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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff

v.

RHINO INTERNATIONAL, INC., NIGEL
HARRISON, and SHERRY MOLINA, individually
and as officers of RHINO INTERNATIONAL,
INC.,

Defendants.

Civil Number

**STIPULATED FINAL ORDER
FOR PERMANENT
INJUNCTION**

Plaintiff, the Federal Trade Commission (the "Commission"), filed a complaint for a permanent injunction and other equitable relief against Rhino International, Inc. ("Rhino"), and Nigel Harrison and Sherry Molina, individually and as officers and directors of Rhino, 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 have agreed to the entry of this Stipulated Final Order for Permanent Injunction (“Order”) and have requested that the Court enter the same to resolve all matters of dispute between them in this action without trial or adjudication of any issue of law or fact herein.

NOW, THEREFORE, the Commission and defendants having requested this Court to enter this Order, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this action and of the defendants. Venue in the Eastern District of New York is proper.
2. The Complaint states a claim upon which relief can be granted, and the Commission has authority to seek the relief it has requested under Sections 5, 12 and 13(b) of the FTC Act, 15 U.S.C. §§ 45, 52, and 53(b).
3. The acts and practices of the defendants were or are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Defendants waive all rights to seek judicial review of, or otherwise challenge or contest the validity of this Order. Defendants also waive any claim that 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.
5. The Commission and defendants stipulate and agree to entry of the Order against defendants freely and without trial or final adjudication of any issue of fact or law, to settle and resolve

all matters in dispute between the parties regarding the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the WaveScrambler. The Order, as well as the accompanying Complaint, does not represent any resolution of fact or law or waiver of future action pertaining to defendants' marketing or sale of any other product(s) including but not limited to any product(s) that purport to affect a cell phone's reception or ability to make or receive cell phone calls. By entering into this Order, the Commission does not forgo any right to investigate or take law enforcement action (including seeking injunctive relief, consumer redress, or disgorgement) in connection with the defendants' marketing or sale of any other product(s), even if any such product(s) were sold together with the WaveScrambler.

6. Each party shall bear its own costs and attorneys' fees.

7. Defendants, without admitting or denying the allegations of wrongdoing set forth in the Commission's Complaint, stipulate and agree to entry of this Order under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). This Order does not constitute and shall not be interpreted to constitute either an admission by defendants, or a finding by the Court, of any liability or wrongdoing by any of the defendants or any violation of any law, rule, or regulation.

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

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” shall mean Rhino’s “WaveScrambler” and any other device or product 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, microwave oven, computer monitor, television, or any other product, device, equipment, or appliance. Covered product shall not include devices whose primary purpose is to enable hands-free use of cellular or cordless phones.

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 ordinary 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 prior to the consumer incurring 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 ordinary 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 ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

4. Defendants shall mean Rhino, Nigel Harrison, and Sherry Molina.

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 in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the ability of such product 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, microwave oven, computer monitor, television, 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 product or service, 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 that WaveScrambler or any substantially similar product in or affecting commerce protects consumers from the electromagnetic energy emitted by the earpieces of cellular and cordless phones, shall disclose clearly and prominently, in any advertisement, promotional material, package label, and package insert, 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 WaveScrambler or any substantially similar 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, directly or through any corporation, subsidiary, division, or other device, and all other persons or entities in active concert or participation with any of them who receive notice of this Order by personal service 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 manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

MONETARY RELIEF

V.

IT IS FURTHER ORDERED that:

(A) Defendants shall pay to the Commission as consumer redress the sum of \$342,665 as follows: \$35,000 upon defendants' signing of this Order and an additional \$65,000 within 30 days after signing this order, such payments shall be deposited into a redress fund escrow account to be established by the Commission; the remaining \$242,665 shall be paid by the defendants to Plaintiff within five (5) days after receiving notice of entry of this Order.

(B) All funds paid pursuant to this Paragraph shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the

Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph. Defendants acknowledge and agree that all money paid pursuant to this Order is irrevocably paid to the Commission for purposes of settlement between plaintiff and defendants. The Commission shall have full and sole discretion to:

- (1) determine the criteria for participation by individual claimants in any consumer redress program implemented pursuant to this Order;
- (2) determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs; and
- (3) delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations; and pay reasonable fees, salaries, and expenses incurred thereby from the payments made pursuant to this Order;

(C) Defendants shall provide to the Commission documents and information in their possession, custody, and control that are sufficient to identify WaveScrambler purchasers within ten (10) days of the entry of this Order. If documents and information sufficient to identify WaveScrambler purchasers are not in defendants' possession, custody, and control, defendants shall use reasonable efforts to obtain said documents and information and provide them to the Commission; and

(D) Defendants shall also furnish to the Commission, in accordance with

31 U.S.C. § 7701, their taxpayer identification numbers (social security number, social insurance number, or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of each defendant's relationship with the government.

