

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

In the Matter of
Polk Audio Inc.

Case No. 07-09

ORDER

The Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce ("BIS"), having determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C. §§2401 – 2420 (2000)) (the "Act")¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Part 730 – 774 (2012)) (the "Regulations"), against Polk Audio Inc. ("Polk Audio"), a domestic concern, organized under the laws of the United States and doing business in the State of Maryland, based on allegations set forth in the Proposed Charging Letter, dated May 17, 2012, that alleged that Polk Audio committed two violations of the Regulations;

¹ Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2011 (76 Fed. Reg. 50661 (Aug. 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701 -1707 (2000)).

Specifically, the charges are:

1. One violation of 15 C.F.R. §760.2(d) – Furnishing Information about Business Relationships with Boycotted Countries or Blacklisted Persons:

During the period June 3, 2007 through June 27, 2007, Polk Audio engaged in a transaction involving the sale and/or transfer of goods or services (including information) from the United States to Oman, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations. In connection with these activities, Polk Audio, on one occasion, with intent to comply with further or support an unsanctioned foreign boycott, furnished to persons in Oman information concerning Polk Audio's or another person's business relationships with another person who is known or believed to be restricted from having any business relationship with or in a boycotting country, an activity prohibited by Section 760.2(d) of the Regulations, and not excepted.

2. One violation of 15 C.F.R. §760.5 – Failing to Report the Receipt of a Request to Engage in a Restrictive Trade Practice or Foreign Boycott Against a Country Friendly to the United States:

During the period June 3, 2007 through June 27, 2007, Polk Audio engaged in a transaction involving the sale and/or transfer of goods or services (including information) from the United States to the Oman, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations. In connection with these activities, Polk Audio, on one occasion,

received a request to take an action which would have the effect of furthering or supporting a restrictive trade practice or unsanctioned foreign boycott.

Polk Audio failed to report to the Department of Commerce its receipt of this request, as required by Section 760.5 of the Regulations.

BIS and Polk Audio having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby the parties have agreed to settle this matter in accordance with the terms and conditions set forth therein and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED THAT:

FIRST, a civil penalty of \$8,000 is assessed against Polk Audio and shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment of this sum shall be made in the manner specified in the attached instructions.


SECOND, pursuant to the Debt Collections Act of 1982, as amended (31 U.S.C. §§3701 – 3720E (1983 and Supp. 2001)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice and, if payment is not made by the due date specified herein, Polk Audio will be assessed, in addition to the full amount of the penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, the timely payment of the sum of \$8,000 is hereby made a condition to the granting, restoration or continuing validity of any export license, permission, or

privilege granted, or to be granted, to Polk Audio. Accordingly, if Polk Audio should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Polk Audio's export privileges for a period of one year from the date of the entry of this Order.

FOURTH, the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public, and a copy of this Order shall be served upon Polk Audio.

This Order, which constitutes the final agency action in this matter, is effective immediately.



David W. Mills
Assistant Secretary of Commerce for
Export Enforcement

Entered this 30th day of July, 2012

Attachments

NOTICE

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collections Act of 1982, as amended (31 U.S.C. §§3701 – 3702E (1983 and Supp. 2001)) and the Federal Claims Collection Standards (65 Fed. Reg. 70390 – 70406, November 22, 2000, to be codified at 31 C.F.R. Parts 900 – 904), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed respondent is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C. §3717 and 31 C.F.R. §901.9.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and respondent will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C. §3717 and 31 C.F.R. §901.9.

The foregoing constitutes the initial written notice and demand to respondent in accordance with Section 901.2 of the Federal Claims Collections Standards (31 C.F.R. §901.2(b)).

INSTRUCTION FOR PAYMENT OF SETTLEMENT AMOUNT

1. The check should be made payable to:

U.S. Department of Commerce

2. The check should be mailed to:

U.S. Department of Commerce
Bureau of Industry and Security
Room 6622

14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Attention: Francine Dodson

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

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In the Matter of)
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Polk Audio Inc.)
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Case No. 07-09

SETTLEMENT AGREEMENT

This agreement is made by and between Polk Audio Inc. ("Polk Audio"), a domestic concern, organized under the laws of the United States and doing business in the State of Maryland, and the Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce ("BIS"), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Part 730 – 774 (2012)) (the "Regulations") issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. §§2401 – 2420 (2000)) (the "Act")¹.

¹ Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2011 (76 Fed. Reg. 50661 (Aug. 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701 – 1707 (2000)).

