frequencies allocated to other services pursuant to 47 U.S.C. 302(b) and FCC regulation 2.803(b), which is unlawful:

<b>UV-5 series can transmit capability</b>	<b>Authorized user</b>	<b>FCC Part authorized to use</b>
136-137 mhz	Aviation Services	87
137-138 mhz	Satellite Communications	25
138-139.9 mhz	Federal government/military no FCC licensees	--

156.7625-157.0375 mhz	Maritime & Aviation	80, 87
406-406.1 mhz	Distress signals	

11. Defendant Amcrest sells the UV-5 series to any purchaser and do not verify licensure.
12. On August 1, 2018, the FCC issued a Citation and Order against Amcrest Industries, LLC., attached as Exhibit 1. The FCC found that the transceivers in the UV-5 series manufactured by defendant Fujian Nan'an Baofeng Electronics Co., Ltd. since 2013 were unlawful for sale and ordered the halt of the sale in the future.
13. On September 24, 2018, the FCC issued an Enforcement Advisory, attached as Exhibit 2 hereto, referring to the citation referred to in paragraph 7, stating that the devices like those cited in Exhibit 2 may not be advertised, sold or used in the United States. A copy of the advisory is attached as Exhibit 2.
14. Each of the defendants is a merchant of radio transceivers.
15. At all times material to this litigation, Defendants, Amcrest Industries, LLC. and Fujian Nan'an Baofeng Electronics Co., Ltd., knew, or should have known that the UV-5 series was unlawful to advertise and sell in the United States but willfully ignored the law.
16. Defendant, Amcrest Industries, LLC. as of 2 October 2018, continues to advertise or sell UV-5 radios in violation of the law.
17. Plaintiff and proposed class representative, David Byron, purchased a UV-5 on October 1, 2018.
18. Plaintiff and proposed class representative, Paul Horner, purchased a UV5-RA on October 15, 2014, prior to the FCC notices (Exhibits 1 and 2)

**CLASS ACTION ALLEGATIONS**

19. Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated as permitted by Federal Rule of Civil Procedure 23(a), (b)(1), (b)(2), (b)(3), and (c)(4). There are in excess of 50,000 purchasers of the UV-5 series radios in the United States.
20. The proposed **Nationwide Class** (“Class”) consists of:  
  
**All persons throughout the United States who from 2013 to August 1, 2018 purchased UV-5 series radios**
21. Defendants are excluded from the Classes as well as any entity in which Defendants have a controlling interest, along with Defendants’ legal representatives, officers, directors, assignees and successors. Also excluded from the Classes is any judge to whom this action is assigned, together with any relative of such judge, and the spouse of any such persons, and the members of the judge’s staff.
22. The Classes are so numerous that joinder of all Members is impracticable. Information in the records of Defendants will establish the names and addresses of Class Members and the size of the Classes.
23. The common questions of law and fact among all Class Members predominate over any issues affecting individual Class Members, and include the following:
  - a. Whether Defendants advertised for sale a series of radio transceivers in violation of FCC regulations;
  - b. Whether Defendants sold a series of radio transceiver in violation of FCC regulations.
  - c. Whether Defendant Amcrest has falsely advertised the UV-5R 2+ and other radios of the UV-5 series was capable of transmitting at 4 watts;

- d. Whether Plaintiffs and Class Members are entitled to equitable and injunctive relief; and
  - e. Whether Plaintiffs and Class Members have sustained monetary loss and the proper measure of that loss.
24. Plaintiffs will fairly and adequately protect the interests of all the Classes.
25. Plaintiffs' claims are typical of those of other Class Members, as there are no material differences in the facts and law underlying their claims and Plaintiffs' prosecution of their claims will advance the claims of all Class Members.
26. Plaintiffs have retained competent counsel experienced in the prosecution of this type of litigation. Counsel for Plaintiff is licensed by the FCC as an Amateur Radio Extra Class operator, the highest level of licensure available for radio amateurs, and has been employed in various capacities including commercial broadcasting engineering and operations since 1975, and is thus familiar with radio engineering and practice.
27. Class treatment of the claims set forth in this Second Amended Complaint is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation, particularly in light of the damages involved when compared with just the filing fees alone, would make it impracticable or impossible for the proposed Class Members to prosecute their claims individually. Absent a Class action, a multiplicity of individual lawsuits would be required to address the claims between the Class Members and Defendants so that inconsistent treatment and adjudication of the claims would likely result.
28. The litigation and trial of Plaintiffs' claims are manageable. Defendants' uniform conduct, the consistent provisions of the relevant laws, the presence of a reasonable mathematical based methodology for generalized proof of damages and the impact of Defendants'

conduct on the Class, and the readily ascertainable identities of many Class Members demonstrates that there would be no significant manageability problems with prosecuting this lawsuit as a Class action.

29. Adequate notice can be given to Class Members directly using information maintained in Defendants' records.

30. Defendants have acted or refused to act on grounds that apply generally to the Class, making final injunctive relief appropriate to the Class as a whole.

31. Defendants' acts and omissions are the direct and proximate and/or direct cause of damage described more fully in the paragraphs set forth in this Amended Complaint.

