

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**FILED**  
2007 OCT 12 PM 12:06  
WESTERN DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_  
DEPUTY

**Plaintiff,**

**Radar Solutions, Ltd. d/b/a  
Rocky Mountain Radar, Inc.**

v.

**Defendant,**

**The United States Federal  
Communications Commission**

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**JUDGE KATHLEEN CARDONE**

Case No.:

**EP07CA0344**

**COMPLAINT**

Plaintiff, through its attorneys, submits this Complaint against Defendant.

**JURISDICTION**

1. Plaintiff, Radar Solutions, Ltd. is a Nevada Corporation doing business as Rocky Mountain Radar, Inc. and is qualified to do business in the State of Texas with its principal offices and manufacturing facilities in El Paso, Texas ("RMR").

2. The United States Federal Communications Commission is an agency of the government of the United States of America, the principal office of which is located at 445 12<sup>th</sup> Street, S.W., Rm. I-A836, Washington, D.C. 20554 ("FCC"). The agency has offices throughout the United States of America including one in the State of Texas.

3. Jurisdiction is proper in this Court under 28 U.S.C. §1346(a)(2).

4. Venue is proper in the Western District of Texas, El Paso Division pursuant to 28 U.S.C. §1391(e) as the place where the Plaintiff resides, where the Defendant maintains a presence and where there is no real property involved in the action.

### GENERAL ALLEGATIONS

5. On January 29, 2007, the FCC adopted a Notice of Apparent Liability for Forfeiture in File no. EB-05-SE-225 against RMR which bears a release date of January 31, 2007 (the "NAL").

6. The FCC has admitted that its action against RMR was prompted by several "informal complaints." These informal complaints were made by competitors of RMR in the sale of radar detection and scrambling products.

7. 47 C.F.R. §1.80 required that RMR be given a reasonable time of thirty days to respond to the NAL.

8. A Response to the NAL entitled Petition for Reconsideration and Cancellation of Proposed Forfeiture (Pursuant to 47 U.S.C. 1.106) was filed on March 2, 2007 under the procedures of the FCC.

9. 47 C.F.R. 1.106 requires that opposition to the petition may be filed and responses made by the petitioner prior to a decision by the agency.

10. As of the date of this Complaint, RMR has received no opposition to its petition and no determination by the FCC except for a Forfeiture Order dated August 16, 2007 stating that no response to the NAL was received.

11. Despite the fact that the NAL and its appeal have not been resolved by the FCC, the agency, at the urging of RMR's competitors, issued citations to twenty (20) of RMR's business affiliates and distributors to stop selling RMR products between January 31 and April 20, 2007.

12. As a result of the actions of the FCC based upon the still pending NAL, RMR's distributors have stopped selling the products listed in the NAL and all other products manufactured by RMR.

### **CLAIMS FOR RELIEF**

#### First Claim for Relief (Violation of 47 U.S.C. §504(c))

13. RMR incorporates the preceding allegations into this Claim for Relief.

14. 47 U.S.C. §504(c) provides that:

In any case where the Commission issues a notice of apparent liability looking toward the imposition of a forfeiture under this chapter, that fact shall not be used, in any other proceeding before the Commission, to the prejudice of the person to whom such notice was issued....

15. The FCC issued a notice of apparent liability to RMR looking toward the imposition of a forfeiture.

16. Without resolving the NAL, the FCC proceeded to use that fact in other proceedings before the Commission at the behest of RMR's competitors to prejudice RMR and its distributors.

17. The FCC's actions have caused many of RMR's distributors to cease all sales of RMR products including those that are not part of the NAL.

18. The FCC has violated the provisions of 47 U.S.C. §504(c) to the detriment of RMR.

#### Second Claim for Relief (Action in the Nature of Mandamus)

19. RMR incorporates the preceding allegations into this Claim for Relief.

20. As a federal agency, the FCC promulgates its own rules of procedure and substance by a public process. Subsequently, the agency is required to abide by its rules as promulgated and by its enabling statutes.

21. The agency promulgated procedural rules and regulations allowing for an appeal or petition to cancel or change a proposed forfeiture.

22. The agency has failed to address RMR's Response to the NAL entitled Petition for Reconsideration and Cancellation of Proposed Forfeiture (Pursuant to 47 U.S.C. 1.106) and has chosen instead to utilize its unresolved NAL to destroy RMR's chain of product distribution.

