

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.

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION
AGAINST DEFENDANTS INTERACT COMMUNICATIONS, INC.
AND SHELDON KALNITSKY**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed a complaint (the “Complaint”) for a permanent injunction and other equitable relief against Interact Communications, Inc. and Sheldon Kalnitsky (each, a “Defendant,” and collectively, the “Defendants”), pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), alleging violations of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52. The Commission and Defendants Interact Communications (“Interact”) and Sheldon Kalnitsky (“Kalnitsky”) hereby agree to the entry of this Stipulated Final Order for Permanent Injunction and Judgment Against Defendants Interact Communications, Inc. and Sheldon Kalnitsky (“Order”). Being advised on the premises, the Court finds:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331 and 1337(a), and 15 U.S.C. § 53(b).
2. Venue is proper as to all parties in the Southern District of Florida.
3. The activities of the Defendants Interact and Kalnitsky are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint alleges a claim upon which relief may be granted against the Defendants Interact and Kalnitsky, under Sections 5(a)(1) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b). This Order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by Defendants that they engaged in violations of any law or regulation, or that the facts alleged in the Complaint, other than the jurisdictional facts, are true.
5. Plaintiff and Defendants, by and through their counsel, have agreed that the entry of this Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Order.
6. By signing and stipulating to this Order, plaintiff and Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants Interact and Kalnitsky also waive any claim against the Commission, its employees, representatives or agents, and any claim they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.
7. Each party shall bear its own costs and attorneys' fees.

8. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

9. Entry of this Order is in the public interest.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

1. “Competent and reliable scientific evidence” shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. “Covered product or service” shall mean “WaveShield” and any other device or product manufactured, distributed, or sold by either of the Defendants that is designed or intended to reduce exposure to, prevent absorption of, mitigate the effects of, or prevent penetration of electromagnetic energy or other fields from any cellular telephone or cordless telephone or any other product, device, equipment, or appliance, or any service relating to such device or product.

3. “Clearly and prominently” shall mean as follows:

A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. *Provided, however*, that in any advertisement

presented solely through video or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinarily prudent consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented before the consumer incurs any financial obligation.

B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinarily prudent consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinarily prudent consumer to read and comprehend it, in print that contrasts with the background against which it appears.

4. A requirement that any Defendant “notify the Commission” or “file with the Commission” shall mean that the Defendant shall send the necessary information via first class mail, costs prepaid, to:

Associate Director for Advertising Practices
Federal Trade Commission

600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Attn: *FTC v. Interact Communications, Inc., et al.* (S.D. Fla.)

CONDUCT PROHIBITIONS

I.

IT IS HEREBY ORDERED that Defendants, and their agents, servants, employees, attorneys, corporations, subsidiaries, successors, assigns, and all other persons or entities in active concert or participation with any of the Defendants who receive actual notice of this Order by personal service, facsimile, or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of a covered product or service in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the ability of such product or service to reduce exposure to, prevent absorption of, mitigate the effects of, or prevent penetration of electromagnetic energy or other fields from any cellular telephone or cordless telephone, or any other product, device, equipment, or appliance, unless the representation is true and, at the time it is made, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that Defendants, and their agents, servants, employees, attorneys, corporations, subsidiaries, successors, assigns, and all other persons or entities in active concert or participation with any of the Defendants who receive actual notice of this Order by personal service, facsimile, or otherwise, in connection with the manufacturing, labeling,

advertising, promotion, offering for sale, sale, or distribution of any covered product or service, or of any other product or service advertised to have health benefits, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, or efficacy of such product or service, unless the representation is true and, at the time the representation is made, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that Defendants, and their agents, servants, employees, attorneys, corporations, subsidiaries, successors, assigns, and all other persons or entities in active concert or participation with any of the Defendants who receive actual notice of this Order by personal service, facsimile, or otherwise, in connection with any representation in or affecting commerce that any covered product protects consumers from the electromagnetic energy emitted by the earpieces of cellular and cordless phones, shall, to the extent that the covered product is intended to block or abate electromagnetic energy transmitted only through the earpiece, disclose clearly and prominently, and in close proximity to the representation, that the vast majority of electromagnetic energy emitted by cellular and cordless phones comes from the antenna and parts of the phone other than the earpiece and that the covered product has no effect on this other electromagnetic energy.

IV.

IT IS FURTHER ORDERED that Defendants, and their agents, servants, employees, attorneys, corporations, subsidiaries, successors, assigns, and all other persons or entities in

active concert or participation with any of them who receive notice of this Order by personal service, facsimile, or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product, in or affecting commerce, shall not misrepresent, in any material manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

V.

IT IS FURTHER ORDERED that the provisions of this Order shall not apply to any label or package for any covered product printed prior to the date of entry of this Order and shipped by Defendants to purchasers or distributors within 90 days of the date of entry of this Order.

NOTICE TO RESELLERS AND DISTRIBUTORS

VI.

IT IS FURTHER ORDERED that Defendants shall:

A. Send, within thirty (30) days of entry of this Order, by first class mail, return receipt requested, an exact copy of the notice attached hereto as Appendix B, showing the date of mailing, to each distributor or reseller who purchased covered products from Defendants between January 1, 2000, and the date of entry of this Order. This mailing shall not include any other document or enclosures.