#### **BREACH OF CONTRACT**

32. As to all Uv-5 series radios sold by the Defendants, are unlawful to sell and to use.

33. Plaintiffs revoke their acceptance of the UV-5 radios.

34. Plaintiffs have suffered damages from the breach of contract.

#### **RELIEF SOUGHT**

FOR ALL THESE REASONS, Plaintiffs individually and on behalf of all others similarly situated, seek relief as more fully set forth in this Complaint as follows:

- a. For an order certifying that the action may be maintained as a Class action, under Rule 23(a), (b)(1), (b)(2),(b)(3) and (c)(4) of the Federal Rules of Civil Case Procedure, appointing Plaintiffs, Class Representatives, and appointing their counsel as Counsel for the Class;
- b. For an award of damages, plus interest on the sums paid by them as described above from the date such sums were paid;
- c. Costs and litigation expenses;
- d. A jury trial;
- e. For any further legal and equitable relief as this Court may deem just and proper.

## COUNT II- BREACH OF CONTRACT

The Plaintiffs, David Byron and Paul Horner, proposed class representative, by counsel, sue the Defendants, Amcrest Industries, LLC., and Fujian Nan'an Baofeng Electronics Co., alleging:

35. Plaintiffs re-allege and incorporation by reference paragraphs 1 to 3 as if fully set forth herein. Plaintiffs assert this case of action on behalf of themselves and the Nationwide Class.

36. The UV-5R 2+ and other radios in the Uv-5 series were advertised by Amcrest to be capable of a power output of 1 watt or 4 watts. The radio is in fact only capable of operation at 1 watt. This representation was false when made and known to be false when made. Purchasers of the model UV-5R 2+ would rely upon the stated power output in deciding to purchase. Although amateur radio operators are required to use the least power possible to communicate, having 4 watt transmit capability is a useful feature for a transceiver because this will allow contact, under certain circumstances, from longer range. At the time made, defendant Amcrest knew or should have know that the claim was false and would mislead purchasers.

37. Plaintiffs revoke their acceptance of the UV-52+ and have suffered damages as a result of the breach of the contract.

FOR ALL THESE REASONS, Plaintiffs individually and on behalf of all others similarly situated, seek relief as more fully set forth in this Complaint as follows:

- a. For an order certifying that the action may be maintained as a Class action, under Rule 23(a), (b)(1), (b)(2),(b)(3) and (c)(4) of the Federal Rules of Civil Case Procedure, appointing Plaintiffs, Class Representatives, and appointing their counsel as Counsel for the Class;
- b. For an award of damages, plus interest on the sums paid by them as described above from the date such sums were paid;
- c. Costs and litigation expenses;

- d. A jury trial;
- e. For any further legal and equitable relief as this Court may deem just and proper.

**COUNT III**

**VIOLATION OF FDUTPA AS TO BOTH DEFENDANTS AS TO THE NATIONWIDE CLASS**

The Plaintiffs, David Byron and Paul Horner, proposed class representative, by counsel, sue the Defendants, Amcrest Industries, LLC. and Fujian Nan'an Baofeng Electronics Co., alleging:

- 38. Plaintiffs re-allege and incorporation by reference paragraphs 1 to 4 and 6 to 32 as if fully set forth herein. Plaintiffs assert this case of action on behalf of themselves and the Nationwide Class.
- 39. Plaintiffs are a citizens of the State of Florida and defendants have their principal place of business in a State other than the State of Florida. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. § 1332.
- 40. Florida's Deceptive and Unfair Trade Practices Act (FDUTPA), Fla. Stat. §§ 501.201, *et seq.*, declares unlawful "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." *Id.* § 501.201.
- 41. Plaintiffs and Nationwide Class members are "consumers" as defined by Florida Statute § 501.203(7), and the subject transactions are "trade or commerce" as defined by Florida Statute § 501.203(8).
- 42. Defendants violated and continue to violate FDUPTA by engaging in the described unconscionable, deceptive, unfair acts or practices proscribed by Florida Statute § 501.201, *et seq.* Defendants' practices were likely to, and did in fact, deceive and mislead members of the public, including consumers acting reasonably under the circumstances, to their detriment.

43. Defendants have engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of its trade and commerce by advertising and selling UV-5 transmitters despite their knowledge that the radios were unlawful to sell.
44. Defendants have engaged in deceptive marketing as to the UV-5R 2+, advertising that it is capable of transmitting with a power output of 4 watts, when it cannot do so.
45. As to Plaintiff's proposed representative Byron, this case occurred after the FCC order to cease selling the radios.
46. Defendant was unjustly enriched by earning revenue and profits from the sale of products that were unlawful for sale in the United States and fraudulently advertised.
47. Defendants' conduct which was designed, engineered, emanated and was controlled from the state of Florida, is clearly unfair, deceptive, and unconscionable as the practice of falsely advertising features of consumer products and selling products that are unlawful to be sold are well established unfair and deceptive practices.
48. Plaintiffs have agreed to pay their counsel a reasonable fee for his services.