WHEREAS, BIS has notified Polk Audio of its intention to initiate an administrative proceeding against Polk Audio pursuant to the Act and the Regulations by issuing the Proposed Charging Letter dated May 17, 2012, a copy of which is attached hereto and incorporated herein by this reference; and

WHEREAS, Polk Audio has reviewed the Proposed Charging Letter and is aware of the allegations against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; Polk Audio fully understands the terms of this Settlement Agreement, and enters into this Settlement Agreement voluntarily and with full knowledge of its rights; and Polk Audio states that no promises or representations have been made to it other than the agreements and considerations herein expressed; and

WHEREAS, Polk Audio neither admits nor denies the truth of the allegations, but wishes to settle and dispose of the allegations made in the Proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, Polk Audio agrees to be bound by the appropriate Order ("Order") when entered;

NOW THEREFORE, Polk Audio and BIS agree as follows:

1. Under the Act and the Regulations, BIS has jurisdiction over Polk Audio with respect to the matters alleged in the Proposed Charging Letter.


2. BIS will impose a civil penalty in the amount of \$8,000. Polk Audio will pay to the U.S. Department of Commerce, within 30 days from the date of entry of the Order, and in accordance with the terms of the Order, when entered, the amount of \$8,000 in complete settlement of all matters set forth in the Proposed Charging Letter.
3. The timely payment of the amount agreed to in paragraph 2 is hereby made a condition of the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Polk Audio. Failure to make payment of this amount shall result in the denial of all of Polk Audio's export privileges for a period of one year from the date of entry of the Order.
4. Subject to the approval of this Settlement Agreement, pursuant to paragraph 9 hereof, Polk Audio hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the Order, when entered) including, without limitation, any right to:
 - a. An administrative hearing regarding the allegations in the Proposed Charging Letter;
 - b. Request a refund of the funds paid by Polk Audio pursuant to this Settlement Agreement and the Order, when entered; or

- c. Seek judicial review or otherwise contest the validity of this Settlement Agreement or the Order, when entered.
5. BIS, upon entry of the Order, will not initiate any administrative or judicial proceeding, or make a referral to the Department of Justice for criminal proceedings against Polk Audio with respect to any violation of Section 8 of the Act or Part 760 of the Regulations arising out of the transactions set forth in the Proposed Charging Letter or any other transaction that was disclosed to or reviewed by BIS in the course of its investigation.
6. Polk Audio understands that BIS will disclose publicly the Proposed Charging Letter, this Settlement Agreement, and the Order, when entered.
7. This Settlement Agreement is for settlement purposes only, and does not constitute an admission by Polk Audio that it has violated the Regulations, or an admission of the truth of any allegations contained in the Proposed Charging Letter or referred to in this Settlement Agreement. Therefore, if this Settlement Agreement is not accepted and the Order not entered by the Assistant Secretary for Export Enforcement, BIS may not use this Settlement Agreement against Polk Audio in any administrative or judicial proceeding.
8. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of

this Settlement Agreement or the Order, when entered, nor shall this Settlement Agreement bind, constrain or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances herein addressed. This paragraph shall not limit Polk Audio's right to challenge any action brought by any other agency based on a referral by BIS or any employee thereof, in contravention of paragraph 5 of this Settlement Agreement.

9. This Settlement Agreement will become binding on BIS only when approved by the Assistant Secretary for Export Enforcement by entering the Order.

POLK AUDIO INC.




 Joseph Tristani
 SVP, COO

DATE: _____

7/13/12

U.S. DEPARTMENT OF COMMERCE



 Edward O. Weant III
 Director
 Office of Antiboycott Compliance

DATE: _____

July 19, 2012

Attachments



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

PROPOSED CHARGING LETTER

May 17, 2012

Polk Audio Inc.
5601 Metro Drive
Baltimore, MD 21215

Attention: Ms. Michelle Randall
Director of Supply Chain & Sales Operations

Case No. 07-09

Gentlemen/Ladies:

We, the Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce ("BIS"), have reason to believe that you, Polk Audio, Inc., on two occasions, have violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2011)) (the "Regulations")¹, which are issued under the authority of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the "Act").²

We charge that you committed one violation of Section 760.2(d) of the Regulations, in that, on one occasion, with intent to comply with, further or support an unsanctioned foreign boycott, you furnished information about your or another person's business relationships with another person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

We also charge that you committed one violation of Section 760.5 of the Regulations, in that, on one occasion, you failed to report to the Department of Commerce ("Department") your receipt of a request to engage in a restrictive trade practice or boycott, as required by the Regulations.

