

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

COMSTAR COMMUNICATIONS,
INC., a/k/a COMMUNICATIONS
2000, and RANDALL A. CARASCO,
Defendants.

Case No. CIV.S-020348 MLS JFM

**STIPULATED FINAL ORDER FOR
PERMANENT INJUNCTION AGAINST
DEFENDANTS COMSTAR
COMMUNICATIONS, INC. AND
RANDALL A. CARASCO**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed a complaint for a permanent injunction and other equitable relief against Comstar Communications, Inc. and Randall A. Carasco, 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 Comstar Communications (“Comstar”) and Randall A. Carasco (“Carasco”) hereby agree to the entry of this Stipulated Final Order for Permanent Injunction and Judgment Against Defendants Comstar Communications, Inc. and Randall A. Carasco (“Order”). Being advised on the premises, the Court finds:

1 **FINDINGS**

- 2 1. This Court has jurisdiction over the subject matter and the parties pursuant to 28
3 U.S.C. §§ 1331 and 1337(a), and 15 U.S.C. § 53(b).
- 4 2. Venue is proper as to all parties in the Eastern District of California.
- 5 3. The activities of the Defendants Comstar and Carasco are in or affecting
6 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
- 7 4. The Complaint states a claim upon which relief may be granted against the
8 Defendants Comstar and Carasco, under Sections 5(a)(1) and 13(b) of the FTC
9 Act, 15 U.S.C. §§ 45(a) and 53(b).
- 10 5. By signing and stipulating to this Order, Defendants Comstar and Carasco have
11 waived all rights to seek judicial review or otherwise challenge or contest the
12 validity of this Order. Defendants Comstar and Carasco also waive any claim
13 against the Commission, its employees, representatives or agents, and any claim
14 they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412,
15 concerning the prosecution of this action to the date of this Order.
- 16 6. By signing and stipulating to this Order, defendants do not admit or deny any of
17 the allegations set forth in the Complaint, other than jurisdictional facts. Likewise,
18 by executing this Order, the Commission does not admit that any defense to the
19 Complaint is valid.
- 20 7. Each party shall bear its own costs and attorneys' fees.
- 21 8. This action and the relief awarded herein are in addition to, and not in lieu of, other
22 remedies as may be provided by law, including both civil and criminal remedies.
- 23 9. Entry of this Order is in the public interest.

24 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

25 **DEFINITIONS**

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

- 27 1. "Competent and reliable scientific evidence" shall mean tests, analyses, research,
28 studies, or other evidence based on the expertise of professionals in the relevant

1 area, that have been conducted and evaluated in an objective manner by persons
2 qualified to do so, using procedures generally accepted in the profession to yield
3 accurate and reliable results.

4 2. “Covered product” shall mean “WaveShield” and any other device or product
5 designed or intended to reduce exposure to, prevent absorption of, mitigate the
6 effects of, or prevent penetration of electromagnetic energy or other fields from
7 any cellular telephone or cordless telephone or any other product, device,
8 equipment, or appliance.

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

10 A. In an advertisement communicated through an electronic medium
11 (such as television, video, radio, and interactive media such as the Internet
12 and online services), the disclosure shall be presented simultaneously in
13 both the audio and video portions of the advertisement. *Provided, however,*
14 that in any advertisement presented solely through video or audio means,
15 the disclosure may be made through the same means in which the ad is
16 presented. The audio disclosure shall be delivered in a volume and cadence
17 sufficient for an ordinary consumer to hear and comprehend it. The video
18 disclosure shall be of a size and shade, and shall appear on the screen for a
19 duration, sufficient for an ordinary consumer to read and comprehend it.
20 In addition to the foregoing, in interactive media the disclosure shall also be
21 unavoidable and shall be presented prior to the consumer incurring any
22 financial obligation.

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

28 C. On a product label, the disclosure shall be in a type size and location

1 on the principal display panel sufficiently noticeable for an ordinary
2 consumer to read and comprehend it, in print that contrasts with the
3 background against which it appears.

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

7 Associate Director for Advertising Practices
8 Federal Trade Commission
9 600 Pennsylvania, Avenue, N.W.
Washington, D.C. 20580
Attn: *FTC v. Comstar Communications, Inc., et al.*, (E.D. Cal.).

- 10 5. The term “including” in this Order shall mean “without limitation.”
11 6. The terms “and” and “or” in this Order shall be construed conjunctively or
12 disjunctively as necessary, to make the applicable phrase or sentence inclusive
13 rather than exclusive.

