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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, vs. RAZER, INC., a Cayman Islands Corporation; RAZER (Asia-Pacific) Pte., Ltd., a Singapore Limited Liability Company; RAZER USA, Ltd., a Delaware Corporation; RAZER HEALTH Pte., Ltd., a Singapore Limited Liability Company; and	Case No.: **COMPLAINT FOR PERMANENT INJUNCTION, MONETARY JUDGMENT, CIVIL PENALTY JUDGMENT, AND OTHER RELIEF**

RAZER ONLINE, Pte., Ltd., a Singapore Limited Liability Company,

Defendants.

Plaintiff, the United States of America, acting upon notification and upon referral by the Federal Trade Commission ("FTC" or "Commission"), for its Complaint alleges:

1. Plaintiff brings this action for Defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Section 12 of the FTC Act, 15 U.S.C. § 52, Section 1401(b)(1) of the COVID-19 Consumer Protection Act of the 2021 Consolidated Appropriations Act ("COVID-19 Consumer Protection Act"), Public Law 116-260, 134 Stat. 1182, 3275-76, Title XIV, § 1401(b)(1), and section 18(a)(1)(B) of the FTC Act, 15 U.S.C. § 57a(a)(1)(B). Defendants' violations relate to misleading statements made to consumers about the performance, protective benefits, and certification of a face mask called the "Razer Zephyr," which Defendants sold to consumers. For these violations, Plaintiff seeks relief, including a permanent injunction, monetary relief, civil penalties, and other relief pursuant to Sections 5(a)(1), 5(m)(1)(A), 12, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 52, 53(b), and 57b, and section 1401 of the COVID-19 Consumer Protection Act, Pub. L. No. 116-260, § 1401, against Razer, Inc., Razer (Asia-Pacific) Pte. Ltd., Razer USA, Ltd., Razer Online Pte. Ltd., and Razer Health Pte. Ltd. (collectively, "Defendants" or "Razer").

SUMMARY OF THE CASE

2. In response to the SARS-CoV-2 virus, also known as the Coronavirus Disease 2019 ("COVID-19"), Defendants began to manufacture and sell a "wearable air purifier" face mask ultimately called the Razer Zephyr (herein, the "Zephyr"). The Zephyr is a plastic face mask with two fans, three areas for filters (two behind the fan

on the cheeks, one on the chin), a transparent design, and internal, color-changing lights.

3. Defendants have advertised the Zephyr on social media and the internet as an N95 mask that provides consumers with protection against contracting COVID-19. However, the Zephyr has never been certified or otherwise approved as an N95 mask, and Defendants lacked competent and reliable scientific bases for their claims. Their use of deceptive advertising and misinformation posed a risk to public health and safety.

4. Prior to the release of the Zephyr, Defendants' consultants informed Defendants that their product was not an N95 mask, would not be certified as an N95 mask, and would not provide a level of protection equivalent to a disposable N95 mask. Nonetheless, Defendants made deceptive and misleading statements about the Zephyr, advertising it using the term "N95" and marketing it to consumers as a reusable N95 mask. The United States therefore brings this suit seeking permanent injunctive relief, monetary relief, civil penalties, and other remedies in order to prevent and remediate the harms caused by Defendants' misrepresentations.

Figure 1: Marketing Image of the Razer Zephyr

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355.

6. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2), (c)(2), (c)(3), 1395(a), and 15 U.S.C. § 53(b).

PLAINTIFF

7. Plaintiff brings this action upon referral by the FTC, pursuant to Section 16(a)(1) of the FTC Act, 15 U.S.C. § 56(a)(1). The FTC is an independent agency of the United States Government created by the FTC Act. 15 U.S.C. §§ 41–58. The FTC enforces Section 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 FTC 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 also enforces the COVID-19 Consumer Protection Act, Pub. L. No. 116-260 § 1401.

DEFENDANTS

8. Defendant Razer, Inc. ("Razer, Inc.") is a Cayman Islands Corporation with its principal place of business at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. Razer, Inc. transacts or has transacted business in this District and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, including subsidiaries, Razer, Inc. has advertised, marketed, distributed, or sold the Zephyr online to consumers throughout the United States.

9. Defendant Razer (Asia-Pacific) Pte. Ltd. ("Razer Asia-Pacific") is a Singapore Limited Liability Company with its principal place of business at 1 One-North Crescent, #02-01 Razer SEA HQ, Singapore 138538. Razer Asia-Pacific transacts or has transacted business in this District and throughout the United States. Razer Asia-Pacific is 100% owned by Razer, Inc. At all times material to this Complaint, acting alone or in concert with others, including subsidiaries, Razer Asia-

Pacific has advertised, marketed, distributed, or sold the Zephyr online to consumers throughout the United States.

10. Defendant Razer USA, Ltd. ("Razer USA") is a Delaware Corporation with its principal place of business at 9 Pasteur, Suite 100, Irvine, CA 92618. Razer USA is 100% owned by Razer Asia-Pacific. Razer USA transacts or has transacted business in this District and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Razer USA has advertised, marketed, distributed, or sold the Zephyr online to consumers throughout the United States.

11. Defendant Razer Online Pte. Ltd. ("Razer Online") is a Singapore Limited Liability Company with its principal place of business at 1 One-North Crescent, #02-01 Razer SEA HQ, Singapore 138538. Razer Online is 100% owned by Razer Asia-Pacific. Razer Online transacts or has transacted business in this District and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Razer Online has advertised, marketed, distributed, or sold the Zephyr online to consumers throughout the United States.

12. Defendant Razer Health Pte. Ltd. ("Razer Health") is a Singapore Limited Liability Company with its principal place of business at 1 One-North Crescent, #02-01 Razer SEA HQ, Singapore 13858. Razer Health is 55% owned by Razer Asia-Pacific. Razer Health transacts or has transacted business in this District and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Razer Health has advertised, marketed, distributed, or sold the Zephyr online to consumers throughout the United States.

COMMON ENTERPRISE

13. Defendants have operated as a common enterprise while engaging in the deceptive acts and practices alleged below. Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, management, business functions, and employees.

Because these Defendants have operated as a common enterprise, each of them is liable for the acts and practices alleged below.

COMMERCE

14. At all times relevant to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

I. Defendants Deceptively Advertised the Zephyr as an N95-Equivalent

15. Defendants are the sole manufacturers of the Zephyr mask. Defendants sold the Zephyr and related products in three SKUs at the following price points: (i) $99.99 for the standard "Razer Zephyr," consisting of one Zephyr and 3 sets of filters (recommended lifespan 3 days); (ii) $149.99 for the "Razer Zephyr Starter Pack," consisting of one Zephyr and 33 sets of filters; and (iii) $29.99 for the "Razer Zephyr Filter Pack," consisting of 10 sets of filters.

16. On October 21, 2021, Defendants began selling the Razer Zephyr and the Razer Zephyr Filter Pack to U.S. consumers online at www.Razer.com and in-store at RazerStore Seattle (Seattle, WA), RazerStore San Francisco (San Francisco, CA), and Razer @ The Linq Promenade (Las Vegas, NV). On October 27, 2021, Defendants began selling the Razer Zephyr Starter Pack to U.S. consumers online at www.Razer.com.

17. Defendants sold the Razer Zephyr, the Razer Zephyr Filter Pack, and the Razer Zephyr Starter Pack online through timed "drops" where only a limited amount of product was made available. Because of the scarcity of the product, third parties purchased some percentage of those "drops" for the purpose of reselling the product at a higher price via various online outlets, including eBay and Facebook Marketplace.