COMPLIANCE MONITORING

VI.

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

(A) Within ten (10) days of receipt of written notice from a representative of the Commission, any defendant receiving such notice shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such defendant's possession or direct or indirect control to inspect the business operation;

(B) In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

(1) obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

(2) posing as consumers and suppliers to: defendants or employees of Rhino, Nigel Harrison, or Sherry Molina, or any other entity managed or controlled in whole or in part by defendants Rhino, Nigel Harrison, or Sherry Molina, without the necessity of identification or prior notice;

Provided that 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 obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

(C) defendants Rhino, Nigel Harrison, and Sherry Molina shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

COMPLIANCE REPORTING BY DEFENDANT

VII.

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

(A) For a period of four (4) years from the date of entry of this Order,

(1) defendants Nigel Harrison and Sherry Molina shall notify the Commission of the following:

(a) Any changes in defendant's own residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

(b) Any changes in defendant's own employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that defendant is affiliated with, employed by, or

performs services for; a statement of the nature of the business; and a statement of defendant's duties and responsibilities in connection with the business;

(c) Any changes in defendant's name or use of any aliases or fictitious names; and

(2) defendants Rhino, Nigel Harrison, and Sherry Molina shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the defendant learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

(B) One hundred eighty (180) days after the date of entry of this Order, defendants Rhino, Nigel Harrison, and Sherry Molina each 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) Any changes required to be reported pursuant to subparagraph (A) above;
- (2) A copy of each acknowledgment of receipt of this Order obtained by defendant pursuant to Paragraph IX;

(C) For the purposes of this Order, defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Regional Director for Northeast Region
Federal Trade Commission
1 Bowling Green, Suite 318
New York, NY 10004
Re: FTC v. Rhino International, Inc., Civil Action No. _____.

(D) For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with defendants Rhino, Nigel Harrison, and Sherry Molina.

RECORD KEEPING PROVISIONS

VIII.

IT IS FURTHER ORDERED that, for a period of seven (7) years from the date of entry of this Order, defendants Rhino, Nigel Harrison, and Sherry Molina, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, for Rhino and any business where: (1) any defendant Nigel Harrison or Sherry Molina is the majority owner of the business or directly or indirectly manages or controls the business; and (2) the business is engaged in the manufacturing, labeling, advertising, promotion, offering for sale, or distribution, in or affecting commerce, of any covered product, are hereby restrained and enjoined from failing to create and retain the following records:

(A) all materials that were relied upon in disseminating representation(s) relating to a covered product;

(B) all tests, reports, studies, surveys, demonstrations, or other evidence in their

possession, custody, or control that contradict, qualify, or call into question the representation(s) relating to a covered product, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental entities or consumer protection organizations;

(C) accounting records that reflect the cost of goods 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 of items or services purchased, and description of items 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; and

(G) copies of all sales scripts, training materials, advertisements, or other marketing materials.

DISTRIBUTION OF ORDER BY DEFENDANT

IX.

IT IS FURTHER ORDERED that, for a period of four (4) years from the date of entry of this Order,

(A) Rhino shall deliver a copy of this Order to all principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Rhino shall deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

(B) Defendants Nigel Harrison and Sherry Molina shall deliver a copy of this Order to the principals, officers, directors, managers and employees under Nigel Harrison's and Sherry Molina's control, for Rhino and any business that (a) employs or contracts for personal services from Nigel Harrison or Sherry Molina and (b) has responsibilities with respect to the subject matter of this Order. Nigel Harrison and Sherry Molina shall secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

X.

IT IS FURTHER ORDERED that each defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

RETENTION OF JURISDICTION

XI.

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

SO STIPULATED:

BARBARA ANTHONY
REGIONAL DIRECTOR
NORTHEAST REGION

RONALD L. WALDMAN
DONALD G. D'AMATO
Federal Trade Commission
1 Bowling Green, Suite 318
New York, NY 10004
(212) 607-2829

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

NIGEL HARRISON

SHERRY MOLINA

RHINO INTERNATIONAL, INC.
NIGEL HARRISON, PRESIDENT

SO ORDERED

DATED: _____

UNITED STATES DISTRICT JUDGE