14 **CONDUCT PROHIBITIONS**

15 **I**

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

28 **II**

1 IT IS FURTHER ORDERED that defendants, and their agents, servants,
2 employees, attorneys, corporations, subsidiaries, successors, assigns, and all other
3 persons or entities in active concert or participation with any of the defendants who
4 receive actual notice of this Order by personal service, facsimile, or otherwise, in
5 connection with the manufacturing, labeling, advertising, promotion, offering for sale,
6 sale, or distribution of any product or service, in or affecting commerce, shall not make
7 any representation, in any manner, expressly or by implication, about the benefits,
8 performance, or efficacy of such product or service, unless the representation is true and,
9 at the time the representation is made, defendants possess and rely upon competent and
10 reliable scientific evidence that substantiates the representation.

11 **III.**

12 IT IS FURTHER ORDERED that defendants, and their agents, servants,
13 employees, attorneys, corporations, subsidiaries, successors, assigns, and all other
14 persons or entities in active concert or participation with any of the defendants who
15 receive actual notice of this Order by personal service, facsimile, or otherwise, in
16 connection with any representation in or affecting commerce that WaveShield or any
17 substantially similar product protects consumers from the electromagnetic energy emitted
18 by the earpieces of cellular and cordless phones, shall disclose clearly and prominently,
19 and in close proximity to the representation, that the vast majority of electromagnetic
20 energy emitted by cellular and cordless phones comes from the antenna and parts of the
21 phone other than the earpiece and that the WaveShield or any substantially similar product
22 has no effect on this other electromagnetic energy.

23 **IV.**

24 IT IS FURTHER ORDERED that defendants, and their agents, servants,
25 employees, attorneys, corporations, subsidiaries, successors, assigns, and all other
26 persons or entities in active concert or participation with any of them, directly or through
27 any corporation, subsidiary, division, or other device, and all other persons or entities in
28 active concert or participation with any of them who receive notice of this Order by

1 personal service or otherwise, in connection with the manufacturing, labeling, advertising,
2 promotion, offering for sale, sale, or distribution of any covered product, in or affecting
3 commerce, shall not misrepresent, in any manner, expressly or by implication, the
4 existence, contents, validity, results, conclusions, or interpretations of any test, study, or
5 research.

6
7
8
9 **RECORD KEEPING**

10 **V.**

11 IT IS FURTHER ORDERED that, for a period of five (5) years from the date of
12 entry of this Order, defendants and their agents, employees, officers, corporations,
13 successors, and assigns, and those persons in active concert or participation with them
14 who receive actual notice of this Order by personal service or otherwise, for defendant
15 Comstar or any business where (1) defendant Carasco is the majority owner of the
16 business or directly or indirectly manages or controls the business, and (2) the business is
17 engaged in the manufacturing, labeling, advertising, promotion, offering for sale, or
18 distribution, of any covered product or assists others engaged in the manufacturing,
19 labeling, advertising, promotion, offering for sale, or distribution of any covered product,
20 are hereby restrained and enjoined from failing to create and retain the following records:

- 21 A. All advertisements and promotional materials containing any representation
22 covered by this Order;
- 23 B. All materials that were relied upon in disseminating the representation; and
- 24 C. All tests, reports, studies, surveys, demonstration, or other evidence in
25 their possession, custody, or control that contradict, qualify, or call into
26 question the representation, or the basis relied upon for the representation,
27 including complaints and other communications with consumers or with
28 governmental entities or consumer protection organizations.

- 1 D. Accounting records that reflect the cost of goods or services sold,
2 revenues generated, and the disbursement of such revenues;
3 E. personnel records accurately reflecting: the name, address, and telephone
4 number of each person employed in any capacity by such business,
5 including as an independent contractor; that person's job title or position;
6 the date upon which the person commenced work; and the date and reason
7 for the person's termination, if applicable;
8 F. customer files containing the names, addresses, phone numbers, dollar
9 amounts paid, quantity of items or services purchased, and description of
10 items or services purchased, to the extent such information is obtained in
11 the ordinary course of business;
12 G. complaint and refund requests (whether received directly, indirectly, or
13 through any third party) and any responses to those complaints or
14 requests; and
15 H. copies of all sales scripts, training materials, advertisements, or other
16 marketing materials.

17 **ACCESS TO BUSINESS PREMISES**

18 **VI**

19 IT IS FURTHER ORDERED that, for a period of three (3) years from the date of
20 entry of this Order, for the purpose of further determining compliance with this Order,
21 defendants, and their agents, servants, employees, attorneys, corporations, subsidiaries,
22 successors, assigns, and all other persons or entities in active concert or participation with
23 any of the defendants who receive actual notice of this Order by personal service,
24 facsimile, or otherwise, shall permit representatives of the Commission, within three (3)
25 business days of receipt of written notice from the Commission:

26 A. Access during normal business hours to any office, or facility storing
27 documents, of Comstar and any business where:

- 28 1. defendant Carasco is the majority owner of the business or directly

1 or indirectly manages or controls the business, and where
2 2. the business is engaged in the manufacturing, labeling, advertising,
3 promotion, offering for sale, or distribution, of any covered product or
4 assists others engaged in the manufacturing, labeling, advertising,
5 promotion, offering for sale, or distribution of any covered product.

