

DRAFT

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

New Focus, Inc.
5215 Hellyer Avenue
San Jose, California 95138-1001

Attention: Mr. William Potts, Jr.
Chief Financial Officer

Dear Mr. Potts:

The Bureau of Industry and Security, United States Department of Commerce (“BIS”), has reason to believe that New Focus, Inc. (“New Focus”), in its own right and as successor to JCA Technology, Inc. (“JCA”)¹, violated the Export Administration Regulations (the “Regulations”)², which are issued under the authority of the Export Administration Act of 1979 (the “Act”)³, on eight occasions. Specifically, BIS alleges that New Focus, Inc. committed or is liable for the following violations:

¹ On January 16, 2001, JCA Technology, Inc. of Camarillo, California merged into New Focus, Inc. New Focus, Inc., the surviving entity, is charged herein as the successor of JCA.

² The Regulations are currently codified in the Code of Federal Regulations as 15 C. F. R. Parts 730-774 (2003).

³ From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000) (“IEEPA”). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. 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)), as extended by the Notice of August 14, 2002 (67 Fed. Reg. 53721 (August 16, 2002)), has continue the Regulations in effect under IEEPA.

Charge 1 (15 C.F.R. §764.2(a) Engaging in Prohibited Conduct - Export of Goods without the Required License)

On or about October 15, 1997, JCA exported 10 microwave solid state amplifiers, items subject to the Regulations and described in Export Control Classification Number 3A001.b.4.a (“ECCN”), from the United States to the Czech Republic without obtaining a license from the Department of Commerce, as required by §742.4 (a) of the Regulations. In so doing, JCA committed one violation of §764.2(a) of the Regulations, and as successor to JCA, New Focus is liable for this violation.

Charge 2 (15 C.F.R. §764.2(a) Engaging in Prohibited Conduct - Export of Goods without the Required Licenses)

On or about March 23, 2000, New Focus exported three microwave solid state amplifiers, items subject to the Regulations, and described in ECCN 3A001.b.4.a, from the United States to Singapore without obtaining a license from the Department of Commerce, as required by §742.4(a) of the Regulations. In so doing, New Focus committed one violation of §764.2(a) of the Regulations.

Charge 3 (15 C.F.R. § 764.2(g) - Misrepresentation of Material Fact - False Statement on a Shipper’s Export Declaration)

On or about March 23, 2000, in connection with the export described in Charge 2 above, New Focus submitted a Shipper’s Export Declaration, defined as an export control document in Part 772 of the Regulations, representing that the export did not require a license by using the designation “NLR” (no license required), when in fact, the export in question required a license from the Department of Commerce. By making a false or misleading statement of material fact directly or indirectly to a United States Government agency in connection with the submission of an export control document that was used to effect an export from the United States, New Focus committed one violation of §764.2(g) of the Regulations.

Charge 4 (15 C.F.R. §764.2(a) Engaging in Prohibited Conduct - Export of Goods without the Required Licenses)

On or about January 9, 2001, JCA exported seven solid state amplifiers, items subject to the Regulations, and described in ECCN 3A001.b 4.a, from the United States to Chile without obtaining a license from the Department of Commerce, as required by §742.4(a) of the Regulations. In so doing, JCA committed one violation of §764.2(a) of the Regulations, and as successor to JCA, New Focus is liable for this violation.

Charge 5 (15 C.F.R. § 764.2(g) - Misrepresentation of Material Fact - False Statement on a Shipper's Export Declaration)

On or about January 9, 2001, in connection with the export described in Charge 4 above, JCA submitted a Shipper's Export Declaration, defined as an export control document in Part 772 of the Regulations, representing that the export did not require a license by using the designation "NLR" (no license required), when in fact, the export in question required a license from the Department of Commerce. By making a false or misleading statement of material fact directly or indirectly to a United States Government agency in connection with the submission of an export control document that was used to effect an export from the United States, JCA committed one violation of §764.2(g) of the Regulations, and as successor to JCA, New Focus is liable for this violation.

Charge 6 (15 C.F.R. §764.2(a) Engaging in Prohibited Conduct - Export of Technology Without the Required License)

From on or about September 18, 2000 to in or about June 2002, New Focus exported technology related to solid state amplifiers, subject to the Regulations and described in ECCN 3E001, to Iran without the license from the Department of Commerce required by Section 746.7 of the Regulations by releasing the technology in the United States to a national of Iran who was not lawfully admitted for permanent residence in the United States and was not a protected individual under the Immigration and Naturalized Act (8 U.S.C. Section 1324b(a)(3)). In so doing, New Focus committed one violation of §764.2(a) of the Regulations.