**RELIEF SOUGHT**

**FOR ALL THESE REASONS**, Plaintiffs individually and on behalf of all others similarly situated, seek relief as more fully set forth in this Complaint as follows:

- a. For an order certifying that the action may be maintained as a Class action, under Rule 23(a), (b)(1), (b)(2), (b)(3) and (c)(4) of the Federal Rules of Civil Case Procedure, appointing Plaintiffs, David Byron and Paul Horner, as Class Representatives, and appointing their counsel as Counsel for the Class;
- b. For an award of damages, plus interest on the sums paid by them as described above from the date such sums were paid;

- c. For an award of equitable relief as follows:
  - i. Enjoining Defendants from engaging in similar unfair, unlawful, and deceptive misconduct in the future;
  - ii. Requiring Defendants to disgorge all ill-gotten gains flowing from the wrongful conduct described in this Complaint;
- d. For an award of attorney's fees, costs and litigation expenses;
- e. For an award of damages, and punitive damages, as permitted under Section 934.10 of the Florida Statutes; and
- f. For any further legal and equitable relief as this Court may deem just and proper.

\_\_\_\_\_/s/\_\_\_\_\_  
Herbert R Kraft  
3030 N. Rocky Point Drive., Suite 150  
Tampa, Florida 33607  
Florida Bar No. 0394191  
813-343-4466  
Attorney for Plaintiffs  
herb344@aol.com

Before the  
 Federal Communications Commission  
 Washington, DC 20554

In the Matter of )  
 )  
 Amcrest Industries, LLC d/b/a Baofengradio.us ) File No.: EB-SED-17-00024360  
 )

**CITATION AND ORDER**

**ILLEGAL MARKETING OF UNAUTHORIZED RADIO FREQUENCY DEVICES**

**Adopted: August 1, 2018**

**Released: August 1, 2018**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. NOTICE OF CITATION**

1. Under the rules of the Federal Communication Commission (Commission or FCC), radio frequency (RF) devices marketed in the United States must operate within certain technical parameters because they can easily cause interference to federal government and licensed communications systems. Consistent with these rules, the Commission has established an equipment authorization program, which requires most RF devices to first pass tests verifying that they comply with FCC-prescribed technical requirements before such devices can be marketed in the United States.<sup>1</sup> As such, a marketer must (a) ensure that any RF device it offers for sale in the United States has been tested under and complies with the Commission’s rules and (b) adhere to all FCC identification requirements, including providing notice to consumers that such device has been properly authorized under the Commission’s rules.

2. This **CITATION AND ORDER** (Citation) notifies Amcrest Industries, LLC d/b/a Baofengradio.us (Amcrest or Company)<sup>2</sup> that it is marketing an unauthorized RF device—a handheld two-way radio—in violation of Section 302(b) of the Communications Act, as amended (Act), and Section 2.803 of the Commission’s rules.<sup>3</sup> We therefore direct Amcrest to take immediate steps to come into compliance with the Commission’s equipment authorization rules and cease marketing unauthorized RF devices in the United States. If Amcrest fails to comply with these laws, it may be liable for significant fines of up to \$19,639 per day and other sanctions.<sup>4</sup>

3. **Notice of Duty to Comply with the Law:** We issue this Citation pursuant to Section 503(b)(5) of the Act, which bars the Commission from imposing monetary forfeitures against non-regulatees who violate the Act or Commission rules unless and until: (a) the Commission issues a citation to the violator; (b) the Commission provides the violator a reasonable opportunity to respond; and (c) the violator subsequently engages in conduct described in the citation.<sup>5</sup> Accordingly, Amcrest is hereby on

<sup>1</sup> There are limited exceptions to this testing requirement, e.g., transmitters used in the band 1427-1435 MHz. 47 CFR § 90.203(b)(3). However, none of these exceptions apply to the devices at issue in this case.

<sup>2</sup> Amcrest was formerly Foscam Digital Technologies LLC. Letter of Inquiry Response from Mr. Adam Ravat, Managing Member, Amcrest Technologies LLC, to Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau at 1 (Dec. 7, 2017) (LOI Response) (on file in EB-SED-17-00024360).

<sup>3</sup> 47 U.S.C. § 302a(b); 47 CFR §§ 2.803(b).

<sup>4</sup> See 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(7). This amount reflects inflation adjustments to Section 503(b)(2)(D) of the Act, which specifies a \$10,000 base forfeiture for each violation or each day of a continuing violation and a \$75,000 base forfeiture for any single act or failure to act. See 47 CFR § 1.80(b)(9); *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 33 FCC Rcd 46, Appendix A (EB 2018).

