

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 03-81106-CIV-HURLEY/HOPKINS

FEDERAL TRADE COMMISSION,

Plaintiff

v.

INTERACT COMMUNICATIONS, INC.,
and SHELDON KALNITSKY,

Defendants.

**COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), by its undersigned attorneys, alleges as follows:

1. This is an action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure a permanent injunction and other equitable relief against Defendants for their deceptive acts or practices and false advertisements in connection with the advertising, marketing, and sale of purported electromagnetic radiation-blocking cellular telephone patches called “WaveShield” in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over Plaintiff’s claim pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1345, and 15 U.S.C. §§ 45(a), 52 and 53(b).

3. Venue in this District is proper under 28 U.S.C. §§ 1391(b) and (c) and 15 U.S.C. § 53(b).

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Sections 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for food, drugs, devices, services, or cosmetics, in or affecting commerce. The FTC may initiate federal district court proceedings to enjoin violations of the FTC Act, and to secure such equitable relief as may be appropriate in each case. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant Interact Communications, Inc. (“Interact”), is a Florida corporation located at 6453 N.W. 43rd Terrace, Boca Raton, FL 33496. Among other things, it markets devices intended to block electromagnetic energy emitted from cellular phones. Interact transacts business in the Southern District of Florida.

6. Defendant Sheldon Kalnitsky (“Kalnitsky”) is President of Interact. His principal office or place of business is the same as that of Interact. In connection with the matters alleged herein, Kalnitsky transacts business in the Southern District of Florida. At all times material to this complaint, Kalnitsky individually or in concert with others, formulated, directed, controlled, or participated in the policies, acts, or practices of Interact, including the acts or practices alleged in this complaint.

COMMERCE

7. The acts and practices of Defendants, as alleged herein, are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ COURSE OF CONDUCT

8. Since at least 2000, and continuing thereafter, Defendants have marketed a product that purportedly blocks electromagnetic energy emitted from cellular telephones to consumers throughout the United States. Defendants have marketed this product under the names “WaveShield,” “WaveShield 1000,” “WaveShield Gold” and “WaveShield 3000” (collectively referred to herein as “WaveShield”). WaveShield is a metallic fiber patch that is placed over the earpiece of the cellular telephone.

9. Defendants have provided various resellers with advertising and promotional material for WaveShield, including but not limited to the attached Exhibits A through C. In addition, Defendants have advertised, promoted, offered for sale, sold and distributed WaveShield to consumers throughout the United States by means of Internet advertisements, including but not limited to the attached Exhibit D.

10. To induce consumers to purchase WaveShield, Defendants disseminated or caused to be disseminated advertisements and promotional materials for WaveShield which include, among others, the following statements and depictions:

a. (Exhibit A: Packaging for WaveShield 1000)

[Front of packaging]

STOP the Wave!

TESTED! PROVEN! BLOCKS up to 97% of Electromagnetic Radiation From your inner ear

[Back of packaging]

STOP the Wave! Finally ... Cellular Protection with the “WAVE SHIELD”

Tested by Global Certification Lab, U.S.A.

The **WAVE SHIELD** is a protective system about the size of a penny that adheres to the ear piece of any cellular phone. The **WAVE SHIELD** blocks up to 97% of the electromagnetic radiation that may enter through the inner ear without affecting the quality of the transmission.

STOP the wave today with the WAVE SHIELD! It's TESTED, PROVEN and fits any phone.

Without Protection... Electromagnetic radiation may enter the unprotected area of the brain when phone is in use. [*Depiction: Concentric circles radiating from a point approximately at the ear. The circles radiate into the person's head area.*] **With the “Wave Shield”...** Electromagnetic radiation is blocked from the brain via the inner ear when the “Wave Shield” is attached. [*Depiction: Concentric circles radiating from a point approximately at the ear. The circles radiate away from the person's head area.*]

b. (Exhibit B: Packaging for WaveShield Gold)

The Ultimate Cellular Protection! ... PURE GOLD ... Blocks up to 99% of Near Field Radiation

c. (Exhibit C: Packaging for WaveShield 3000)

[Front of packaging]

Protect your family from radiation waves!

TESTED. PROVEN. BLOCKS up to 97% of Electromagnetic Radiation from your inner ear

[Back of packaging]

Finally ... Cordless Phone Protection

STOP the Wave!

Tested by Global Certification Lab, U.S.A.

The **WAVE SHIELD** is a protective system about the size of a penny that

adheres to the ear piece of any cordless phone. The **WAVE SHIELD** blocks up to 97% of the electromagnetic radiation that may enter through the inner ear without affecting the quality of the transmission.

STOP the wave today with the WAVE SHIELD! It's TESTED, PROVEN and fits any cordless phone.

Without Protection... Electromagnetic radiation may enter the unprotected area of the brain when phone is in use. [*Depiction: Concentric circles radiating from a point approximately at the ear. The circles radiate into the person's head area.*] **With the "Wave Shield"...** Electromagnetic radiation is blocked from the brain via the inner ear when the "Wave Shield" is attached. [*Depiction: Concentric circles radiating from a point approximately at the ear. The circles radiate away from the person's head area.*]

d. (Exhibit D: Webpage excerpts)

All Wave Shield mobile phone accessories are proved and tested in the USA.