18. Since at least January 2021, Defendants advertised the Zephyr—initially marketed as "Project Hazel" during the development phase—as an N95 or N95-equivalent mask that would protect consumers from contracting COVID-19.

Defendants advertised and promoted the Zephyr on the internet, including on the website Razer.com and through social media posts and videos, including on TikTok, Twitter, Instagram, Facebook, Discord, and YouTube.

19. Through the website Razer.com and postings on TikTok, Twitter, Instagram, Facebook, Discord, and YouTube, Defendants disseminated or caused to be disseminated advertisements for the Zephyr, including but not limited to the statements and depictions identified below.

20. To induce consumers to purchase the Zephyr, Defendants have explicitly and implicitly represented that their product prevents, or reduces the likelihood of, contracting COVID-19.

a. The Razer Zephyr was not an N95 mask, nor was it certified or in any way approved by a U.S. government agency.

21. N95 masks are regulated by both the Food and Drug Administration ("FDA") and the National Institute for Occupational Safety and Health ("NIOSH"). Generally, N95 masks must receive premarket clearance from the FDA under section 510(k) of the Food, Drug, and Cosmetic Act before they can be legally marketed, unless NIOSH has approved the masks under their regulations.

22. NIOSH is a part of the U.S. Centers for Disease Control and Prevention in the U.S. Department of Health and Human Services. Among other things, NIOSH approves N95 respirators using standards promulgated under 42 C.F.R. Part 84.

23. NIOSH did not certify or approve the Zephyr.

24. The term "N95" refers to respirators that meet the NIOSH air-purifying particulate respirator performance requirements as described in 42 CFR § 84.170(a)(3)(iii), by which the respirator must demonstrate a minimum "Particulate Filtration Efficiency" ("PFE") level of 95 percent filtration. That is, the respirator must filter at least 95% of ambient air particles sized 0.1 to 0.3 micrometers, with even higher filtration efficiency at higher particle sizes. Respirators are designed to help reduce the wearer's respiratory exposure to ambient particulate matter, while facemasks are

generally designed to prevent contamination of the environment from particulate matter generated by the wearer. Despite this distinction in nomenclature, N95 respirators are frequently referred to as N95 masks.

25. The "95" in "N95" refers to the 95% PFE level of protection afforded by the respirator. The ability to filter out 95% of ambient air particles sized 0.1 to 0.3 micrometers is thus inherent in and integral to the labeling of a respirator as N95.

26. During the COVID-19 public health emergency, consumers sought to purchase N95 masks. Studies have shown that, worn correctly, N95 masks are more effective at preventing contraction of COVID-19 than other types of masks that provide lower levels of PFE.

27. NIOSH approves respirators per the requirements in 42 CFR Part 84 by conducting an intensive quality review of all documents filed with the application for approval, conducting site qualification visits of the manufacturer's facility, and conducting testing of hardware—respirator samples—provided with the application. NIOSH permits a company to market a respirator as "N95" when, following the company's submission of a sample to NIOSH, NIOSH has evaluated and approved the respirator as meeting the relevant requirements set forth in 42 C.F.R. Part 84, and issued an approval number.

28. Outside of the N95 certification process, NIOSH does not certify that any respirator has "adopted the standards" of NIOSH. To determine whether a respirator complies with the N95 standard, NIOSH would need to review a sample of a respirator through its formal process. NIOSH has no approval procedure for device components, including filters. NIOSH only approves respirators as a complete assembly.

29. N95 is a registered certification mark that has been granted to NIOSH by the US Patent and Trademark Office. A company cannot market a product as "N95" or as "NIOSH Approved" until and unless it receives certification from NIOSH.

30. Defendants have never submitted a facemask to NIOSH for approval, whether for certification as an N95 respirator or otherwise. NIOSH did not certify any

version of the Zephyr (prototype or final) as an N95 respirator. Accordingly, the Zephyr could not meet the standards of 42 C.F.R. Part 84, which requires NIOSH to test and certify compliance.

31. Defendants did not seek, and NIOSH did not give Defendants permission to use the term N95.

32. The Food and Drug Administration ("FDA") also did not certify, approve, or grant premarket clearance to the Zephyr.

33. The FDA regulates face masks, barrier face coverings, face shields, and respirators when they meet the definition of a "device" under section 201(h)(1) of the Federal Food, Drug, and Cosmetic Act. That definition is met when they are intended for a medical purpose, such as use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease.

34. Any references to ASTM F2100 (a medical face mask standard), Bacterial Filtration Efficiency, PFE, or other claims related to medical face masks or testing of a product to medical standards constitute medical claims. Accordingly, if a manufacturer uses such language in marketing a face mask, they must have obtained FDA or NIOSH approval for their product.

35. Defendants did not submit a premarket notification under section 510(k) of the Food, Drug, and Cosmetic Act to the FDA for the Zephyr, and Defendants never obtained premarket clearance or approval from the FDA to market the Zephyr.

36. Accordingly, the Zephyr was not approved or certified by NIOSH or the FDA in any capacity and could not legally be marketed as an N95 facemask.

37. Defendants also advertised the Zephyr as being "FDA-registered."

38. Owners and operators of establishments involved in the production and distribution of medical devices intended for use in the United States are required to register annually with the FDA. However, registration does not mean that the establishment or the device has been approved by the FDA, that the establishment or

device is in compliance with all FDA regulations, or even that the establishment has sought approval from the FDA for the device.

39. FDA regulations prohibit firms from making any representation that creates an impression of official FDA approval because of registration or possession of a registration number. "Any representation that creates an impression of official approval because of registration or possession of a registration number is misleading and constitutes misbranding." 21 CFR § 807.39.

b. Defendants promoted the Zephyr as an N95 or N95-equivalent mask that would reduce the likelihood of contracting COVID-19 although they knew the Zephyr was not certified as N95 and did not provide an equivalent level of protection.

40. Beginning in January 2021, Defendants began promoting the Zephyr, then known as "Project Hazel" ("Hazel"). Defendants announced Project Hazel at the 2021 Consumer Electronics Show, an annual trade show typically held in Las Vegas, Nevada. In promotional materials released in January 2021, Defendants described Hazel as a "Surgical N95 Respirator" providing "the highest degree of safety."