Charge 7 (15 C.F.R. §764.2(a) Engaging in Prohibited Conduct - Export of Technology Without the Required License)

From on or about November 26, 2001 to in or about October 2002, New Focus exported technology related to solid state amplifiers, subject to the Regulations and described in ECCN 3E001, to the People's Republic of China without the license from the Department of Commerce required by Section 742.4(a) of the Regulations by releasing the technology in the United States to a national of the People's Republic of China who was not lawfully admitted for permanent residence in the United States and was not a protected individual under the Immigration and Naturalized Act (8 U.S.C. Section 1324b(a)(3)). In so doing, New Focus committed one violation of §764.2(a) of the Regulations.

Charge 8 (15 C.F.R. §764.2(a) Engaging in Prohibited Conduct - Export of Technology Without the Required License)

From on or about July 10, 2000 to on or about, September 6, 2002, New Focus exported technology related to photoreceivers and other telecommunication components subject to the Regulations and described in ECCN 5E991, to Iran without the license from the Department of Commerce required by Section 746.7 of the Regulations by releasing the technology in the United States to a national of Iran who was not lawfully admitted for permanent residence in the

United States and who was not a protected individual under the Immigration and Nationality Act (8 U.S.C. Section 1324b(a)(3)). In doing so, New Focus committed one violation of §764.2(a) of the Regulations.

BIS alleges that New Focus committed six violations of Section 764.2(a) of the Regulations and two violations of Section 764.2(g) of the Regulations, for a total of eight violations of the Regulations.

Accordingly, New Focus is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13 of the Act and Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of up to \$120,000 per violation⁴;

Denial of export privileges; and/or

Exclusion from practice before BIS.

If New Focus fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of the letter, that failure will be treated as a default. (Regulations, Section 766.6 and 766.7). If New Focus defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to New Focus. The Under Secretary for Industry and Security may impose up to the maximum penalty on each of the charges in this letter. New Focus is further notified that it is entitled to an agency hearing on the record if New Focus files a written demand for one with its answer. (Regulation, Section 766.6). New Focus is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4)

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should you have a proposal to settle this case, you or your representative should transmit it to me through the attorney representing BIS named below.

The U.S. Coast Guard provides administrative law judge service in connection with the matters set forth in this letter. Accordingly, New Focus's answer should be filed pursuant to the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

⁴ See: 15 C.F.R. §6.4(a)(2).

A copy of New Focus's answer must be served on BIS at:

Office of Chief Counsel for Industry and Security
Attention: Laird M. Street, Esq.
Room H-3839
U.S. Department of Commerce
14th Street and Constitution Avenue, NW
Washington, D.C. 20230

Laird M. Street is the attorney representing the BIS in this case. He may be contacted by telephone at (202) 482-5301.

Sincerely,

Mark D. Menefee
Director
Office of Export Enforcement

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
New Focus, Inc.)
5215 Hellyer Avenue)
San Jose, California 95138-1001,)
)
Respondent.)
)

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Respondent, New Focus, Inc. ("New Focus"), in its own right and as successor to JCA Technology, Inc. ("JCA")¹, and the Bureau of Industry and Security, United States Department of Commerce ("BIS") (collectively referred to as "Parties"), pursuant to Section 766.18(a) of the Export Administration Regulations ("Regulations"),² issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) ("Act"),³

¹ On January 16, 2001, JCA Technology, Inc. of Camarillo, California merged into New Focus, Inc. New Focus, Inc., the surviving entity, is charged herein as the successor of JCA.

² The Regulations are currently codified in the Code of Federal Regulations as 15 C. F. R. Parts 730-774 (2003). The violations charged occurred in 1997 and 2000- 2002. The Regulations governing the violations at issue are found in the 1997 and 2000- 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1997) and (2000--2002)). The 2003 Regulations establish the procedures that apply to this matter.

³ From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in

WHEREAS, BIS has notified Respondent of its intention to initiate an administrative proceeding against Respondent, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to Respondent that alleged that Respondent committed eight violations of the Regulations, specifically:

1. *One Violation of 15 C.F.R. Section 764.2(a) - Engaging in Prohibited Conduct - Export of Goods without the Required License:* On or about October 15, 1997, JCA exported 10 microwave solid state amplifiers, items subject to the Regulations and described in Export Control Classification Number 3A001.b.4.a ("ECCN"), from the United States to the Czech Republic without obtaining a license from the Department of Commerce, as required by Section 742.4 (a) of the Regulations.
2. *One Violation of 15 C.F.R. Section 764.2 (a) Engaging in Prohibited Conduct - Export of Goods without the Required Licenses:* On or about March 23, 2000, New Focus exported three microwave solid state amplifiers, items subject to the Regulations and described in ECCN 3A001.b.4.a, from the United States to Singapore without obtaining a license from the Department of Commerce, as required by Section 742.4(a) of the Regulations.

lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (68 *Fed. Reg.* 47833, August 11, 2003), has continued the Regulations in effect under IEEPA.

3. *One Violation of 15 C.F.R. Section 764.2(g) - Misrepresentation of Material Fact - False Statement on a Shipper's Export Declaration:* On or about March 23, 2000, in connection with the export described in Charge 2 above, New Focus submitted a Shipper's Export Declaration, defined as an export control document in Part 772 of the Regulations, representing that the export did not require a license by using the designation "NLR" (no license required), when in fact, the export in question required a license from the Department of Commerce.
4. *One Violation of 15 C.F.R. Section 764.2(a) Engaging in Prohibited Conduct - Export of Goods without the Required Licenses:* On or about January 9, 2001, JCA exported seven solid state amplifiers, items subject to the Regulations and described in ECCN 3A001.b 4.a, from the United States to Chile without obtaining a license from the Department of Commerce, as required by Section 742.4(a) of the Regulations.
5. *One Violation of 15 C.F.R. Section 764.2(g) - Misrepresentation of Material Fact - False Statement on a Shipper's Export Declaration:* On or about January 9, 2001, in connection with the export described in Charge 4 above, JCA submitted a Shipper's Export Declaration, defined as an export control document in Part 772 of the Regulations, representing that the export did not require a license by using the designation "NLR" (no license required), when in fact, the export in question required a license from the Department of Commerce.

6. *One Violation of 15 C.F.R. Section 764.2 (a) - Engaging in Prohibited Conduct - Export of Technology Without the Required License:* From on or about September 18, 2000 to in or about June 2002, New Focus exported technology related to solid state amplifiers, items subject to the Regulations and described in ECCN 3E001, to Iran without the license from the Department of Commerce required by Section 746.7 of the Regulations by releasing the technology in the United States to a national of Iran who was not lawfully admitted for permanent residence in the United States and was not a protected individual under the Immigration and Naturalized Act (8 U.S.C. Section 1324b(a)(3)).
7. *One Violation of 15 C.F.R. Section 764.2(a)- Engaging in Prohibited Conduct - Export of Technology Without the Required License:* From on or about November 26, 2001 to in or about October 2002, New Focus exported technology related to solid state amplifiers, items subject to the Regulations and described in ECCN 3E001, to the People's Republic of China without the license from the Department of Commerce required by Section 742.4(a) of the Regulations by releasing the technology in the United States to a national of the People's Republic of China who was not lawfully admitted for permanent residence in the United States and was not a protected individual under the Immigration and Naturalized Act (8 U.S.C. Section 1324b(a)(3)).
8. *One Violation of 15 C.F.R. Section 764.2 Engaging in Prohibited Conduct - Export of Technology Without the Required License:* From on or about July 10,

2000 to on or about, September 6, 2002, New Focus exported technology related to photoreceivers and other telecommunication components, items subject to the Regulations and described in ECCN 5E991, to Iran without the license from the Department of Commerce required by Section 746.7 of the Regulations by releasing the technology in the United States to a national of Iran who was not lawfully admitted for permanent residence in the United States and who was not a protected individual under the Immigration and Nationality Act (8 U.S.C. Section 1324b(a)(3)).