6 In providing such access, defendants shall permit representatives of the Commission to
7 inspect and copy all documents relevant to any matter contained in this Order; and shall
8 permit Commission representatives to remove documents relevant to any matter contained
9 in this Order for a period not to exceed five (5) business days so that the documents may
10 be inspected, inventoried, and copied; and

11 B. To interview the officers, directors, and employees, including all personnel
12 involved in responding to consumer complaints or inquiries, and all sales personnel,
13 whether designated as employees, consultants, independent contractors or otherwise, of
14 any business to which Subsection A of this Paragraph applies, concerning matters relating
15 to compliance with the terms of this Order. The person interviewed may have counsel
16 present.

17 **COMPLIANCE REPORTING BY DEFENDANTS**

18 **VII.**

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

21 A. For a period of three (3) years from the date of entry of this Order,
22 defendants shall notify the Commission of the following:

- 23 1. Any changes in defendant Carasco's residence, mailing addresses,
24 and telephone numbers, within ten (10) days of the date of such change;
- 25 2. Any changes in defendant Carasco's employment status (including
26 self-employment) within ten (10) days of such change. Such notice shall
27 include the name and address of each business that Carasco is affiliated
28 with or employed by, a statement of the nature of the business, and a

1 statement of Carasco's duties and responsibilities in connection with the
2 business or employment; and

3 3. Any proposed change in the structure of defendant Comstar or any
4 proposed change in the structure of any business entity owned or
5 controlled by defendant Carasco, such as creation, incorporation,
6 dissolution, assignment, sale, creation or dissolution of subsidiaries, or any
7 other change that may affect compliance obligations arising out of this
8 Order, thirty (30) days prior to the effective date of any proposed change;

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

13 1. Defendant Comstar's then current business and telephone numbers,
14 and Defendant Carasco's then current residence addresses and telephone
15 numbers;

16 2. Defendant Carasco's then current employment, business addresses
17 and telephone numbers, a description of the business activities of each
18 such employer, and defendant's title and responsibilities for each employer;

19 3. A copy of each acknowledgment of receipt of this Order obtained
20 by defendants pursuant to Paragraph VIII;

21 4. A statement describing the manner in which defendants have
22 complied and are complying with the Order.

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

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

1 any and all individuals or entities for whom any defendant performs services as an
2 employee, consultant, or independent contractor.

3 E. For purposes of the compliance reporting required by this Paragraph, the
4 Commission is authorized to communicate directly with defendants.

5 **DISTRIBUTION OF ORDER BY DEFENDANTS**

6 **VIII.**

7 IT IS FURTHER ORDERED that, for a period of three (3) years from the date of
8 entry of this Order, defendants shall:

9 A. Provide a copy of this Order to, and obtain a signed and dated
10 acknowledgment of receipt of same from, each officer or director, each individual serving
11 in a management capacity, all personnel involved in responding to consumer complaints or
12 inquiries, and all sales personnel, whether designated as employees, consultants,
13 independent contractors or otherwise, immediately upon employing or retaining any such
14 persons, for any business where

15 1. defendant Carasco is the majority owner of the business or directly
16 or indirectly manages or controls the business, and where

17 2. the business is engaged in any acts or practices subject to this
18 Order.

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

23 **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

24 **IX.**

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

28 A. The Commission is authorized, without further leave of court, to obtain

1 discovery from any person in the manner provided by Chapter V of the Federal Rules of
2 Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process
3 pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating
4 defendants' compliance with any provision of this Order;

5 B. The Commission is authorized to use representatives posing as consumers
6 and suppliers to defendants' employees, or any other entity managed or controlled in
7 whole or in part by defendant Carasco, without the necessity of identification or prior
8 notice;

9 C. Nothing in this Order shall limit the Commission's lawful use of
10 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49,
11 57b-1, to investigate whether defendants have violated any provision of this Order or
12 Section 5 of the FTC Act, 15 U.S.C. § 45.