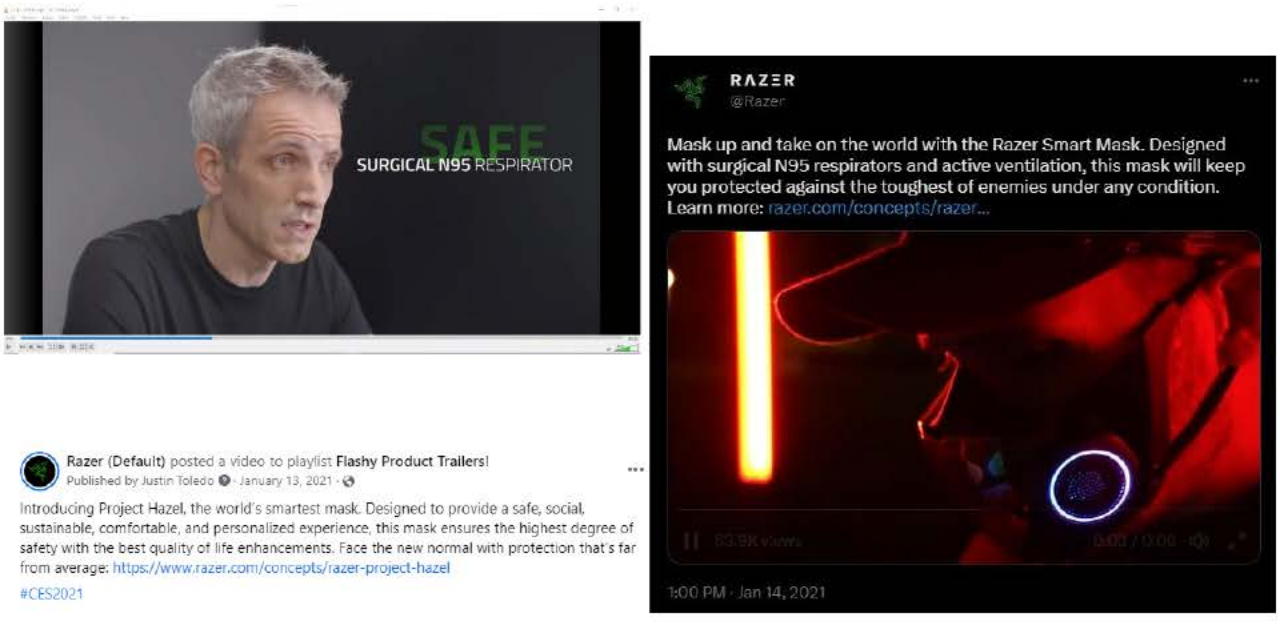


Figure 2: Jan. 13-14, 2021 Promotional Materials for Project Hazel on Facebook and Twitter

41. As Defendants continued work on Hazel, they advertised the mask as providing "maximum protection" with "replaceable N95 grade filters," including in a June 23, 2021 post on Razer's Facebook page.

Figure 3: June 23, 2021 Facebook Post by Razer

42. On August 4, 2021, with COVID-19 remaining a major health threat and an animating force behind mask use, Defendants emphasized that Hazel would provide its wearer with "the highest degree of safety" and was "[l]ab-tested" for safety: "With masks becoming the latest addition to our everyday life, it has become more important than ever to ensure that they provide us with the highest degree of safety. Lab-tested for 99% BFE, the Project Hazel wearable air purifier features N95 grade filters for

Figure 4: Aug. 4, 2021 Promotional Materials for the Zephyr on Instagram, Twitter, and Facebook

reliable particulate filtration while maintaining breathing ease." Defendants posted this or a substantially similar message on Twitter, Facebook, and Instagram.

43. Mr. Min-Liang Tan ("Tan") is Co-Founder, CEO, Director and Chairman of Razer, Inc., Director of Razer Asia-Pacific, CEO of Razer USA, and Director of Razer Online. Throughout this time period, Tan also took to social media to promote the Hazel/Zephyr, linking the mask to the rise of the COVID-19 Delta variant, making explicit health claims, positioning the mask as a reusable N95, and claiming that Razer was seeking certification, when Defendants knew that they had never sought – and were not seeking – such certification.

44. On July 30, 2021, Tan made a post on Facebook that recognized customer interest in the mask was based on concerns about COVID-19: "With the recent rise in the Delta variant and the CDC issuing the new mandate on masking up, I've been getting a lot of queries on Project Hazel." Tan went on to claim that Razer was "getting the mask certified." In fact, Razer never submitted the mask to NIOSH or to the FDA for certification, and the Zephyr was never certified. Defendants knew they were not seeking certification of the Zephyr from NIOSH or the FDA.

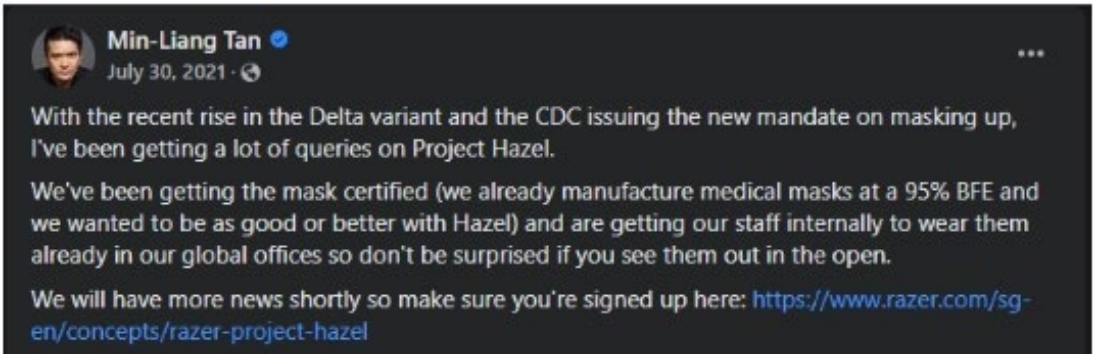


Figure 5: July 30, 2021 Facebook Post by Razer CEO Min-Liang Tan

45. After Hazel's name was officially changed to the Zephyr, Tan continued to promote the mask on Facebook, claiming on August 11, 2021, that the mask was "designed for safety first" and that "[i]ts filters have been tested and certified for 99% BFE, the same standards for the most demanding medical grade masks out there." The statement that the mask was "tested and certified" to that medical standard implied that

a government agency certified the filter's performance; in fact, however, Razer did not obtain certification of its filters from NIOSH, the FDA (the agency responsible for regulating medical-grade face masks), or any other governmental agency.

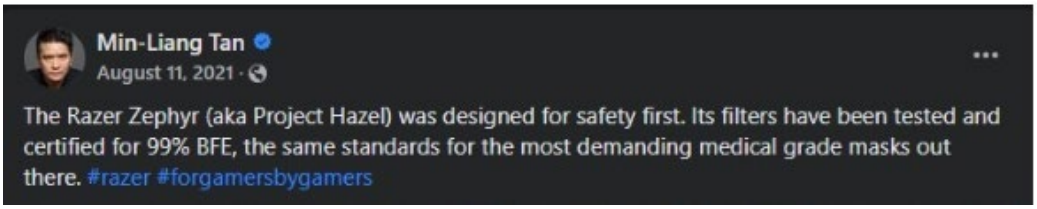


Figure 6: Aug. 11, 2021 Facebook Post by Razer CEO Min-Liang Tan

46. Tan continued to promote the Zephyr on Facebook. On August 20, 2021, Tan drew an explicit link between the Zephyr and conventional N95 masks in a post where he suggested the Zephyr provided the protection of an N95 mask with greater comfort and reusability: "One of our beta testers of the Razer Zephyr pinged me and said, 'Isn't this just an N95, but a lot more comfortable and reusable?' Well, that's really the point. For us to achieve N95 grade 99% BFE filters and ensure it's reusable, all other features are secondary." In fact, the Zephyr was not an N95 mask, and Razer knew it was not certified as an N95 mask since Razer never attempted to obtain certification of the Zephyr as an N95 mask.

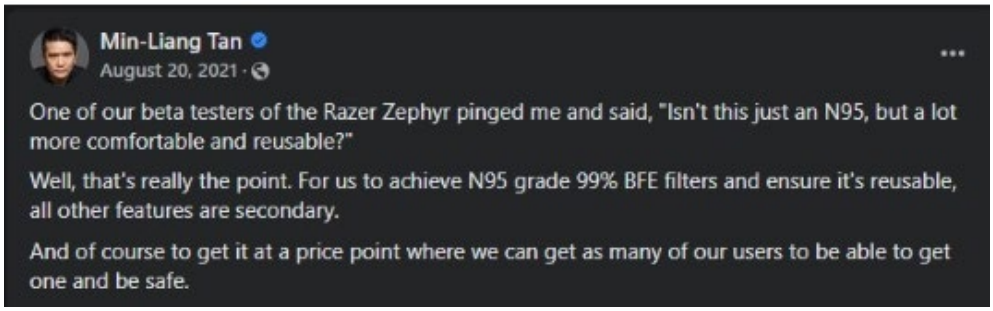


Figure 7: Aug. 20, 2021 Facebook Post by Razer CEO Min-Liang Tan

47. One week later, Tan again compared the Zephyr favorably to a conventional disposable N95 mask in a Facebook post. On August 27, 2021, Tan claimed: "We benchmarked the Razer Zephyr against the N95 – and our singular goal was to design a safe, social, and sustainable mask. The Razer Zephyr uses N95 grade

filters, is tested for 99% BFE and is comfortable to breathe (and even more so when the ventilation fans are in use)."