<sup>5</sup> 47 U.S.C. § 503(b)(5).

notice that it must comply with Section 302(b) of the Act and Section 2.803(b) of the Commission's rules.<sup>6</sup> If Amcrest subsequently engages in any conduct of the type this Citation describes, Amcrest may be subject to civil penalties including, but not limited to, substantial monetary forfeitures. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.<sup>7</sup>

## II. BACKGROUND

4. On March 14, 2013, the Enforcement Bureau's Spectrum Enforcement Division (SED) received a complaint alleging that Baofeng radio model UV-5R was capable of (1) transmitting on land mobile frequencies using the equipment's external controls and (2) operating at power levels above those specified in its Equipment Authorization.<sup>8</sup> On October 30, 2017, SED issued a Letter of Inquiry (LOI) to Amcrest, an authorized distributor of Baofeng radios,<sup>9</sup> directing it to submit a sworn written response to a series of questions relating to these allegations; follow-up LOIs were issued on January 12, 2018, and February 2, 2018.<sup>10</sup> Amcrest timely responded to the inquiries on December 7, 2017, January 23, 2018, and February 4, 2018, respectively.<sup>11</sup>

5. According to Amcrest, the Company began marketing four models of the Baofeng radio UV-5R series in June 2013; it ceased doing so with respect to three of them (UV-5R, UV-5RA, UV-5RE) "a few years ago."<sup>12</sup> The Company nonetheless failed to remove these three models from its website until

<sup>6</sup> 47 U.S.C. § 302a(b); 47 CFR § 2.803(b).

<sup>7</sup> See S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (if the target of a Commission-issued citation subsequently engages in the conduct that occasioned the citation of violation, the resulting 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).

<sup>8</sup> Radio models UV-5R and UV-5R V2+ (the subject of this Citation) were authorized under Commission certification procedures in 2012. Grant of Equipment Authorization, Fujian Nan'an Baofeng Electronics Co., Ltd., FCC Identifier ZP5BF-5R (granted May 21, 2012) (Equipment Authorization), [https://apps.fcc.gov/oetcf/tcb/reports/Tcb731GrantForm.cfm?mode=COPY&RequestTimeout=500&tcb\\_code=&application\\_id=n%2BgY1ooaqEevhls5IkVd1g%3D%3D&fcc\\_id=ZP5BF-5R](https://apps.fcc.gov/oetcf/tcb/reports/Tcb731GrantForm.cfm?mode=COPY&RequestTimeout=500&tcb_code=&application_id=n%2BgY1ooaqEevhls5IkVd1g%3D%3D&fcc_id=ZP5BF-5R). Cf. 47 CFR § 15.201.

<sup>9</sup> Amcrest, a limited liability company based in Houston, Texas, sells two-way handheld Baofeng radios through "Amcrest Direct" and on its website, [www.baofengradio.us](http://www.baofengradio.us). Amcrest is one of many authorized distributors of Baofeng radios and has no relationship with their manufacturer, Fujian Nan'an Baofeng Electronics Co., Ltd., which Amcrest refers to as "Fujian Baofeng Electronics Co., Ltd" in its LOI Response, along with a reference to the FCC Identifier for the Equipment Authorization. LOI Response at 2.

<sup>10</sup> Letter of Inquiry from Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Mr. Adam Ravat, Managing Member, Amcrest Technologies LLC (Oct. 30, 2017) (LOI); E-mail from Jennifer Burton, Attorney-Advisor, Spectrum Enforcement Division, Enforcement Bureau, FCC, to Mr. Adam Ravat, Amcrest Industries, LLC (Supplemental LOI) (Jan. 12, 2018, 15:38 EST); E-mail from Jennifer Burton, Attorney-Advisor, Spectrum Enforcement Division, Enforcement Bureau, FCC, to Mr. Adam Ravat, Amcrest Industries, LLC (Second Supplemental LOI) (Feb. 2, 2018, 12:40 EST) (all on file in EB-SED-17-00024360).

<sup>11</sup> LOI Response; Letter of Inquiry Response from Mr. Adam Ravat, Managing Member, Amcrest Technologies LLC, to Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Jan. 23, 2018) (Supplemental LOI Response); E-mail from Mr. Adam Ravat, Managing Member, Amcrest Technologies LLC, to Jennifer Burton et al., Spectrum Enforcement Division, Enforcement Bureau, FCC (Feb. 4, 2018, 13:30 EST) (Second Supplemental LOI Response) (all on file in EB-SED-17-00024360).

<sup>12</sup> LOI Response at 3; Second Supplemental LOI Response at 2.

February 1, 2018, following its receipt of the LOI.<sup>13</sup> Currently, Amcrest markets only one model of the Baofeng radio UV-5R series, the UV-5R V2+.<sup>14</sup>

6. After receiving the LOI, the Company confirmed with the manufacturer that model UV-5R V2+ is indeed capable of operating on “restricted frequencies,”<sup>15</sup> though it is incapable of operating at power levels above those specified in its Equipment Authorization.<sup>16</sup> The Company then instructed the manufacturer to rectify the issue<sup>17</sup> and subsequently confirmed with the manufacturer that “all [Amcrest] inventory currently on order and in the future will operate only on 145-155 M[H]z and 400-520 M[H]z.”<sup>18</sup>

### III. APPLICABLE LAW AND VIOLATIONS

7. Section 302(b) of the Act states 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.”<sup>19</sup> Section 2.803(b) of the Commission’s rules states that “[n]o person may market a radio frequency device unless . . . the device has been authorized in accordance with the rules in subpart J of this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter . . . .”<sup>20</sup> Under Section 2.803 of the Commission’s rules, an entity may not market a device that is capable of operating outside the scope of its equipment authorization.<sup>21</sup> RF devices that have been authorized under Part 90 rules (Private Land Mobile Radio services), such as the model at issue, must operate within the technical parameters established in those rules.<sup>22</sup>

8. After reviewing Amcrest’s responses, we find that Amcrest marketed the UV-5R V2+

<sup>13</sup> See Second Supplemental LOI Response at 2.