B. Notify, immediately, each distributor or reseller that Defendants will stop doing business with that distributor or reseller if it continues to use any advertisement or promotional material that contains any representation prohibited by this Order, in the event Defendants

become aware that the distributor or reseller is using or disseminating any such advertisement or promotional material subsequent to receipt of Appendix B. By delivering the notice attached as Appendix B in accordance with the provisions of subparagraph A, Defendants will have satisfied their obligations under this subparagraph B.

C. To the extent permitted by applicable law and any applicable contract, terminate any distributor or reseller within ten (10) days after Defendants become aware that the distributor or reseller has continued to use any advertisement or promotional material that contains any representation prohibited by this Order after receipt of the notice required by subparagraph B of this Part.

RECORD KEEPING

VII.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendants, in connection with Interact and or any business where (1) Defendant Kalnitsky is the majority owner of the business or directly or indirectly manages or controls the business, and (2) the business engages, or assists others engaged in, the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution, of any product or service covered by this Order, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from failing to create and retain the following records with respect to any product or service covered by this Order:

A. All advertisements and promotional materials disseminated by that party or business containing any representation covered by this Order;

B. All materials that were relied upon in disseminating the representations identified in subparagraph A, including, but not limited to, all tests, reports, studies, surveys, demonstrations, or other evidence in that party or business's possession, custody, or control that confirm, contradict, qualify, or call into question the representations;

C. Accounting records that reflect the cost of such products or services sold, revenues generated, and the disbursement of such revenues;

D. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

E. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity, and description of such products or services purchased, to the extent such information is obtained in the ordinary course of business;

F. Complaint and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests, including complaints and other communications with consumers or with governmental entities or consumer protection organizations; and

G. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

ACCESS TO BUSINESS PREMISES

VIII.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendants shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office, or facility storing documents, of Interact or any business where: (1) Defendant Kalnitsky is the majority owner of the business or directly or indirectly manages or controls the business, and (2) the business engages, or assists others engaged in, the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution, of any product or service covered by this Order. In providing such access, Defendants shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order (excepting any such documents that may be privileged or otherwise legally protected from disclosure); and shall permit Commission representatives to remove documents relevant to any matter contained in this Order (excepting any such documents that may be privileged or otherwise legally protected from disclosure) for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to

which subparagraph A applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present. If such person declines to answer, or otherwise fails to respond to, any question addressed to him or her during the interview, that shall not constitute a violation of the Order.

COMPLIANCE REPORTING BY DEFENDANTS

IX.

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of five (5) years from the date of entry of this Order, Defendants shall notify the Commission of the following:

1. Any changes in Defendant Kalnitsky's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
2. Any changes in Defendant Kalnitsky's employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that Kalnitsky is affiliated with or employed by, a statement of the nature of the business, and a statement of Kalnitsky's duties and responsibilities in connection with the business or employment; and
3. Any proposed change in the structure of Defendant Interact or any proposed change in the structure of any business entity owned or controlled by Defendant Kalnitsky, such as creation, incorporation, dissolution, assignment, sale, creation or dissolution of subsidiaries, or any other change that may affect

compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any proposed change;

B. Sixty (60) days after the date of entry of this Order, Defendants shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include but not be limited to:

1. Defendant Interact's then current business and telephone numbers, and Defendant Kalnitsky's then current residence addresses and telephone numbers;
2. Defendant Kalnitsky's then current employment, business addresses and telephone numbers, a description of the business activities of each such employer, and Defendant's title and responsibilities for each employer;
3. A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Paragraph X;
4. A statement describing the manner in which Defendants have complied and are complying with the Order.

C. Upon written request by a representative of the Commission, Defendants shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct subject to this Order;

D. "Employment" shall mean any affiliation with any business, non-profit, or government entity, including the performance of services as an officer, owner, manager, supervisor, employee, consultant, or independent contractor, and "employer" shall mean any and

all individuals or entities for whom any Defendant performs services as an employee, consultant, or independent contractor.

E. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendants, or if Defendants request, with Defendants' legal counsel, in which case the Commission must not communicate with Defendants.

DISTRIBUTION OF ORDER BY DEFENDANTS

X.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendants shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for Interact or any business where (1) Defendant Kalnitsky is the majority owner of the business or directly or indirectly manages or controls the business, and (2) the business engages, or assists others engaged in, the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution, of any product or service covered by this Order; and

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in subparagraph A.

COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

XI.