23. The agency is prohibited by statute from utilizing an NAL in other proceedings to prejudice RMR. See, 47 U.S.C. §504(c).

24. The agency has prejudiced RMR by utilizing the unresolved NAL in other proceedings to destroy RMR's chain of product distribution relating to the two products that were included in the NAL and all other products of RMR.

Third Claim for Relief

*(Deprivation of Due Process Required Under the 5<sup>th</sup> Amendment to the United States Constitution)*

25. RMR incorporates the preceding allegations into this Claim for Relief.

26. The 5<sup>th</sup> Amendment to the United States Constitution provides that no person shall be "deprived of life, liberty or property, without due process of law."

27. The FCC's own rules, regulations and authorizing statutes define the process to be employed before depriving a person of property by way of forfeiture.

28. Despite the process provided by law, the FCC has chosen to abandon its own rules and statutes and utilize the unresolved NAL to destroy RMR's business by attacking its chain of product distribution.

29. The FCC has violated RMR's 5<sup>th</sup> Amendment right to due process before the imposition of a penalty/forfeiture.

Fourth Claim for Relief

*(Intentional Interference with a Beneficial Business Relationship)*

30. RMR incorporates the preceding allegations into this Fourth Claim for Relief.

31. RMR had a beneficial business relationship with its product distributors.

32. The FCC was advised of these relationships by a competitor of RMR and knew or reasonably should have known that the relationships were vital to RMR's business.

33. The FCC intentionally interfered with the relationship and contract performance among RMR and its distributors causing distributors to stop sales of RMR products.

34. The FCC's interference with these relationships was improper for the reasons noted in the first three claims for relief.

35. The FCC's interference with these beneficial relationships and contracts has caused damages to RMR in an amount to be proven at trial.

Fifth Claim for Relief

*(Abuse of Process)*

36. RMR incorporates the preceding allegations into this Fifth Claim for Relief.

37. The FCC issued citations to at least twenty (20) of RMR's distributors, upon information and belief, requiring them to stop purchasing and marketing RMR products.

38. The purpose of the FCC's action was to harm the business of RMR and not to enforce its own regulations and governing statutes. These actions were taken at the request of RMR's competitors.

39. The actions of the FCC caused RMR damages.

Sixth Claim for Relief  
(*Prohibitory Injunction*)

40. RMR incorporates the preceding allegations into this Sixth Claim for Relief.

41. RMR is likely to succeed on the merits of its claims under 47 U.S.C. §504(c), its claim in the nature of mandamus as allowed under Rule 81, and its claim for deprivation of due process in that the Agency has simply chosen to ignore RMR's procedural rights and use its claims against Plaintiff to preclude its access to sources of product distribution regardless of whether the products are believed by the Agency to be prohibited.

42. The entry of injunctive relief will preserve the status quo. In the absence of an injunction against the Agency to preclude it from enforcement of actions against RMR's distributors based upon the initial action against RMR, the Plaintiff's business will be destroyed quickly as sales of products cease, particularly coming into the Christmas buying season. The loss of relationships with distributors and advertisers is irreparable as other products will replace those of RMR.

43. Injunctive relief prohibiting enforcement will cause no injury to the FCC.

44. Injunctive relief would not be adverse to the public's interest. The public's greater interest is to insure that Agency action is properly undertaken as delegated by the legislature in a manner that preserves the rights of the parties.

NOW, THEREFORE, RMR requests this Court to enter judgment in its favor and against the Defendant for:

a. Preliminary and permanent injunctive relief based upon its First, Second, Third and Fifth Claims for Relief along with costs and attorneys fees incurred in this action.

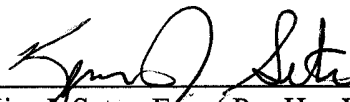
b. Money damages, costs, attorneys fees and any other relief deemed appropriate with regard to the its First, Fourth and Fifth Claims for Relief in an amount to be determined by a jury after trial.

**JURY DEMAND**

Plaintiff requests a jury on all issues so triable.

Respectfully submitted this 8<sup>th</sup> day of October, 2007.

Seter & Vander Wall, P.C.

  
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