<sup>14</sup> LOI Response at 5. The UV-5R V2+ is an updated version of the UV-5R model identified in the complaint; as noted above, both models are covered by the same Equipment Authorization. See *supra* note 8.

<sup>15</sup> Second Supplemental LOI Response at 1. The UV-5R 2+ operates on frequencies not authorized for Part 90. Cf. First Supplemental LOI Response at 1-2 (Amcrest added a warning to “all user manuals, marketing materials and sales materials” implying that the UV-5R 2+ can operate on unauthorized and restricted frequencies, including “136 – 137 MHz (Aviation Services, Part 87); 137 MHz – 138 MHz (Satellite Communications, Part 25); 138 MHz – 144 MHz (not available to any FCC licensee – Federal use only); 156.7625 MHz – 157.0375 MHz (Maritime Services, Part 80 and Aviation Services, Part 87)”). See 47 CFR §§ 2.106 & nn.US244 (“[t]he band 136-137 MHz is allocated to non-Federal aeronautical mobile (R) service on a primary basis”), G30 (“[i]n the band[] 138-144 MHz . . . the fixed and mobile services are limited primarily to operations by the military services”), 25.202(a)(3), 80.1(b), 87.173(b).

<sup>16</sup> Second Supplemental LOI Response at 2. The UV-5R 2+ user manual states it is capable of operating at either 1 watt or 4 watts, as opposed to the Equipment Authorization’s maximum power level of 1.78 watts. Amcrest avers that despite these representations, discussions with the manufacturer confirmed that the UV-5R 2+ is “only capable of operating at 1 [w]att.” *Id.*

<sup>17</sup> See *id.* at 1-2.

<sup>18</sup> *Id.* at 1.

<sup>19</sup> 47 U.S.C. § 302a(b).

<sup>20</sup> 47 CFR § 2.803(b). “Marketing” includes the sale or lease, or offering for sale or lease (including advertising for sale or lease), or importing, shipping, or distribution for the purpose of selling or leasing or offering for sale or lease. *Id.* § 2.803(a).

<sup>21</sup> *Id.* § 2.803(b).

<sup>22</sup> See generally 47 CFR Part 90. For instance, Part 90 radios that permit an operator to use external controls to program and transmit on frequencies, other than those programmed by the manufacturer or service or maintenance personnel, are generally prohibited. 47 CFR § 90.203(e), (g) (delineating exceptions).

outside the scope of its Equipment Authorization.<sup>23</sup> As noted above, Amcrest admitted that the UV-5R V2+ is “capable of operating on restricted frequencies.”<sup>24</sup> Accordingly, Amcrest violated Section 302(b) of the Act and Section 2.803 of the Commission’s rules.<sup>25</sup> While we recognize Amcrest’s efforts to date to achieve compliance with the Commission’s rules, the Company must nonetheless ensure the version of the UV-5R V2+ it is marketing operates only on frequencies specified in its Equipment Authorization.<sup>26</sup>

#### IV. REQUEST FOR INFORMATION

9. We direct Amcrest to provide the requested documents within 30 days from the release date of this Citation:

Confirm in writing that Amcrest ceased marketing the UV-5R V2+, including removing all references to the model from marketing materials and Company websites, until it brought the device into full compliance with Section 2.803(b) of the Commission’s rules.<sup>27</sup>

State in writing the date on which the UV-5R V2+ came into compliance with Section 2.803(b) of the Commission’s rules.<sup>28</sup>

#### V. OPPORTUNITY TO RESPOND TO THIS CITATION

10. Amcrest may respond to this Citation within 30 calendar days from the release date of this Citation by any of the following methods: (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to Amcrest’s place of business. The Commission Field Office nearest Amcrest is located in Dallas, Texas.

11. If Amcrest requests a teleconference or personal interview, contact Jennifer Burton at (202) 418-7581. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If Amcrest prefers to submit a written response with supporting documentation, it must send the response within 30 calendar days of the release date of this Citation to the contact and address provided in paragraph 12, below.

12. All written communications should be sent to the address below.

Jennifer Burton, Attorney Advisor  
Spectrum Enforcement Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Rm. 3-A445  
Washington, DC 20554  
**Re: EB-SED-17-00024360**

<sup>23</sup> The Equipment Authorization contains the designation of “extended frequencies” (EF), which represents the full operating capability of the radio. *See supra* note 8. The grantee may use an EF listing on the grant if a portion of the band falls within the operating range of the rule part listed. The authorization for the UV-5R V2+ lists a frequency range of 136 MHz-174 MHz and 400 MHz-480 MHz, which represents the full operating capability of the radio. However, only a portion of those frequencies are authorized for Part 90 and certain frequencies listed in the authorization are restricted to use by certain entities such as the federal government.