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendants' compliance with this Order by all lawful means, including but not limited to the following means:

A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendants' compliance with any provision of this Order;

B. The Commission is authorized to use, in a lawful and constitutional manner, representatives posing as consumers and suppliers to Defendants' employees, or any other entity managed or controlled in whole or in part by Defendant Kalnitsky, without the necessity of identification or prior notice, for the purpose of monitoring and investigating Defendants' compliance with any provision of this Order;

C. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. § § 49, 57b-1, to investigate whether Defendants have violated any provision of this Order or Section 5 of the FTC Act, 15

U.S.C. § 45. Neither Defendant waives any right or privilege to object to such process or to any other demand for information or documents or inspection thereof that the Commission may make or to any other conduct the Commission may engage in relative to this Order.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

AND RIGHT TO REOPEN

XII

IT IS FURTHER STIPULATED AND ORDERED that, within fifteen (15) days after service of this Order, Defendant Kalnitsky, individually and on behalf of Interact, shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order on behalf of Defendants and shall reaffirm and swear to the truthfulness, accuracy and completeness of the financial statements previously submitted to the Commission by Defendants. The Commission's agreement to this Order is expressly premised on the truthfulness, accuracy and completeness of such financial statements. If the Court finds that any Defendant failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall enter judgment against Defendants, in favor of the Commission, in the amount of \$220,000, and the entire amount of the judgment shall become immediately due and payable; *provided, however*, that in all other respect this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further*, that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that

the Commission may initiate to enforce this Order. For purposes of this provision, and any subsequent proceedings to enforce payment, including but not limited to a non-dischargeability complaint filed in a bankruptcy proceeding, Defendants waive any right to contest any of the allegations in the Complaint.

RETENTION OF JURISDICTION

XIII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

STIPULATED AND AGREED TO:

By: _____
SERENA VISWANATHAN
Fla. Bar # A5500649
Federal Trade Commission
600 Pennsylvania Avenue NW,
NJ-3212
Washington DC 20580

Attorneys for Plaintiff

By: _____
SHELDON KALNITSKY,
individually and on behalf of
Defendant INTERACT
COMMUNICATIONS, INC.

By: _____
WALTER KRASLOW, ESQ.
FRIEDMAN, ROSENWASSER &
GOLDBAUM
5355 Town Center Road, Suite 801
Boca Raton, FL 33486

Attorneys for Defendants

SO ORDERED

UNITED STATES DISTRICT JUDGE

Dated: _____

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.

FEDERAL TRADE COMMISSION,

Plaintiff

v.

INTERACT COMMUNICATIONS, INC.,
and SHELDON KALNITSKY,

Defendants.

_____ /

AFFIDAVIT OF SHELDON KALNITSKY

Sheldon Kalnitsky, being duly sworn, hereby states and affirms:

1. My name is Sheldon Kalnitsky. I am a citizen of Canada and am over the age of eighteen. I have personal knowledge of the matters discussed in this declaration, and if called as a witness, I could and would competently testify as to the matters stated herein. I am a defendant in the above-captioned action individually and on behalf of defendant Interact Communications, Inc.

2. My current business address is _____. My current business telephone number is _____.

3. On (date) _____, I received a copy of the Stipulated Final Order for Permanent Injunction and Judgment Against Defendants Interact Communications, Inc. and Sheldon Kalnitsky, which was signed by the Honorable _____, United States District Court Judge for the Southern District of Florida. A true and correct copy of the Order that I received is appended to this Affidavit.

4. I reaffirm and swear to the truthfulness, accuracy and completeness of the financial statements that I submitted on behalf of defendant Interact Communications, Inc. to the Federal Trade Commission on or about (date) _____ .

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date) _____ , at (city, state) _____ , _____ .

Sheldon Kalnitsky

STATE OF FLORIDA
COUNTY OF _____

BEFORE ME this day personally appeared Sheldon Kalnitsky, who being first duly sworn, deposes and says that he has read and understands the foregoing statement and that he has executed the same for the purposes contained therein.

SUBSCRIBED AND SWORN TO before me this ___ day of _____, 2003, by Sheldon Kalnitsky. He is personally known to me or has presented (state identification) _____ as identification.

Print Name
NOTARY PUBLIC STATE OF FLORIDA
Commission Number
Affix Seal

APPENDIX B

**BY FIRST CLASS MAIL, RETURN RECEIPT REQUESTED
(To be printed on Defendant's Letterhead)**

[date]

Dear [distributor or reseller]:

Our records indicate that you have been a distributor or reseller of Interact Communications, Inc.'s products. This letter is to inform you that Interact and Sheldon Kalnitsky recently settled a civil dispute with the Federal Trade Commission regarding its advertising for WaveShield. Among other things, we have agreed to notify distributors and resellers of the settlement.

In its complaint, the FTC alleged that advertisements for WaveShield, made the following false and/or unsubstantiated claims:

1. WaveShield blocks up to 97 percent or up to 99 percent of radiation and other electromagnetic energy emitted by cellular and cordless telephones;
2. 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.

In addition, the FTC alleged that we 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, and that we also failed to disclose that WaveShield has no effect on this other electromagnetic energy.

Interact denies the FTC's allegations and does not admit to any wrongdoing or violation of law. Nonetheless, in order to resolve this matter, we have agreed not to make the challenged claims, and to request that our distributors and resellers stop using or distributing advertisements, packaging, or promotional materials containing the claims challenged by the FTC. Under the FTC Order, we must stop doing business with you if you continue to make these representations or fail to make the disclosures set forth above.

This letter has been provided for your files. If you have any questions or if you want a copy of the FTC Order, please contact [insert name and telephone number of contact representative].

Interact Communications, Inc.
Sheldon Kalnitsky, President