

# Equipment Manufacturer Ends FCC Investigation by Agreeing to Consent Decree That Includes Four-Year Compliance Plan

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On December 23, 2013, the Enforcement Bureau ("Bureau") of the Federal Communications Commission ("FCC" or "Commission") issued an Order adopting a Consent Decree the Bureau reached with Rane Corporation ("Rane"), a manufacturer of professional audio gear, including mixers, processors, amplifiers, preamplifiers, and reinforcement accessories. The Consent Decree ended an investigation that commenced in July 2012 and reflects that Rane will make a voluntary contribution to the United States Treasury and commits to establish, maintain, and follow a compliance plan and make periodic reporting to the Bureau for a period of four years.

The Commission was investigating Rane's record of adherence to the FCC's equipment labeling and information-to-user requirements. These requirements are part of the Commission's equipment marketing rules ("Marketing Rules") which apply to digital devices generally, such as the products made and sold by Rane but also including computers and many peripherals, among other types of equipment that emit potentially interfering radiofrequency energy, whether unintentionally or intentionally.

## The Investigation

Digital devices and unintentional radiators generally, although they may be operated on an unlicensed basis, must be tested in the vast majority of cases for adherence to the FCC's applicable emissions limits before they can be marketed or sold. In addition to meeting the emissions limits, digital devices must also be labelled in accordance with the Marketing Rules. Further, the party responsible for adherence to the Marketing Rules must also insure that certain disclosures are made to user within the user instructions and/or on the device itself.

The Bureau's Order does not give the reasons for launching an investigation into Rane's marketing and manufacture of certain digital devices. Based on the sparse factual discussion in the Consent Decree, among the topics the Bureau examined – the investigation files are not disclosed to the public – were Rane's labels on its products as well as the consumer disclosures the FCC's rules require be in the manuals for each digital device, depending on its type. Those disclosures distinguish between Class A and Class B devices and inform the user that the device has been tested and found to comply with the applicable Commission radiofrequency energy emissions limits and what the user's obligations are if operation of the device causes interference. Notably, the Consent

Decree suggests that it may have been only during the investigation that Rane discovered that some of its devices were apparently not labeled and that some products' user manuals did not include the requisite disclosures. The Consent Decree does not state how many instances of either apparent violation had occurred or how many product models or instances of each product model had been sold or offered for sale.

The Consent Decree and Order offer no suggestion that the devices had not been properly tested before marketing commenced (pursuant to the Commission's certification, verification, or declaration of conformity rules, as applicable), or that any of the devices failed to adhere to the applicable emission limits. It is quite probable, however, that the Commission made some inquiry into these matters when investigating Rane's activities.

## The Consent Decree

To close the investigation, Rane agreed to a Consent Decree consisting of a voluntary contribution of \$61,000 to the U.S. Treasury and a commitment to a Compliance Plan that will be in effect for four years. Without detailed information on the number of apparent violations discovered during the Bureau's investigation or the numbers of models and units affected, it is difficult to comment the scale of the voluntary contribution. However, the Compliance Plan is laid out in detail in the Consent Decree and is quite comprehensive and potentially burdensome.

The Compliance Plan, which must be instituted within 30 days of the Order, includes the following elements:

- Designate a duly-qualified senior corporate manager to serve as Compliance Officer with responsibility for developing, implementing, and administering the Compliance Plan and ensuring Rane's compliance with the Compliance Plan and Consent Decree.
- Establish operating procedures ("Operating Procedures") that employees who perform, or supervise, oversee, or manage the performance of, duties that relate to Rane's responsibilities under the Marketing Rules ("Covered Employees") must follow to help ensure Rane's compliance with the Marketing Rules, including procedures and policies specifically designed to ensure that, prior to marketing, all Rane digital devices and other subject devices comply with the applicable FCC technical standards, have been properly authorized (via the certification, verification, or declaration of conformity procedures, as applicable), and adhere to applicable requirements relating to labeling and consumer disclosures.
- Develop and distribute (and periodically review and revise so as to keep current) a compliance manual to all Covered Employees that explains the Marketing Rules and sets forth the Operating Procedures.
- Establish and implement a compliance training program ("Training Program") covering compliance with the Marketing Rules and the Operating Procedures, including instructions on how Covered Employees are to disclose noncompliance to the Compliance Officer. Existing Covered Employees are to go through the Training Program within thirty (30) calendar days after the effective date of the Order and then annually thereafter. (Those persons becoming Covered Employees in the future are to be trained within 30 days of becoming Covered Employees.) Rane is to periodically review and revise the Training Program so as to keep it current and effective.
- Establish a remedial program when previously unlabeled devices are returned for service or

repair.

- Post and maintain user manuals complying with the FCC's user disclosure requirements for all models on its website.
- Report noncompliance with the Marketing Rules or the Consent Decree within fifteen days of discovery of non-compliance, including a report of the steps that Rane will take to remedy the noncompliance and prevent its recurrence.
- File detailed compliance reports within three months of the effective date of the Order and for four years on each anniversary of the effective date.

Notably, the four-year period in the Rane Consent Decree for maintaining the Compliance Plan and reporting on compliance (and non-compliance) is longer than most consent decrees for violations of the Commission's rules, which historically have been two or three years.

Attorneys at Kelley Drye are experienced in assessing the applicability of and compliance with the FCC's Marketing Rules and in the development of plans to help ensure adherence to the Marketing Rules, including training programs. Please contact [Chip Yorkgitis](#) at (202) 342-8540 or your usual Kelley Drye attorney if you have any questions.