WHEREAS, New Focus has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, New Focus fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if she approves this Agreement as the final resolution of this matter;

WHEREAS, New Focus enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, New Focus states that no promises or representations have been made to New Focus other than the agreements and considerations herein expressed;

WHEREAS, New Focus neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, New Focus wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, New Focus agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over New Focus, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanction shall be imposed against New Focus in complete settlement of the violations of the Regulations set forth in the proposed charging letter:

- a. New Focus shall be assessed a civil penalty in the amount of \$200,000 which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the appropriate Order.
- b. The timely payment of the civil penalty agreed to in paragraph 2.a. 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 New Focus. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of New Focus's export privileges for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, New Focus hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; (c) request any relief from the Order, if entered, including without limitation relief from

the terms of a denial order under 15 C.F.R. Section 764.3(a)(2); and (d) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order and timely payment of the \$200,000 civil penalty, BIS will not initiate any further administrative proceeding against New Focus in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to 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 addressed herein.

8. This Agreement shall become binding on BIS only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

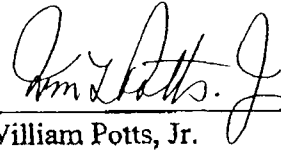
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE

NEW FOCUS, INC.



Mark D. Menefee
Director
Office of Export Enforcement



William Potts, Jr.
Chief Financial Officer

Date: 3/5/04

Date: MARCH 7, 2004

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
New Focus, Inc.)
5215 Hellyer Avenue)
San Jose, California 95138-1001,)
)
Respondent.)
_____)

ORDER

The Bureau of Industry and Security, United States Department of Commerce (“BIS”) notified New Focus, Inc. (“New Focus”), in its own right and as successor to JCA Technology, Inc. (“JCA”)¹, of its intention to initiate an administrative proceeding against New Focus, pursuant to Section 766.3 of the Export Administration Regulations (“Regulations”),² and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),³ based on the proposed charging letter issued to New Focus that alleged that New Focus committed eight violations of the Regulations. Specifically, the charges are:

¹ On January 16, 2001, JCA Technology, Inc. of Camarillo, California merged into New Focus, Inc. New Focus, Inc., the surviving entity, is charged herein as the successor of JCA.

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3. *One Violation of 15 C.F.R. Section 764.2(g) - Misrepresentation of Material Fact -False Statement on a Shipper’s Export Declaration:* On or about March 23, 2000, in connection with the export described in Charge 2 above, New Focus submitted a Shipper’s Export Declaration, defined as an export control document in Part 772 of the Regulations, representing that the export did not require a license by using the designation “NLR” (no license required), when in fact, the export in question required a license from the Department of Commerce.
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obtaining a license from the Department of Commerce, as required by Section 742.4(a) of the Regulations.

5. *One Violation of 15 C.F.R. Section 764.2(g) - Misrepresentation of Material Fact - False Statement on a Shipper's Export Declaration:* On or about January 9, 2001, in connection with the export described in Charge 4 above, JCA submitted a Shipper's Export Declaration, defined as an export control document in Part 772 of the Regulations, representing that the export did not require a license by using the designation "NLR" (no license required), when in fact, the export in question required a license from the Department of Commerce.
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releasing the technology in the United States to a national of the People's Republic of China who was not lawfully admitted for permanent residence in the United States and was not a protected individual under the Immigration and Naturalized Act (8 U.S.C. Section 1324b(a)(3)).

8. *One Violation of 15 C.F.R. Section 764.2(a) Engaging in Prohibited Conduct - Export of Technology Without the Required License:* From on or about July 10, 2000 to on or about September 6, 2002, New Focus exported technology related to photoreceivers and other telecommunication components, items subject to the Regulations and described in ECCN 5E991, to Iran without the license from the Department of Commerce required by Section 746.7 of the Regulations by releasing the technology in the United States to a national of Iran who was not lawfully admitted for permanent residence in the United States and who was not a protected individual under the Immigration and Nationality Act (8 U.S.C. Section 1324b(a)(3)).

BIS and New Focus having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they 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:

FIRST, that a civil penalty of \$200,000 is assessed against New Focus which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

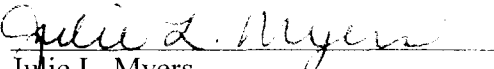
SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C.

§§ 3701-3720E (2000)), 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, New Focus will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to New Focus. Accordingly, if New Focus should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of New Focus's export privileges for a period of one year from the date of entry of this Order.

FOURTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

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


Julie L. Myers
Assistant Secretary of Commerce
for Export Enforcement

Entered this 2nd day of April 2004.