13
14
15 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**
16 **AND RIGHT TO REOPEN**

17 **X.**

18 IT IS FURTHER STIPULATED AND ORDERED that, within fifteen (15) days
19 after service of this Order, defendant Carasco, individually and on behalf of Comstar, shall
20 submit to the Commission a truthful sworn statement, in the form shown on Appendix A,
21 that shall acknowledge receipt of this Order on behalf of defendants and shall reaffirm and
22 swear to the truthfulness, accuracy and completeness of the financial statements
23 previously submitted to the Commission by defendants. The Commission's agreement to
24 this Order is expressly premised on the truthfulness, accuracy and completeness of such
25 financial statements. If the Court finds that any defendant failed to disclose any material
26 asset, materially misrepresented the value of any asset, or made any other material
27 misrepresentation or omission in the above-referenced financial statements and
28 information, the Court shall enter judgment against defendants, in favor of the

1 Commission, in the amount of \$52,000, and the entire amount of the judgment shall
2 become immediately due and payable; *provided, however*, that in all other respect this
3 Order shall remain in full force and effect unless otherwise ordered by the Court; and,
4 *provided further*, that proceedings instituted under this provision would be in addition to,
5 and not in lieu of, any other civil or criminal remedies as may be provided by law,
6 including any other proceedings that the Commission may initiate to enforce this Order.
7 For purposes of this provision, and any subsequent proceedings to enforce payment,
8 including but not limited to a non-dischargeability complaint filed in a bankruptcy
9 proceeding, defendants waive any right to contest any of the allegations in the Complaint.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **RETENTION OF JURISDICTION**

2 **XI**

3 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter
4 for purposes of construction, modification, and enforcement of this Order.
5

6 **STIPULATED AND AGREED TO:**

7
8 By: _____ Date: _____

9 SERENA VISWANATHAN
10 Federal Trade Commission
11 600 Pennsylvania Avenue NW, S-4002
12 Washington DC 20580

13 EDMUND BRENNAN
14 Assistant United States Attorney
15 U.S. Attorney's Office
16 501 I Street, Suite 10-100
17 Sacramento, CA 95814

18 Attorneys for Plaintiff

19 By: _____ Date: _____

20 RANDALL A. CARASCO, individually
21 and on behalf of defendant COMSTAR
22 COMMUNICATIONS, INC.

23 _____

24 PETER J. STUBBS
25 777 Campus Commons Road, Suite 200
26 Sacramento, CA 95825

27 Attorneys for Defendants RANDALL A. CARASCO
28 and COMSTAR COMMUNICATIONS, INC.

29 **SO ORDERED**

30 _____ Dated: _____

31 UNITED STATES DISTRICT JUDGE

1 **APPENDIX A**

2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA

4 FEDERAL TRADE COMMISSION,
5
6 Plaintiff,

Case No. CIV.S-020348 MLS JFM

7 v.

8 COMSTAR COMMUNICATIONS, INC.,
9 a/k/a COMMUNICATIONS 2000, and
10 RANDALL A. CARASCO,

11 Defendants.

12 **AFFIDAVIT OF RANDALL A. CARASCO**

13 Randall A. Carasco, being duly sworn, hereby states and affirms:

14 1. My name is Randall A. Carasco. I am a citizen of the United States and am over
15 the age of eighteen. I have personal knowledge of the matters discussed in this declaration,
16 and if called as a witness, I could and would competently testify as to the matters stated
17 herein. I am a defendant in the above-captioned action individually and on behalf of
18 defendant Comstar Communications, Inc.

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

21 3. On (date) _____, I received a copy of the Stipulated Final Order for
22 Permanent Injunction and Judgment Against Defendants Comstar Communications, Inc.
23 and Randall A. Carasco, which was signed by the Honorable _____,
24 United States District Court Judge for the Eastern District of California. A true and correct
25 copy of the Order that I received is appended to this Affidavit.
26

27 4. I reaffirm and swear to the truthfulness, accuracy and completeness of the
28

1 financial statements that I submitted on behalf of defendant Comstar Communications,
2 Inc. to the Federal Trade Commission on or about (date) _____ .

3 I hereby declare under penalty of perjury under the laws of the United States of
4 America that the foregoing is true and correct. Executed on (date) _____ , at (city,
5 state) _____ , _____ .
6

7 _____
8 Randall A. Carasco
9

10 STATE OF CALIFORNIA
11 COUNTY OF _____
12

13 BEFORE ME this day personally appeared Randall A. Carasco, who being first
14 duly sworn, deposes and says that he has read and understands the foregoing statement
15 and that he has executed the same for the purposes contained therein.

16 SUBSCRIBED AND SWORN TO before me this ___ day of _____, 2003,
17 by Randall A. Carasco. He is personally known to me or has presented (state
18 identification) _____ as identification.

19 _____
20 Print Name

21 NOTARY PUBLIC
22 STATE OF CALIFORNIA

23 Commission Number
24 Affix Seal
25
26
27
28