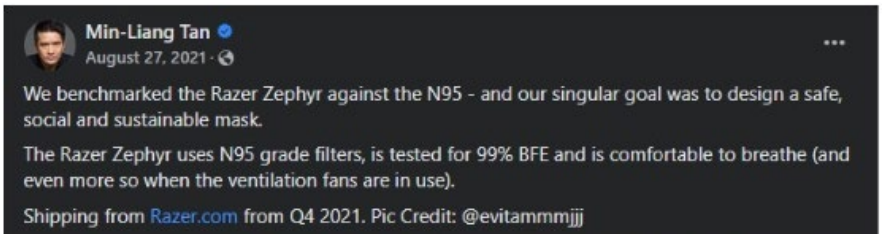


Figure 8: Aug. 27, 2021 Facebook Post by Razer CEO Min-Liang Tan

48. When the Zephyr was made available for sale through Razer.com on October 21, 2021, Razer's website touted several purported safety features of the mask, including: (1) "Stay safe with its replaceable N95 Grade filters for daily protection;" (2) "FDA-registered and lab-tested for 99% BFE, the Razer Zephyr offers greater protection compared to standard disposable/cloth masks, and filters air both inhaled and exhaled to safeguard you and others around you;" and (3) "It is not tested specifically against the COVID-19 virus, but offers the same functionality and adequate protection due to its 99% BFE rating." The Zephyr had not been tested, much less certified, by the NIOSH or FDA, and Razer had no evidence that the mask as a whole would offer adequate protection against the COVID-19 virus based solely on the BFE characteristic of the filter material. In fact, Razer knew from testing the PFE performance of the Zephyr that the mask as a whole performed worse with respect to filtering out foreign material than the filter material did on its own.

49. Through the time the Zephyr was sold to consumers on Razer.com, Defendants continued to promote the Zephyr as possessing "N95 grade filters" in advertisements and on social media, including on Discord, YouTube, Twitter, and Facebook. Both the Razer.com website and the box for the Razer Zephyr also prominently advertised the Zephyr's purported "N95 grade filters.

Figure 9: Oct. 21, 2021 Twitter Post by Razer

c. Defendants knew their claims were not substantiated and that their mask did not provide a level of protection against COVID-19 equivalent to an N95 mask.

50. From the early stages of the development of Hazel, Defendants knew that they should not refer to the mask or its filters as "N95." In early 2021, Defendants contracted with the Singapore office of Intertek Group plc to provide guidance and testing in connection with the development of the Zephyr. During those discussions, on March 8, 2021, Defendants stated "we will mention the filter we use is PM2.5/ N95 grade." In response, Intertek warned against doing so due to the risk of consumer confusion: "suggest not to indicate N95, as it is not relevant to this product, and the claim will cause confusion."

4. we will mention the filter we use is PM2.5/ N95 grade.
CF 3/11: suggest not to indicate N95, as it is not relevant to this product, and the claim will cause confusion.

Figure 10: Mar. 8, 2021 Email Between Razer and Intertek Group plc Employees

51. An internal email sent in June 2021 demonstrates that Defendants were aware they were not permitted to mention N95 or use the term NIOSH in connection with the promotion of the Zephyr because the Zephyr was not certified as an N95 respirator.

Target profile document:

#1

Intended use

The product is a reusable mask, intended to be certified as an N95 respirator in order to distinguish the product from less robust and protective reusable masks available on the market.

➔ Cannot mentioned N95. Hazel mask is not a N95 respirator.

#2

Whole document cannot mentioned NIOSH or NIOSH-certified respirators.

Figure 11: June 9, 2021 Internal Email Between Razer Employees

52. In the same email, Defendants also recognized that 42 CFR Part 84 set forth the consensus standard for measuring "Particle filtration efficiency (PFE)." 42 CFR Part 84 sets forth that a respirator must have PFE greater than or equal to 95% to meet the efficiency standard necessary to be classified as an N95.

#3. Under Design Requirements,

below information in the table is more propriate:

User need	Consensus standard
Bacteria Filtration Efficiency(BFE)	EN 14683:2019+AC:2019 Annex B
Particle filtration efficiency (PFE)	42 CFR Part 84
Inhalation and Exhalation Resistance Test	42 CFR Part 84
Restriction of Hazardous Substances in Electrical and Electronic Equipment (RoHS)	EU RoHS Directive 2011/65/EU
Standard Specification for Barrier Face Coverings	ASTM F3502

Figure 12: June 9, 2021 Internal Email Between Razer Employees

53. In July, August, and September of 2021, Intertek performed tests assessing the PFE of various assembled Zephyr prototypes. In each test, the assembled device failed to perform to the N95 standard of 95% or greater PFE. Figure 13, *infra*, depicts the best results ever reached for the device in testing: as documented in Intertek's August 13, 2021 report, the device reached a maximum PFE of 83.2% with the fans off and 86.3% with the fans on, and frequently tested much lower. The mask did not come close to consistently reaching a PFE of 95%, the level of protection characteristic of an N95 mask.

1. Sodium Chloride Filtration
(NIOSH 42 CFR part 84)

Type of Face Covering:	Non-Flat (Blue/White Filter & Black/White Filter)
Size of Filter Holder:	31.82 cm^2 (Based on the two 4.5 cm diameter filters)
Air Flow Rate	85 L/min
Aerosol Particle Size	0.3 µm

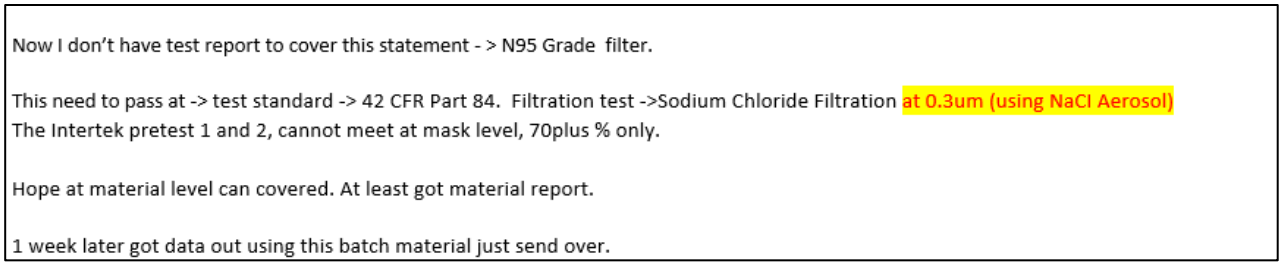
Sample	Blue/White Filter, PFE (%)	
	Ventilation – Power Off	Ventilation – Power On High Mode
1	81.3	83.8
2	79.6	85.0
3	78.8	85.7
4	79.1	85.6
5	79.3	86.6
6	83.2	85.5
7	79.2	86.3
8	75.7	86.3
9	75.0	85.4
10	75.2	84.7
Minimum	75.0	83.8

The performance requirements for respirators according to 42 CFR Part 84:

Respirator	Minimum Filtration Efficiency (%)
Powered	No specified requirement
Non-Powered (N95)	95%
Non-Powered (N99)	99%
Non-Powered (N100)	99.97%

Figure 13: Aug. 13, 2021 Intertek Report on Zephyr PFE Performance

54. Thus, while Razer's CEO was claiming that the Zephyr was a more comfortable, reusable N95, *see supra* ¶¶ 46-47, internal communications reveal that Defendants knew the mask could *not* provide the level of protection offered by an N95. On August 12, 2021, a Senior Director of Regulatory & Compliance at Razer, Inc. wrote to a colleague: "Now I don't have test report to cover this statement - > N95 Grade filter. This need to pass at -> test standard -> 42 CFR Part 84. Filtration test -> Sodium Chloride Filtration at 0.3um (using NaCl Aerosol)[.] The Intertek pretest 1 and 2, cannot meet at mask level, 70plus % only." That is, Defendants knew that the fully assembled mask could not reach 95% PFE and thus could not pass the PFE test prescribed by 42 CFR Part 84.


Now I don't have test report to cover this statement - > N95 Grade filter.

This need to pass at -> test standard -> 42 CFR Part 84. Filtration test ->Sodium Chloride Filtration at 0.3um (using NaCl Aerosol)
The Intertek pretest 1 and 2, cannot meet at mask level, 70plus % only.

Hope at material level can covered. At least got material report.

1 week later got data out using this batch material just send over.

Figure 14: Aug. 12, 2021 Internal Email Between Razer Employees

55. An internal presentation prepared by Defendants in May 2021 discussed a competitor mask (the "XUPERMASK"), which also used air filters and a powering mechanism. That presentation reflected that the XUPERMASK's manufacturer made disclaimers that *its* similar fully assembled product was **not** an N95 mask. As documented in Defendants' presentation, those disclaimers included statements that "XUPERMASK is NOT a respirator," "XUPERMASK is NOT N95," "XUPERMASK is NOT FDA-approved," and "This face mask has not been FDA cleared or approved."

56. In sharp contrast to XUPERMASK, however, Defendants neglected to include proper disclaimers. In fact, though Defendants knew that the Zephyr was not certified as an N95 mask and that the assembled mask could not reach 95% PFE, they decided to remove disclaimers that employees testing the Zephyr had proposed including on the Zephyr's packaging. Shortly before the release of the Zephyr, the language that was set to be published on the packaging for the Zephyr and Razer

Zephyr Filter Pack products included disclaimers that would have correctly identified that the Zephyr was not a medical device, not a respirator, and not FDA-approved. However, on September 1, 2021, Defendants' Senior Director of Regulatory and Compliance instructed that those disclaimers be *removed* from those products.

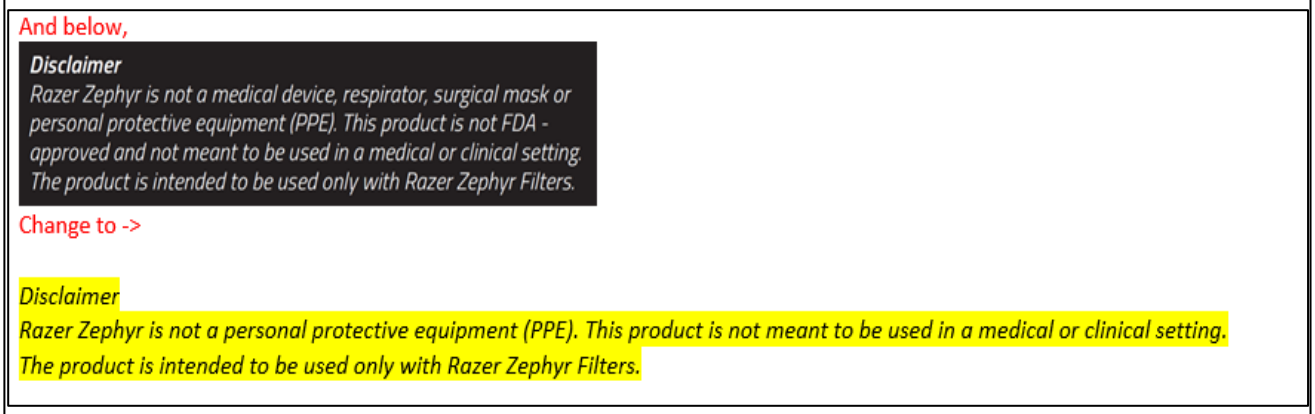


Figure 16: Sept. 1, 2021 Internal Email Between Razer Employees

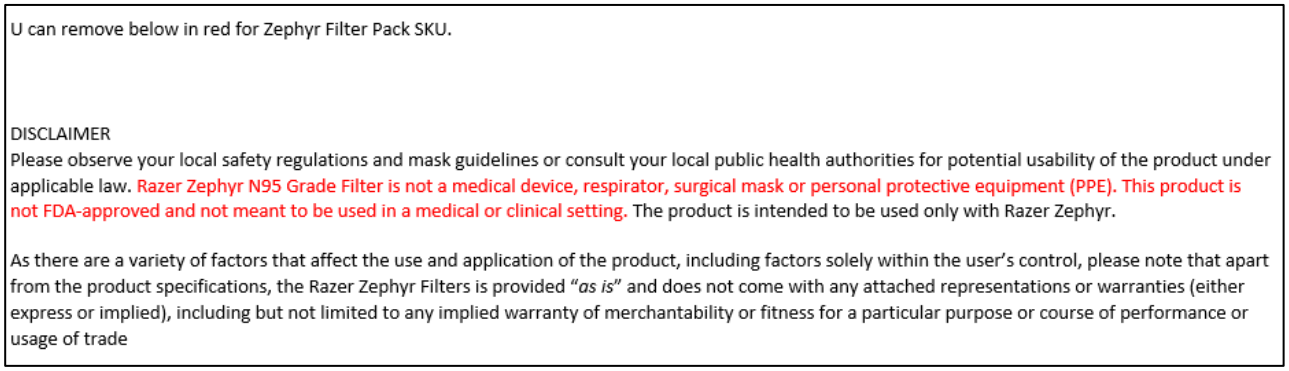


Figure 15: Sept. 1, 2021 Internal Email Between Razer Employees

II. Defendants Only Take Down Their Deceptive Advertising After Journalistic Reports, Public Outcry, and Requests from the FTC and FDA.

57. Defendants continued to misrepresent the efficacy of the Zephyr for months after making the Zephyr available to the public for purchase in October of 2021.

58. In late October 2021, Defendants provided tech reviewer Naomi Wu with a Zephyr mask for her to use and review. On November 1, 2021, Ms. Wu published a video on YouTube.com titled "The Razer Zephyr Is Useless- But It Has Potential." In that video, Ms. Wu criticized the Zephyr's build and fit and noted that the mask was

not NIOSH-approved and would almost certainly be unable to get NIOSH approval due to its fit issues. She especially called out Defendants for using the phrase "N95-grade filters," deeming that "deceptive marketing," noting that "N95 is a certification for an entire mask – not a part of a mask," and observing that simply using the same filter material as an N95 mask in the Zephyr did not mean that the Zephyr could provide a level of protection equivalent to an N95 mask. This accords with the conclusion Intertek reached when testing the Zephyr's PFE, which the Defendants knew.

59. Accordingly, Razer was aware from Intertek, its own employees, and Ms. Wu that their claims regarding the Zephyr's N95 status were misleading. Nevertheless, Razer continued to market and sell the Zephyr to consumers both in stores and online. Indeed, of Razer's seven Zephyr drops, three of them (November 10, December 7, and December 23, 2021) occurred after the release of Ms. Wu's video.

60. Following the publication of Ms. Wu's review, her contact at Razer reached out to Ms. Wu to address certain points raised in her video and to request that she change her video's name. In an email to Ms. Wu, Defendants' employee acknowledged that the Zephyr was not certified. Ms. Wu and Razer continued to exchange emails.

61. On November 16, 2021, Defendants received a letter from the Justice and Consumer Protection Agency of Hamburg, Germany informing Defendants that an inquiry had been opened into whether the Zephyr conformed with EU and German law, including with respect to certain health claims. Razer continued to market and sell the Zephyr after receiving that letter. On December 13, 2021, Defendants received a letter from that authority setting forth preliminary findings that the Zephyr did not comply with EU regulations regarding Personal Protective Equipment. After receiving that letter, Defendants halted all sales of the Zephyr in the European Union on December 13, 2021. Nevertheless, Defendants continued to sell the Zephyr within the United States after that date with the same health claims that violated EU law.

62. Over two months after the publication of Ms. Wu's review, on January 6, 2022, Defendants launched the "Science Behind the Razer Zephyr" webpage. Defendants made several medical claims on that page, including claiming that the *filtration material* used in the mask complied with 42 CFR Part 84 with respect to both Inhalation and Exhalation Resistance and PFE. Razer also made reference to report numbers purportedly underlying those claims. On that webpage Razer continued to describe the Zephyr as having "N95 grade filters" "to keep you safe," and claimed "the Razer Zephyr's N95 filters and airtight seal offer greater protection over standard cloth masks and daily disposable masks." Razer also asserted that "[e]ach set of filters has been confirmed by third-party lab testing to meet a 95% Particulate Filtration

TEST RESULTS

ITEM	TEST	STANDARD	RESULT	REPORT
Filtration Material	Bacterial Filtration Efficiency (BFE)	EN 14683:2019+AC:2019 Annex B	Meet at least ≥ 95%	SINH21800189
Filtration Material	Medical Face Mask Resistance to Penetration by Synthetic Blood	ASTM F1862/F1862M-17	Complied, No Penetration	SINH21800188-2
Filtration Material	Bacterial Filtration Efficiency (BFE)	ASTM F2100-19	Meet Level 3 Barrier (≥ 98%)	SINH21800188-2
Filtration Material	Standard Specification for Barrier Face Coverings. (ASTM F 3502)	ASTM F 3502	Complied	SINH21800228-R1
Filtration Material	Flammability	16 CFR 1610 /ASTM F2100	IBE(Ignited but extinguished), meet Class 1 – Normal Flammability	SINH21800228-R1
Face Seal Material	BPA Free	-	Complied	SINH21800188-1
Zephyr wearable air purifier	Inhalation and Exhalation Resistance	42 CFR Part 84	Complied	SINH21800401
EU ROHS-Restriction of Hazardous Substances in Electrical and Electronic Equipment (RoHS)	According to the EU RoHS Directive 2011/65/EU	EU RoHS Directive 2011/65/EU	Complied	-
EU REACH	EC No. 1907/2006	EC No. 1907/2006	Complied	-
Filtration Material	Particle Filtration Efficiency (PFE)	ASTM F2100-19 Editon 1, Section 9.3, Testing Refer to ASTM F2299/F2299M-17	Complied . meet ≥ 95% (Level 1 Barrier)	SINH21800396
CE Mark	-	RADIO EQUIPMENT DIRECTIVE (RED) – 2014/53/EU	Complied	-

Figure 17: Test Results, "Science Behind Razer Zephyr" on Razer.com as of Jan. 14, 2021

Efficiency (PFE) and 99% Bacterial Filtration Efficiency (BFE) for up to 72 hours in a normal environment." However, Razer knew that the testing results for the full mask, as described *supra* ¶ 53, showed that the fully-assembled Zephyr did not provide the same level of PFE protection as a certified N95 respirator. Razer did not inform consumers of the testing results for the full mask.

63. On January 8, 2022, Ms. Wu publicly reached out via Twitter to Intertek, one of the testing services used by Defendants for the Zephyr, asking if Intertek was "comfortable with the designation 'N95 Grade' for" the Zephyr. Over the next two days, Ms. Wu made a series of tweets in which she stated that Defendants had contacted her to inform her that they would remove the N95 marketing from the Zephyr website, but she believed that the damage had already been done because the media and public already believed the Zephyr was an N95 mask. Following Ms. Wu's public comments, several media outlets ran articles discussing the Zephyr, its lack of N95 certification, and the allegation by Ms. Wu that Defendants had engaged in deceptive marketing.

64. In internal discussions following Ms. Wu's tweets, Razer, Inc.'s Director of Global Public Relations recognized that Defendants' claims were potentially misleading. In a January 8, 2022 email, he stated that "the 'N95 grade filter' wording that we're using […] suggests that Zephyr is on par with officially certified N95 masks," and asked "Do we have any certifications to back the N95-grade claim? Are we currently in the process of being officially certified/listed as a N95-grade product? Any other data that supports our marketing? The website can be confusing to read for customers, so can we boil it down to one clear statement (2-3 sentences max) on HOW Zephyr provides N95 grade protection?" He concluded: "And if we can't do that, I'd recommend to stop using any 'N95 grade' claims in our marketing immediately."

The main issue here, though, is the "N95 grade filter" wording that we're using, which suggests that Zephyr is on par with officially certified N95 masks:

> Following that announcement, my Twitter feed exploded with rage against the company's "N95" claim. Naomi Wu, an influencer in the 3D-printing world, argued that having an "N95 Grade filter" doesn't make something an N95 mask. But most people will see that phrase as equivalent to "N95 mask," no matter how many fine-print disclaimers Razer adds, she says.
>
> 
>
>
> 'N95 grade filters with two-way protection,' Razer's website says.
>
> In the US, the CDC's National Institute for Occupational Safety and Health (NIOSH) certifies that N95 respirators "used in an occupational setting meet the minimum construction, performance, and respiratory protection standards." It also maintains a website of NIOSH-approved N95 respirators listed by manufacturer from A-Z. Razer's products are not on the NIOSH list.

THIS is what we need to address asap.

Questions:

- Do we have any certifications to back the N95-grade claim?
- Are we currently in the process of being officially certified/listed as a N95-grade product?
- Any other data that supports our marketing? The website can be confusing to read for consumers, so can we boil it down to one clear statement (2-3 sentences max) on HOW Zephyr provides N95 grade protection?

And if we can't do that, I'd recommend to stop using any "N95 grade" claims in our marketing immediately.

Figure 19: Jan. 8, 2022 Internal Email Between Razer Employees

65. When another Razer employee responded that the *filters* were tested, Razer, Inc.'s Director of Global Public Relations reframed the question to whether "the Zephyr as a whole (not only the filters)" could claim to be N95-grade. "From a consumer and media POV, the key question here is: **Does Zephyr offer the same protection as an N95 face mask?** If it does, how can we prove that? And if it doesn't, our marketing is misleading."

> Thanks – I understand that the filter is N95 grade and I feel we can confidently make that claim, but how about Zephyr as a whole (not only the filters)?
>
> From a consumer and media POV, the key question here is: **Does Zephyr offer the same protection as an N95 face mask?**
>
> If it does, how can we prove that? And if it doesn't, our marketing is misleading.

Figure 18: Jan. 8, 2022 Internal Email Between Razer Employees

66. Ultimately, a product designer for the Zephyr conceded that Defendants had no scientific proof that the Zephyr offers the same protection as an N95 face mask, stating: "We were not able to arrive at a conclusive test using the whole mask."

> We were not able to arrive at a conclusive test using the whole mask. The lab's equipment was able to perform the test successfully when using a sheet of the filter material but was not able to accommodate the Zephyr due to a decrease in the total surface area for air exchange. The Zephyr could not be subjected to the same conditions as the sheet as the test pressure was always too high.

Figure 20: Jan. 8, 2022 Internal Email Between Razer Employees

67. In internal discussions following Ms. Wu's tweets, Razer, Inc.'s Director of Global Public Relations acknowledged that "A lot of media (if not the majority) have positioned both Zephyr and Zephyr Pro as an N95 grade mask when covering the announcements and reviewing the product." Razer's explicit and implicit statements caused or contributed to that media coverage, and Razer made no attempt to correct any errors in media coverage until after the company faced significant backlash from the public and the media for its "N95-grade" claims.

> - A lot of media (if not the majority) have positioned both Zephyr and Zephyr Pro as an N95 grade mask when covering the announcements and reviewing the product

Figure 21: Jan. 10, 2022 Internal Email Between Razer Employees and CEO

68. Around January 10, 2022, following Ms. Wu's comments, media coverage of those comments, and public backlash, Defendants finally began to remove references to the N95 standard from its website, as described below—almost two months after Ms. Wu had complained directly to the Defendants about these claims. However, Defendants continued to claim that the filtration material used in the mask complied with 42 CFR Part 84—the N95 standard—with respect to PFE, and that the mask itself complied with 42 CFR Part 84 with respect to Inhalation and Exhalation Resistance. Because the Zephyr had not been evaluated by NIOSH, it was false to assert that the Zephyr complied with 42 CFR Part 84. Defendants also did not remove or correct previously-published marketing materials or statements at that time, which remained visible to consumers until after the FTC informed Defendants of its investigation into the Zephyr.

69. On January 10, 2022, Razer made only minimal changes to the language on the "Science Behind the Razer Zephyr" webpage. Specifically, Razer replaced "N95 grade filters" with "air purification filters" and "N95 filters" with "filters," and included fine print that the Zephyr is not a certified N95 mask. However, the vast majority of language remained the same, and Razer continued to make claims regarding the protective capability of the Zephyr, including stating "The Razer Zephyr's filters and airtight seal offer greater protection over standard cloth masks and daily disposable masks." Razer also continued to make claims regarding the PFE and BFE capabilities of the filters used in the Zephyr, despite knowing that the mask as a whole offered lower levels of protection.[1]

70. On January 13, 2022, Defendants finally issued a statement to consumers regarding the claims it had made about the Zephyr. It transmitted that message via email only to consumers who purchased the Zephyr directly from its website, Razer.com, or who had provided an email when purchasing the Zephyr from Defendants' three retail outlets. The message stated: "Razer would like to clarify that while the filters used in the Razer Zephyr Wearable Air Purifier have been tested for 95% Particulate Filtration Efficiency (PFE) and 99% Bacterial Filtration Efficiency (BFE), per the statements on the website and documentation for the product, the wearable by itself is not a medical device nor certified as an N95 mask. To avoid any confusion, we are in the process of removing all references to 'N95 Grade Filter' from our marketing material. Customers with any further questions about the Razer Zephyr Wearable Air Purifier should contact our Customer Service at https://support.razer.com." Defendants' customer service agents were told to provide

[1] Razer did not remove its statements regarding filter PFE and BFE protective capabilities until they received a request to do so from the FDA in May 2022. Certain other medical claims about the mask's protective capabilities remained on the website until November 2022, following Razer's receipt of the FTC's CID in late June 2022.

only the message included in Defendants' email, verbatim, should customers contact Razer Support about the Zephyr's effectiveness.

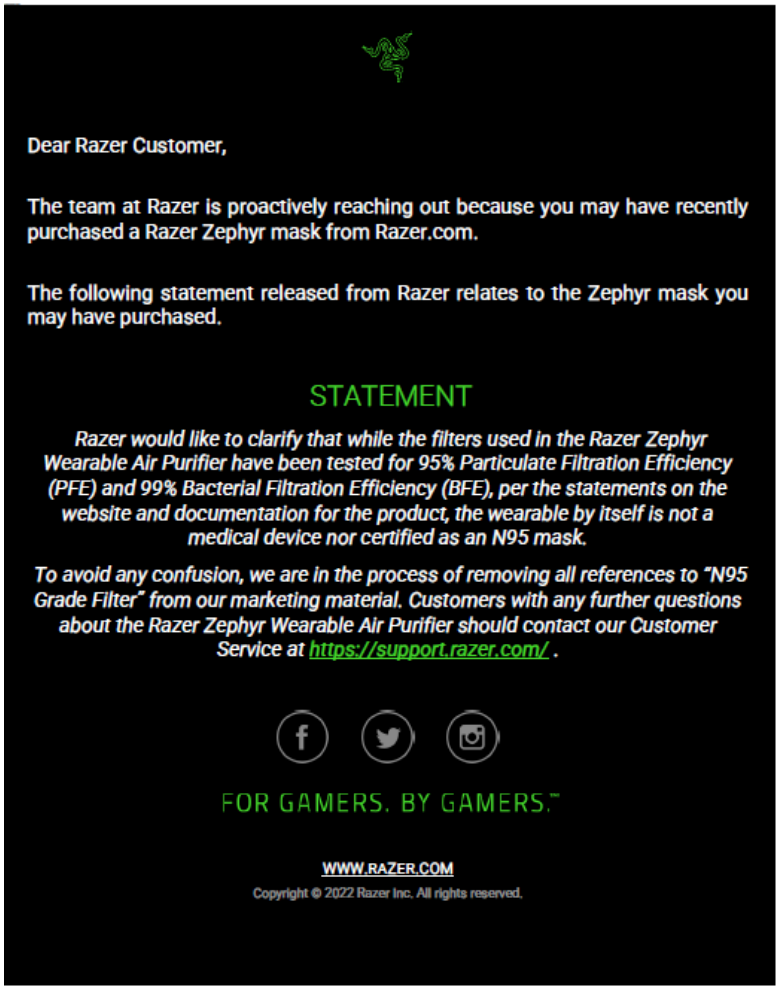


Figure 22: Jan. 13, 2022 Statement Emailed by Razer to Purchasers of the Zephyr from Razer.com

71. Defendants' statement failed to acknowledge that Defendants had no evidence that the Zephyr provides protection equivalent to that of an N95 mask. Defendants' statement did not invite or otherwise indicate that consumers who believed they were purchasing an N95 mask when they purchased the Zephyr could request a refund from Razer.

72. Because Defendants sold the Zephyr online through "drops," the last domestic online sale of the Zephyr occurred in conjunction with the December 23, 2021 drop; the last domestic in-store sale of the Zephyr occurred in January 2022. Razer did not offer further drops of the Zephyr following the media coverage and public outcry

surrounding the Zephyr at the start of January 2022, though filter packs were available for sale until July 2022. However, Defendants continued to make misleading statements regarding the protective capabilities of the Zephyr. Defendants thus encouraged consumers to continue using the Zephyr to protect themselves from COVID and deterred consumers who had been misled by Defendants' statements from seeking refunds.

73. While Defendants purport to have instituted a policy of fully refunding consumers concerned about the filters on January 9, 2022, Defendants did not promote that policy in its January emails to consumers or on its website.