¹The transactions and violations alleged occurred in 2007. The Regulations governing the violations at issue are found in the 2007 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2007)). The prior year's regulations are substantially the same as the 2011 version of the Regulations which governs the procedural aspects of this matter.

²Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent of which was August 12, 2011 (76 Fed. Reg. 50661 (August 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).



We allege that:

You, Polk Audio, Inc. ("Polk Audio"), are, and at all times relevant were, a domestic concern resident in the State of Maryland. As such, you are a United States person as defined in Section 760.1(b) of the Regulations.

During the period June 3, 2007 through June 27, 2007, you engaged in a transaction involving the sale and/or transfer of goods or services (including information) from the United States to Oman, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations.

Charge 1 (15 C.F.R. § 760.2(d) – Furnishing Information about Business Relationships with Boycotted Countries or Blacklisted Persons)

In connection with the activities referred to above, on or about June 27, 2007, you, through your document preparation specialists, furnished to persons in Oman a vessel certificate signed as agents for the carrier. The certification contained the following information concerning your or another person's business relationships with another person who is known or believed to be restricted from having any business relationship with or in a boycotting country:

WE HEREBY CERTIFY THAT THE VESSEL CARRYING THE GOODS IS
ALLOWED TO ENTER THE PORTS OF ARAB STATES/OMAN.

Providing the information described above, with intent to comply with, further or support an unsanctioned foreign boycott, is an activity prohibited by Section 760.2(d) of the Regulations, and not excepted. Therefore, we charge you with one violation of Section 760.2(d).

Charge 2 (15 C.F.R. §760.5 – Failing to Report the Receipt of a Request to Engage in a Restrictive Trade Practice or Foreign Boycott Against a Country Friendly to the United States)

In connection with the activities referred to above, on or about June 3, 2007, you received a copy of a letter of credit, number DC BAF070679, issued by HSBC Bank Middle East Ltd., Sultanate of Oman. Paragraph 46A of the letter of credit contained a request to take an action which would have the effect of furthering or supporting a restrictive trade practice or unsanctioned foreign boycott. The boycott request in paragraph 46A reads as follows:

"6- A CERTIFICATE FROM THE OWNERS, AGENTS OR MASTER OF THE VESSEL/OR THEIR AGENTS STATING THAT THE VESSEL CARRYING THE GOODS IS ALLOWED TO ENTER THE PORTS OF ARAB STATES/OMAN."

Section 760.5 of the Regulations requires United States persons to report to the Department their receipt of such requests. You failed to report to the Department your receipt of this request.

By failing to report your receipt of this request as directed by Section 760.5 of the Regulations, you are in violation of Section 760.5. Therefore, we charge you with one violation of Section 760.5 of the Regulations.

Accordingly, administrative proceedings are instituted against you pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions.³

You are entitled to a hearing on the record as provided in Section 766.6 of the Regulations. If you wish to have a hearing on the record, you must file a written demand for it with your answer. Under Sections 766.3(a) and 766.4 of the Regulations, you are entitled to be represented by counsel or other authorized representative who has power of attorney to represent you and, under Section 766.18 of the Regulations, to seek a settlement agreement without a hearing.

Under the Small Business Regulatory Enforcement Flexibility Act, you may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter.⁴

If you fail to answer the allegations contained in this letter within thirty (30) days after service as provided in Section 766.6, such failure will be treated as a default under Section 766.7.

As provided in Section 766.3 of the Regulations, I am referring this matter to the Administrative Law Judge. Pursuant to an Interagency Agreement between BIS and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with matters set forth in this letter. Therefore, in accordance with the instructions in Section 766.5(a) of the Regulations, your answer should be filed with:

U.S. Coast Guard ALJ Docketing Center
40 South Gay Street
Baltimore, Maryland 21202-4022
Attention: Administrative Law Judge

³ Administrative sanctions may include any or all of the following:

- a. A maximum civil penalty of the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation (see International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007));
- b. Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or
- c. Exclusion from practice before BIS (see Section 764.3(a)(3) of the Regulations).

⁴ To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman>.

Also, in accordance with the instructions in Section 766.5(b) of the Regulations, a copy of your answer also should be served on the Bureau of Industry and Security at:

Office of the Chief Counsel for Industry and Security
Room H-3839
Bureau of Industry and Security
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington D.C. 20230

Sincerely,

Edward O. Weant III
Director
Office of Antiboycott Compliance