<sup>24</sup> *See supra* note 15.

<sup>25</sup> 47 U.S.C. § 302a(b); 47 CFR § 2.803(b).

<sup>26</sup> For instance, Amcrest avers that “the inventory currently on order and in the future will operate only on 145-155 M[H]z and 400-520 M[H]z.” Second Supplemental LOI Response at 1. However, the band 406.0-406.1 MHz falls under the latter frequency range and is limited to certain uses, all of which are outside the scope of the Equipment Authorization. *See* 47 CFR §§ 80.1061 (emergency position indicating radiobeacon stations), 87.187(m) (distress and safety communications), 95.2963 (emergency and distress frequency band for personal locator beacons). *Cf.* 47 CFR § 2.106 n.5.267 (“Any emission capable of causing harmful interference to the authorized uses of the band 406-406.1 MHz is prohibited.”).

<sup>27</sup> 47 CFR § 2.803(b).

<sup>28</sup> *See id.*

13. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, Amcrest should provide a description of the accommodation required, and include as much detail as possible, and also provide a telephone number and other contact information. Amcrest should allow at least five business days advance notice; last minute requests will be accepted, but may be impossible to fill. Amcrest should send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's 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).

14. We advise Amcrest that it is a violation of Section 1.17 of the Commission's rules<sup>29</sup> for any person to make any false or misleading written or oral statement of fact to the Commission. 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.

15. 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.<sup>30</sup>

16. Violations of Section 1.17 of the Commission's rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to Section 503 of the Act.

17. Finally, we warn Amcrest that, under the Privacy Act of 1974,<sup>31</sup> Commission staff will use all relevant material information before it, including information disclosed in interviews or written statements, to determine what, if any, enforcement action is required to ensure Amcrest's compliance with the Act and Commission's rules.

## VI. FUTURE VIOLATIONS

18. If, after receipt of this Citation, Amcrest again violates the Act and Commission's rules by engaging in conduct of the type described herein, the Commission may impose sanctions for each such violation. For example, the Commission may impose monetary forfeitures. The Commission may impose forfeitures not to exceed \$19,639 for each such violation or each day of a continuing violation, and up to \$147,290 for any single act or failure to act.<sup>32</sup> The Commission may further adjust the forfeiture reflecting enumerated statutory factors, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior

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<sup>29</sup> 47 CFR § 1.17.

<sup>30</sup> 18 U.S.C. § 1001.

<sup>31</sup> 5 U.S.C. § 552a(e)(3).

<sup>32</sup> See *supra* note 4.

offenses, ability to pay, and other such matters as justice may require.<sup>33</sup> Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.<sup>34</sup>

## VII. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 4(j) of the Act,<sup>35</sup> Amcrest Industries, LLC must cease and desist from marketing any Baofeng Radio model UV-5R V2+ that is capable of transmitting on unauthorized or restricted frequencies in violation of Sections 2.803(b) of the Commission's rules.<sup>36</sup>

20. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i), 4(j), and 403 of the Act,<sup>37</sup> Amcrest Industries, LLC must provide the written information requested in paragraph 9, above. Amcrest Industries, LLC must support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Amcrest Industries, LLC with personal knowledge of the representations provided in the response, verifying the truth and accuracy of the information therein and that all of the information requested has been produced. All such declarations provided must comply with Section 1.16 of the Commission's rules and be substantially in the form set forth therein.<sup>38</sup> The FCC must receive the response within 30 calendar days of 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 mail and certified mail, return receipt requested, to Mr. Adam Ravat, Managing Member, Amcrest Industries, LLC, 16727 Park Row Drive, Houston, TX 77084.

FEDERAL COMMUNICATIONS COMMISSION

Matthew L. Conaty  
Chief  
Spectrum Enforcement Division  
Enforcement Bureau

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<sup>33</sup> 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8).

<sup>34</sup> *See supra* paras. 2-3.

<sup>35</sup> 47 U.S.C. §§ 154(i), 154(j).

<sup>36</sup> 47 CFR § 2.803(b).

<sup>37</sup> 47 U.S.C. §§ 154(i), 154(j), 403.

<sup>38</sup> 47 CFR § 1.16.



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

DA 18-980

September 24, 2018

**Enforcement Advisory No. 2018-03**

## FCC ENFORCEMENT ADVISORY

### **TWO-WAY VHF/UHF RADIOS MAY NOT BE IMPORTED, ADVERTISED, OR SOLD IN THE UNITED STATES UNLESS THEY COMPLY WITH THE COMMISSION'S RULES**

#### **OPERATORS MUST ALSO COMPLY WITH FCC RULES**

The Enforcement Bureau (Bureau) of the Federal Communications Commission (FCC) has observed that a growing number of conventional retailers and websites advertise and sell low-cost, two-way VHF/UHF radios that do not comply with the FCC's rules. Such devices are used primarily for short-distance, two-way voice communications and are frequently imported into the United States. These radios must be authorized by the FCC prior to being imported, advertised, sold, or operated in the United States.<sup>1</sup>