The **Wave Shield 1000** blocks up to **97%** of the near-field radiation from entering the soft tissue of the ear, without affecting the quality of the transmission.

Without Protection, Electromagnetic Radiation may enter the unprotected area of the inner ear when phone is in use.

With the "Wave Shield", Electromagnetic radiation is blocked from the soft tissue of the ear canal when the "Wave Shield" is attached.

Our Economy Cellphone Shield Blocks up to 97% fo [sic] Nearfield Radiation

Protect your family from harmful electromagnetic radiation... [Wave Shield 3000] blocks up to **97%** of the near-field radiation from entering the soft tissue of the ear, without affecting the quality of the transmission.

Without Protection, Electromagnetic Radiation may enter the unprotected area of the inner ear when phone is in use.

With the "Wave Shield", Electromagnetic radiation is blocked from the soft tissue of the ear canal when the "Wave Shield" is attached.

The **Wave Shield GOLD** blocks up to **99%** of the near-field radiation from entering the soft tissue of the ear, without affecting the quality of the transmission.

Without Protection, Electromagnetic Radiation may enter the unprotected area of the inner ear when phone is in use.

With the “Wave Shield”, Electromagnetic radiation is blocked from the soft tissue of the ear canal when the “Wave Shield” is attached.

Wave Shield mobile phone radiation shields block up to 99% of the near-field electromagnetic waves, shielding potentially harmful radiation away from you, without effecting [sic] the quality of the transmission. Finally ... cellular phone radiation protection at an affordable price. Proven and Tested in the USA, Russia and Germany.

11. Defendants charged \$19.95 to \$24.95 for WaveShield. Defendants distributed Wave Shield to resellers and offered for sale and sold WaveShield to consumers throughout the United States.

DEFENDANTS’ VIOLATIONS OF THE FTC ACT

12. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits deceptive acts or practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. As set forth below, Defendants have engaged and are continuing to engage in such unlawful practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in connection with the offer, sale, advertising, promotion or distribution of WaveShield.

13. For purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, WaveShield is a

“device” pursuant to Section 15(d) of the FTC Act, 15 U.S.C. § 55(d).

COUNT ONE

14. Through the use of representations and statements contained in advertisements, including but not limited to Exhibits A through D, Defendants have represented, expressly or by implication, that WaveShield blocks up to 97 percent or up to 99 percent of radiation and other electromagnetic energy emitted by cellular and cordless telephones.

15. In truth and in fact, WaveShield does not block up to 97 percent or up to 99 percent of electromagnetic energy emitted by cellular and cordless telephones. Therefore, the making of the representations set forth in Paragraph 14 constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT TWO

16. Through the use of representations and statements contained in advertisements, including but not limited to Exhibits A through D, Defendants have represented, expressly or by implication, that WaveShield blocks up to 97 percent or up to 99 percent of radiation and other electromagnetic energy emitted by cellular and cordless telephones.

17. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 16 at the time the representations were made. Therefore, the making of the representations set forth in Paragraph 16 constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT THREE

18. In their advertising and sale of WaveShield, defendants have represented that the product protects consumers from the electromagnetic energy emitted by the earpieces of cellular and cordless telephones. Defendants have failed to disclose that the vast majority of electromagnetic energy emitted by cellular and cordless telephones comes from the antenna and parts of the phone other than the earpiece. Defendants have also failed to disclose that WaveShield has no effect on this other electromagnetic energy. These facts would be material to consumers in their purchase or use of the products. The failure to disclose these facts, in light of the representation made, was, and is, a deceptive act or practice. Therefore, the making of the representation set forth above constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT FOUR

19. Through the use of representations and statements contained in advertisements, including but not limited to Exhibits A through D, Defendants have represented, expressly or by implication, that scientific testing has proven that WaveShield blocks up to 97 percent or up to 99 percent of electromagnetic energy emitted by cellular and cordless telephones.

20. In truth and in fact, scientific testing has not proven that WaveShield blocks up to 97 percent or up to 99 percent of electromagnetic energy emitted by cellular and cordless telephones. Therefore, the making of the representations set forth in Paragraph 19 above constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT FIVE

21. By providing resellers and other distributors with the advertising and promotional material referred to in Paragraph 10, Defendants have provided the means and instrumentalities for the commission of the deceptive and misleading acts and practices alleged herein.

22. Therefore, the acts and practices of Defendants as alleged in this Complaint constitute a deceptive practice, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

CONSUMER INJURY

23. Consumers throughout the United States have suffered and continue to suffer monetary loss as a result of Defendants' unlawful acts or practices. In addition, Defendants have been unjustly enriched as a result of its unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

24. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer notification and/or education, consumer redress, disgorgement, and restitution, to prevent and remedy any violations of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

25. WHEREFORE, Plaintiff requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

- a. Permanently enjoin Defendants from violating Sections 5 and 12 of the FTC Act, as alleged herein, in connection with the advertising or sale of food, drugs,

- devices, cosmetics or other products, services or programs;
- b. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, consumer notification and/or education, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains; and
- c. Award Plaintiff the costs of bringing this action, as well as such other and additional equitable relief as the Court may deem just and proper.

Respectfully submitted,

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Dated: