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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff

v.

SAFETY CELL, INC., and JERRY BERGER,  
individually and as an officer of SAFETY CELL,  
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 Safety Cell, Inc. ("Safety Cell") and Jerry Berger, individually and as an officer of Safety Cell, 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 Safety Cell and Jerry Berger 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. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law.

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).

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 Safety Cell's "WaveGuard" 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.

3. A requirement that any defendant "notify the Commission" or "file with the Commission" shall mean that the defendant shall send the necessary information via first class mail,

costs prepaid, to the: Regional Director, Northeast Region, Federal Trade Commission, 1 Bowling Green, Suite 318, New York, NY 10004, Re: *FTC v. Safety Cell, Inc., et al.*

4. Defendants shall mean Safety Cell and Jerry Berger.

## 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.

### **SUSPENDED JUDGMENT**

#### **III.**

**IT IS FURTHER ORDERED** that judgment is entered against Defendants, jointly and severally, in the amount of \$13,500, provided however, that this judgment shall be suspended and subject to the conditions set forth in Paragraph IV of this Order.

### **RIGHT TO REOPEN**

#### **IV.**

**IT IS FURTHER ORDERED** that the Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' financial conditions as represented in the Financial Statements dated July 14, 2002, which contain material information upon which the Commission relied in negotiating and agreeing to the terms of this Order.

A. If, upon motion by the Commission, this Court finds that any of the Defendants failed to file the sworn statement required by this Section, or filed a financial statement that failed to disclose any

material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from any financial statement, the judgment herein shall be reopened for the purpose of increasing the amount Defendants shall pay the Commission pursuant to Section II above, to \$13,500 less any amounts previously paid, representing the approximate amount of consumer injury, and which will become immediately due and payable. For purposes of this Section and any subsequent proceedings to enforce payment, including but not limited to a non-dischargeability complaint filed in a bankruptcy case, Defendants waive any right to contest any of the allegations in the Commission's complaint.

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. No portion of this Judgment for equitable monetary relief shall be deemed a fine, penalty or punitive assessment, or forfeiture. 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 expressly waive their rights to litigate the issue of disgorgement. 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;

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.

## **RECORD KEEPING**

### **V.**

**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, for a period of eight (8) years from the date of entry of this Order, for any business where: (1) any defendant 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 advertisements and promotional materials containing the representation;
- B. all materials that were relied upon in disseminating the representation;
- C. all tests, reports, studies, surveys, demonstrations, or other evidence in their possession, custody, or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental entities or consumer protection organizations;
- D. accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- E. 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;
- F. 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;
- G. complaint and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests; and

H. copies of all sales scripts, training materials, advertisements, or other marketing materials.

## **DISTRIBUTION OF ORDER BY DEFENDANTS**

### **VI.**

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

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

1. defendant Jerry Berger is the majority owner of the business or directly or indirectly manages or controls the business, and where
2. the business is engaged in the manufacturing, labeling, advertising, promotion, offering for sale, or distribution, of any covered product, or assisting others engaged in

the manufacturing, labeling, advertising, promotion, offering for sale, or distribution of any covered product.

B. Maintain for a period of five (5) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Subsection (A) of this Paragraph.

### **ACCESS TO BUSINESS PREMISES**

#### **VII.**

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

A. Access during normal business hours to any office, or facility storing documents, of Safety Cell and any business where:

1. defendant Jerry Berger is the majority owner of the business or directly or indirectly manages or controls the business, and where
2. the business is engaged in the manufacturing, labeling, advertising, promotion, offering for sale, or distribution, of any covered product or assists others engaged in the

manufacturing, labeling, advertising, promotion, offering for sale, or distribution of any covered product.

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

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

**COMPLIANCE REPORTING BY DEFENDANTS  
ACKNOWLEDGMENT OF RECEIPT**

**VIII.**

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

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

1. any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change; and

2. any changes in his employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that defendant Jerry Berger is affiliated with or employed by, a statement of the nature of the business, and a statement of his duties and responsibilities in connection with the business or employment.

B. For a period of five (5) years from the date of entry of this Order, defendants shall notify the Commission of the following any proposed change in the structure of defendant Safety Cell, or any proposed change in the structure of any business entity owned or controlled by defendant Jerry Berger where the business is engaged in the manufacturing, labeling, advertising, promotion, offering for sale, or distribution, of any covered product or assists others engaged in the manufacturing, labeling, advertising, promotion, offering for sale, or distribution of any covered product, such as creation, incorporation, dissolution, assignment, sale, creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any proposed change;

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

1. defendant Jerry Berger's then current residence address and telephone number;

2. defendant Jerry Berger's then current employment, business addresses and telephone numbers, a description of the business activities of each such employer, and defendant's title and responsibilities for each employer;

3. a copy of each acknowledgment of receipt of this Order obtained by defendants pursuant to Paragraph VI;

4. a statement describing the manner in which defendants have complied and are complying with Paragraphs I and II of the Order, and

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

E. For the purposes of this Paragraph, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom defendant Jerry Berger performs services as an employee, consultant, or independent contractor; and

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

**COMPLIANCE MONITORING  
ACKNOWLEDGMENT OF RECEIPT**

**IX.**

**IT IS FURTHER ORDERED** that, within five (5) business days after receipt by defendants of this Order as entered by this Court, defendants shall each submit to the Commission truthful sworn statements, in the form shown on Appendix A, that shall acknowledge receipt of this Order.

**COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

**X.**

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

A. the Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including but not limited to the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating the compliance of defendants with this Order;

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

C. nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether defendants have violated any provision of this Order or Sections 5 or 12 of the FTC Act, 15 U.S.C. §§ 45, 55.

### **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:**

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

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JERRY BERGER

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SAFETY CELL, INC.  
JERRY BERGER, PRESIDENT

Attorneys for Plaintiff  
FEDERAL TRADE COMMISSION

**SO ORDERED**

DATED: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

**APPENDIX A**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

FEDERAL TRADE COMMISSION,

Plaintiff

v.

SAFETY CELL, INC., and JERRY BERGER,  
individually and as an officer of SAFETY CELL,  
INC.,

Defendants.

Civil Number

**AFFIDAVIT OF JERRY BERGER**

Jerry Berger, being duly sworn, hereby states and affirms:

1. My name is Jerry Berger. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the matters discussed in this declaration, and if called as a witness, I could and would competently testify as to the matters stated herein. I am a defendant in the above-captioned action.

2. My current address is \_\_\_\_\_

\_\_\_\_\_.

3. On (date) \_\_\_\_\_, 2002, I received a copy of the Stipulated Final Order and Settlement of Claims for Monetary Relief as to Defendant Jerry Berger, which was signed

by the Honorable \_\_\_\_\_, United States District Court Judge for the Eastern District of New York. A true and correct copy of the Order that I received is appended to this Affidavit.

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

\_\_\_\_\_  
Jerry Berger

STATE OF NEW YORK

COUNTY OF \_\_\_\_\_

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

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by Jerry Berger. He is personally known to me or has presented (state identification) \_\_\_\_\_ as identification.

\_\_\_\_\_  
Print Name

NOTARY PUBLIC  
STATE OF NEW YORK  
Commission Number

Affix Seal