Many of these radios violate one or more FCC technical requirements. For example, some can be modified to transmit on public safety and other land mobile channels for which they are not authorized, while others are capable of prohibited wideband operations.<sup>2</sup> Such radios are illegal, and many have the potential to negatively affect public safety, aviation, and other operations by Federal, state, and local agencies, as well as private users. Because these devices must be, but have not been, authorized by the FCC, the devices may not be imported into the United States, retailers may not advertise or sell them, and no one may use them. Rather, these devices may only be imported, advertised, sold, or used only if the FCC first has approved them under its equipment authorization process (or unless the devices operate *exclusively* on frequencies reserved for amateur licensees or they are intended for use exclusively by the federal government). Moreover, with only very limited exceptions, after being authorized, the devices may not be modified. Anyone importing, advertising or selling such noncompliant devices should stop

<sup>1</sup> 47 CFR § 2.803(b)(1). Importing, advertising and selling are three aspects of "marketing" under the Commission's rules. Specifically, marketing "includes [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." 47 CFR § 2.803(a).

<sup>2</sup> The maximum allowed operational bandwidth for such radios, with limited exceptions, is 12.5 kHz, which is considered "narrowband." See 47 CFR § 90.209(b)(5) n.3.

immediately, and anyone owning such devices should not use them. Violators may be subject to substantial monetary penalties.<sup>3</sup>

### What Should You Know?

The Bureau has noted an increase in the manufacturing, importation, advertising, and sale of two-way VHF/UHF radios that are not authorized in accordance with the Commission's rules.<sup>4</sup> Generally, electronic devices that intentionally emit radio waves are required to be certified by the FCC or an authorized third-party certification entity (Telecommunications Certification Body) prior to importation, advertising, sale, or use.<sup>5</sup> Two-way VHF/UHF radios require FCC certification to show compliance with our rules, unless they qualify for a limited exception (see *Amateur Radio Exception*, below, and Federal government exception at footnote 4).

This certification requirement ensures that equipment complies with technical requirements to avoid causing interference to federal government operations, private licensed operations, and other authorized operations or equipment.<sup>6</sup> **Equipment that does not comply with the technical requirements cannot be certified and thus cannot be imported, advertised, sold, or used.**<sup>7</sup>

*Amateur Radio Exception.* There is one exception to this certification requirement: if a device is capable of operating *only* on frequencies that the FCC has allocated for use by Amateur Radio Service licensees, it does not require FCC equipment authorization,<sup>8</sup> and an amateur licensee may use his or her license to operate such radios. However, many two-way radios that purport to operate on amateur frequencies also operate on frequencies that extend beyond the designated amateur frequency bands.<sup>9</sup> If a two-way

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<sup>3</sup> See, e.g., *Amcrest Industries, LLC, d/b/a Baofengradio.US*, Citation and Order, DA 18-801 (EB-SED Aug. 1, 2018) (issuing citation); *Pilot Travel Centers, L.L.C.*, Notice of Apparent Liability, 19 FCC Rcd 23113 (2004) (*Pilot NAL*), Order and Consent Decree, 21 FCC Rcd 5308 (2006) (\$90,000 settlement); *CB Shop & More, LLLP Loveland, Colorado*, Forfeiture Order, 23 FCC Rcd 4688 (EB-WR 2008) (imposing \$7,000 forfeiture); *Love's Travel Stops and Country Stores, Inc. Oklahoma City, Oklahoma*, Forfeiture Order, 21 FCC Rcd 10798 (EB-SCR 2006) (imposing \$25,000 forfeiture).

<sup>4</sup> See, e.g., Letter from David Smith, President, and Mark Crosby, Secretary/Treasurer, Land Mobile Communications Council, to Michael O'Rielly, Commissioner, FCC at 2 (June 7, 2018) (stating that the "distribution of non-compliant radio devices . . . reaches 1,000,000 units annually."), <http://lmcc.org/wp-content/uploads/2018/06/LMCC-Letter-ORielly-re-NonComDev-060718.pdf>.

<sup>5</sup> 47 CFR §§ 2.803, 2.805, 2.907, 15.201. The equipment authorization rules apply to the manufacture, import, sale, offer for sale, shipment or use of devices capable of emitting radio frequency energy. See 47 U.S.C. § 302a(b). These rules apply to all radio frequency equipment advertised or sold to non-Federal U.S. customers regardless of the equipment's origin, including equipment manufactured overseas and imported for subsequent sale to non-Federal U.S. customers or shipped directly from overseas to non-federal U.S. customers. These rules do not apply to equipment used by Federal Government agencies. See 47 U.S.C. § 302a(c), 47 CFR § 2.807(d).

<sup>6</sup> 47 CFR §§ 2.907, 15.201.

<sup>7</sup> Frequently, these devices are also not accompanied by required disclosures concerning FCC licensing requirements. See, e.g., 47 CFR § 95.653(b)(4). Marketing without these disclosures is also prohibited. 47 U.S.C. § 302a(b).