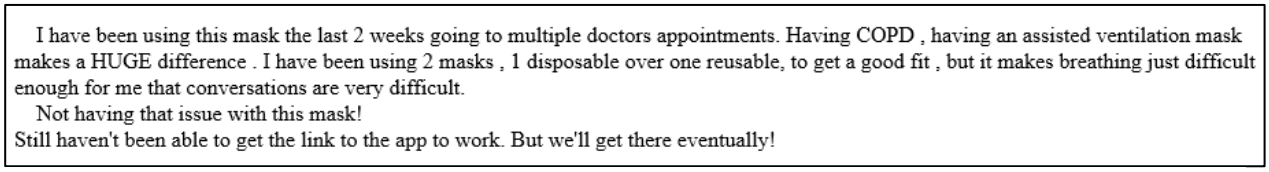
74. After Defendants allegedly implemented that refund policy, at least some customers requesting a refund based on concerns about the mask not providing N95 levels of protection were told that they could not receive a refund because they were outside of Razer's standard 14-day return policy. Other customers requesting a refund based on concerns about the Zephyr not being an N95 mask were told that they could not receive a full refund because they had used the disposable filters provided with the Zephyr when they bought the Zephyr in October 2022 or because the Zephyr was no longer sealed and unused. Numerous customers were deterred from, or confused regarding their ability to, obtain full refunds because of statements by Defendants' customer service representatives that they were ineligible for full refunds. In total, Defendants refunded less than 6% of U.S. Zephyr-related purchases.

III. Defendants' Deceptive Claims about Their Product Harm Consumers

75. Throughout the development and sale of the Zephyr, Defendants were aware that consumers were interested in purchasing and wearing the Zephyr as a facemask to prevent the contraction of COVID-19.

76. During beta testing prior to the release of the Zephyr, Defendants received feedback from consumers who were testing the Zephyr which put Defendants on notice that individuals were relying on the Zephyr to protect them from COVID-19. For example, one beta tester had chronic obstructive pulmonary disease and was thus

unusually susceptible to experiencing negative effects from contracting COVID-19. Prior to wearing the Zephyr, that tester wore two masks when going to doctors' appointments. However, upon receiving the Zephyr, that tester only wore the Zephyr for protection when going to doctors' appointments and relied on the Zephyr to keep safe from COVID-19.


I have been using this mask the last 2 weeks going to multiple doctors appointments. Having COPD , having an assisted ventilation mask makes a HUGE difference . I have been using 2 masks , 1 disposable over one reusable, to get a good fit , but it makes breathing just difficult enough for me that conversations are very difficult.

Not having that issue with this mask!

Still haven't been able to get the link to the app to work. But we'll get there eventually!

Figure 23: Sep. 2, 2021 Email from Beta Tester to Zephyr Beta Test Google Group

77. After the Zephyr's release, Defendants continued to receive comments indicating that consumers were interested in purchasing the Zephyr to protect against COVID-19. For example, when the Zephyr was first released, many consumers reached out to Razer's customer service department seeking help obtaining the Zephyr and identified protection against COVID-19 as their main motivation for obtaining the Zephyr. One consumer, who worked in healthcare, was excited for the "safety" the Zephyr could provide. Another consumer wanted the mask because several of their children were at high risk of COVID-19 complications and they had issues with other masks. A third wanted to get the mask to help protect a spouse, a schoolteacher. Razer received multiple comments to that effect through its customer service channels, as well as through social media.

78. Based on the facts and violations of law alleged in this Complaint, Plaintiff has reason to believe that Defendants' conduct may reoccur because, among other things, Defendants engaged in their unlawful acts and practices willfully and knowingly, and continued these practices despite knowledge of numerous complaints, including an inquiry by German authorities soon after the Zephyr was launched. Although Defendants halted sales in the European Union based on German authorities' findings that the Zephyr did not comply with EU regulations concerning Personal Protective Equipment, Defendants continued to sell the Zephyr in the United States

using deceptive claims. Defendants only ceased sales of the Zephyr after media reporting and public outcry exposed their misrepresentations. However, even then Defendants continued to make misleading scientific claims about the Zephyr and its ability to protect consumers from COVID-19, and only removed all such claims from their website and social media platforms after they received a Civil Investigative Demand from the FTC. Defendants have also failed to remediate the injuries and harm to consumers by failing to provide full redress to consumers who purchased the Zephyr under false pretenses.

79. Based on the facts and violations of law alleged in this Complaint, Plaintiff has reason to believe the Defendants are violating or have knowingly violated the FTC Act and the COVID-19 Consumer Protection Act.

VIOLATIONS OF THE FTC ACT

80. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

81. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

82. Section 12 of the FTC Act, 15 U.S.C. § 52, 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. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, the Zephyr sold by Defendants is a "device" as defined in Section 15(d) of the FTC Act, 15 U.S.C. § 55(d).

83. Enacted on December 27, 2020, the COVID-19 Act ("CCPA") made it unlawful, for the duration of the public health emergency declared on January 31, 2020 and ended on May 11, 2023, pursuant to Section 319 of the Public Health Service Act, for any person, partnership, or corporation to "engage in a deceptive act or practice in or affecting commerce in violation of Section 5(a) of the [FTC] Act (15 U.S.C. 45(a)) that is associated with . . . the treatment, cure, prevention, mitigation, or diagnosis of COVID-19." Public Law 116-260, 134 Stat 1182, Title XIV, Section 1401(b)(1).

84. The CCPA provides that "[a] violation of subsection (b) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under Section 18(a)(1)(B) of the [FTC] Act," 15 U.S.C. § 57a(a)(1)(B).

85. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of up to $50,120 for each violation of Section 5(a) of the FTC Act pursuant to the CCPA, 16 C.F.R. § 1.98(d).

COUNT ONE

FTC Act Section 5(a) and Section 12 Violations

86. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of the Zephyr, including through the means described in paragraphs 15-79 of this Complaint, Defendants have represented, directly or indirectly, expressly or by implication, that the Zephyr:

a. was an N95 respirator;

b. was a facemask with filtration efficiency comparable to that of an N95 respirator;

c. was a facemask with a filtration efficiency greater than or equal to 95 percent;

d. was a facemask that provided protection against contraction of COVID-19 comparable to an N95 respirator; and

e. was a facemask certified by NIOSH.

87. On or after December 27, 2020, Defendants made the representations set forth in paragraphs 15-79, which are associated with the treatment, cure, prevention, mitigation, or diagnosis of COVID-19.

88. Defendants' representations as described in paragraphs 15-79 were false or misleading, or were not substantiated at the time the representations were made.

89. Therefore, Defendants' representations as described in paragraphs 15-79 constitute deceptive acts or practices and the making of false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C.§§ 45(a), 52.

90. Defendants committed the violations set forth set in paragraphs with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

CONSUMER INJURY

91. Consumers are suffering, have suffered, and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the COVID-19 Consumer Protection Act. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

CIVIL PENALTIES

92. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), authorizes this Court to award civil penalties for each violation of Section 5(a) of the FTC Act pursuant to the COVID-19 Consumer Protection Act.

93. Defendants violated the FTC Act and the COVID-19 Consumer Protection Act with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

PRAYER FOR RELIEF

94. Wherefore, Plaintiff requests that the Court:

A. Enter a permanent injunction to prevent future violations of the FTC Act and the COVID-19 Consumer Protection Act by Defendants;

B. Award such relief pursuant to Section 19 of the FTC Act as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of Section 5 pursuant to the COVID-19 Consumer Protection Act, including recission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or practice;

C. Award Plaintiff civil penalties from Defendants for violations of Section 5(a) of the FTC Act pursuant to the COVID-19 Consumer Protection Act; and

D. Award any additional relief as the Court determines to be just and proper.

Respectfully submitted,

Dated: April 26, 2024

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