<sup>8</sup> See, e.g., *Pilot NAL*, 19 FCC Rcd at 23114 ("[R]adio transmitting equipment that transmits *solely* on Amateur Radio Service ('ARS') frequencies is not subject to equipment authorization requirements prior to manufacture or marketing.") (emphasis added).

<sup>9</sup> For example, the Bureau has observed two-way radios that apparently operate on frequencies 136-143 MHz, 400-419 MHz and/or 451-520 MHz, all of which are outside of the authorized amateur radio service bands. 47 CFR

VHF/UHF radio is capable of operating outside of the amateur frequency bands, it cannot be imported, advertised, sold, or operated within the United States without an FCC equipment certification.<sup>10</sup>

Even if a two-way VHF/UHF radio operates solely within the amateur frequencies, the operator is required to have an amateur license to operate the device and must otherwise comply with all applicable rules.<sup>11</sup> The Bureau will take very seriously any reports of failures of two-way radio operators to comply with all relevant rules and requirements when using devices in the amateur bands.

### **What Happens If Manufacturers, Retailers, or Operators Do Not Comply with the FCC's Rules?**

Violators of the Commission's marketing rules may be subject to the penalties authorized by the Communications Act, including, but not limited to, substantial monetary fines (up to \$19,639 per day of marketing violations and up to \$147,290 for an ongoing violation).<sup>12</sup>

### **What Should You Do?**

The FCC rules governing two-way VHF/UHF radios are designed to minimize interference to all authorized spectrum users, including important government and public safety operations. Manufacturers, importers, retailers, and radio operators should take the time to learn the FCC rules governing equipment authorization and comply with them. When manufacturing, importing, advertising or selling two-way radios and accessories that either are electronic or have electronic components, manufacturers, importers and marketers should ensure that such devices or components are properly certified and labeled as FCC-compliant and cannot be easily modified to operate outside its grant of certification.<sup>13</sup> Prior to purchase or operation, individuals should ensure that a device is either labeled as FCC-compliant or operates solely within amateur frequencies.<sup>14</sup>

### **Need more information?**

For additional information regarding equipment marketing and amateur radio rules, please visit the FCC website at <https://www.fcc.gov/engineering-technology/laboratory-division/general/equipment-authorization> and <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/amateur-radio-service>, respectively. Media inquiries should be directed to Will Wiquist at (202) 418-0509 or [will.wiquist@fcc.gov](mailto:will.wiquist@fcc.gov).

To file a complaint, visit <https://consumercomplaints.fcc.gov> or call 1-888-CALL-FCC.

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§ 97.301(a) (listing amateur frequencies).

<sup>10</sup> See, e.g., *New Generation Hobbies*, Citation, 26 FCC Rcd 9468, 9471 n.23 (EB 2011) (“[W]hile amateur radio service equipment is exempt from the FCC’s equipment certification requirement, it is a violation of the Commission’s regulations to market in the United States a transmitter that is designed or intended to operate on frequencies outside of the authorized amateur radio service bands if such equipment has not been issued a grant of equipment certification.”).

<sup>11</sup> See, e.g., 47 CFR §§ 97.5, 97.113, 97.215.

<sup>12</sup> See 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (b)(9) (reflecting adjustments for inflation).

<sup>13</sup> A label indicating compliance may be located on the surface of the product, within a user-accessible non-detachable compartment (such as the battery compartment), on the packaging of the device, and/or within electronic menus if the device has an electronic display.

<sup>14</sup> Moreover, any type of authorized equipment that requires a license should not be operated without the appropriate license. Many commercially-available two-way radios, depending on operational frequencies, require a license to operate. See, e.g., 47 CFR Part 95 (Personal Radio Services).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). You may also contact the Enforcement Bureau on its

TTY line at (202) 418-1148 for further information about this Enforcement Advisory, or the FCC on its TTY line at 1-888-TELL-FCC (1-888-835-5322) for further information about the aviation radio rules.

Issued by: Chief, Enforcement Bureau

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

Paul Horner and David Byron, proposed class representatives and individually,

Plaintiff(s)

v.

Amcrest Industries, LLC. and Fujian Nan'an Baoteng Electronics Co., Ltd.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Amcrest Industries, Inc., by serving its registered agent for service of process, Sawera Ravat, 16727 Park Row Drive Houston TX 77084

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Herbert R Kraft 3030 N Rocky Point Drive, Suite 150 Tampa Florida 33607

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Paul Horner and David Byron, proposed class representatives and individually

(b) County of Residence of First Listed Plaintiff St Lucie (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Herbert R Kraft, 3030 N Rocky Point Drive, Suite 150 Tampa, Florida 33607 (310)9671-7533

DEFENDANTS

Amcrest Industries, LLC. and Fujian Nan'an Baofeng Electronics Co., Ltd.

County of Residence of First Listed Defendant Harris (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332(d);

Brief description of cause: Breach of contract; fraud; FDUPTA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,001 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 4 October 2018 SIGNATURE OF ATTORNEY OF RECORD Herbert R. Kraft

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Fujian UV-5 Series Radios Unlawful to Sell in the United States](#)

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