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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

**COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), by its undersigned

attorneys, alleges as follows:

1. This is an action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure a permanent injunction and other equitable relief against defendants for their deceptive acts or practices and false advertisements in connection with the advertising, marketing, and sale of “WaveScrambler,” a device that purportedly blocks electromagnetic waves emitted from cellular and cordless phones in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over plaintiff’s claim pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1345, and 15 U.S.C. §§ 45(a), 52 and 53(b).

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

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, which prohibit, respectively, deceptive acts or practices, and false advertisements for food, drugs, devices or cosmetics in or affecting commerce. The FTC may initiate federal district court proceedings to enjoin violations of the FTC Act, and to secure such equitable relief as may be appropriate in each case. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant Rhino International, Inc. (“Rhino”) is a Delaware corporation with its

principal office or place of business at 33 Meadow Street, Sag Harbor, New York 11963. It markets devices intended to block electromagnetic energy emitted from cellular and cordless phones. Rhino transacts business in the Eastern District of New York.

6. Defendant Nigel Harrison (“Harrison”) is the President of Rhino. His principal office or place of business is the same as that of Rhino. In connection with the matters alleged herein, Harrison transacts business in the Eastern District of New York. At all times material to this complaint, Harrison, individually or in concert with others, formulated, directed, controlled, or participated in the policies, acts, or practices of Rhino, including the acts or practices alleged in this complaint.

7. Defendant Sherry Molina (“Molina”) is Executive Vice President of Rhino. Her principal office or place of business is the same as that of Rhino. In connection with the matters alleged herein, Molina transacts business in the Eastern District of New York. At all times material to this complaint, Molina, individually or in concert with others, formulated, directed, controlled, or participated in the policies, acts, or practices of Rhino, including the acts or practices alleged in this complaint.

COMMERCE

8. The acts and practices of defendants as alleged herein are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ COURSE OF CONDUCT

9. Beginning in 2000, and continuing through on or about May 2002, defendants have marketed a product that purportedly blocks electromagnetic waves emitted from cellular and cordless telephones to consumers throughout the United States. Defendants have marketed this product under

the name “WaveScrambler.” This product consists of metallic fiber patches that are placed over the earpieces of cellular and cordless telephones.

10. Defendants have advertised, promoted, offered for sale, sold and distributed WaveScrambler to consumers throughout the United States by means of television advertisements, including but not limited to the advertisement described in Paragraph 11.

11. To induce consumers to purchase WaveScrambler, defendants disseminated or caused to be disseminated advertisements for WaveScrambler which include, among others, the following statements and depictions:

a. Can talking on the cell phone cause cancerous brain tumors? Hi, I’m Terri Toner. *[‘Television Host’ appears as Ms. Toner introduces herself.]* And according to these recent articles, cell phones can cause cancer. *[Depictions of various articles/studies pass across the TV screen as Ms. Toner makes the previous statement.]*

Why take the risk? Now there’s the WaveScrambler, a revolutionary new phone shield that filters out 99% of the electromagnetic waves emitted by cellular phones. *[Depiction of the product being attached to a cellular phone, then the words ‘Eliminates 99% of electromagnetic waves!’ appear on screen next to a cellular phone with the product attached to it.]*

Look, when you talk on an unprotected cell phone, electromagnetic radiation penetrates

through your ear into your brain. *[Depiction of a head with a cellular phone next to the ear and electromagnetic waves entering the ear into the head.]*

[Depiction of product alone.]

But the WaveScrambler's amazing shield scrambles electromagnetic radiation away from your head making it safer to talk on the phone. . . . *[Depiction of head reappears with a cellular phone next to the ear, but this time electromagnetic radiation is emitting away and being prevented from entering the head.]*

[Depiction of an unidentified woman holding a cellular phone with the product attached to it.] I would never let my teenager talk on an ordinary cell phone, but with the WaveScrambler I have peace of mind.

[Depiction of an unidentified man holding a cellular phone with the product attached to it.] I really depend on my cell phone for work, and now thanks to the WaveScrambler it's safe!

[Depiction of a man identified as 'Dr. Carlos Levy, DO, PA Board Certified Family Practitioner' at the bottom of the screen.] The WaveScrambler filters out the electromagnetic radiation caused by cell phones, making them safe for everybody. . . .

Protect yourself, order the WaveScrambler today. . . .

b. (Exhibit A: Packaging for WaveScrambler)

[Front of packaging]

(Photograph of a cellular phone with the WaveScrambler attached to it)

Electronic Cell Phone Shield

- Works on any phone
- Will not affect quality of reception
- Can be used on cordless phones

Prevents 99% [of] harmful electronic waves
entering through the ear.

[Back of packaging]

With the advent of cellular phone technology and its popularity,
mobile phone users have developed a new concern that using
their phones may induce potential health hazards.

The electromagnetic waves (EM waves) generated from the mobile phone network are transmitted throughout the phone's entire surface, and therefore cannot be eliminated. Our brain is protected by a thick skull and the only unprotected portions are the ear ducts. 'Wave Scrambler' protects the soft tissue of the ear ducts from the EM waves, thereby eliminating any potential ailments. . . .

The Japanese testing authority, KEC, confirms that 'Wave Scrambler' is able to filter 99% of the EM waves emitted from the ear piece of cellular phones up to a frequency of 2,000Mhz (i.e. GSM, CDMA, TDMA and PCS cellular networks plus all indoor cordless telephones). . . .

12. Defendants offered for sale and sold WaveScrambler to consumers throughout the United States.

DEFENDANTS' VIOLATIONS OF THE FTC ACT

13. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits deceptive acts or practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a) 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, or cosmetics. As set forth below, defendants have engaged in such unlawful practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in connection with the offer, sale, advertising, promotion or distribution of WaveScrambler.

14. For purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, WaveScrambler is a “device” pursuant to Section 15(d) of the FTC Act, 15 U.S.C. § 55(d).

COUNT ONE

15. Through the use of representations and statements, including but not limited to the representations and statements in Paragraph 11, defendants have represented, expressly or by implication, that WaveScrambler blocks 99 percent of electromagnetic energy emitted by cellular telephones.

16. In truth and in fact, WaveScrambler does not block 99 percent of electromagnetic energy emitted by cellular telephones. Therefore, the making of the representation set forth in Paragraph 15 was, and is, a deceptive practice and constitutes false and misleading advertising for a device in or affecting commerce in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT TWO

17. Through the use of representations and statements contained in advertisements, including but not limited to the representations and statements in Paragraph 11, defendants have represented, expressly or by implication, that WaveScrambler blocks 99 percent of electromagnetic energy emitted by cellular and cordless telephones.

18. Defendants did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 17 at the time the representation was made. Therefore, the making of the representation set forth in Paragraph 17 was, and is, a deceptive practice and constitutes false advertising for a device in or affecting commerce in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT THREE

19. In their advertising and sale of WaveScrambler, including but not limited to the representations and statements in Paragraph 11, defendants have represented that it protects consumers from the electromagnetic energy emitted by the ear pieces of cellular and cordless phones. Defendants have failed to disclose 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 ear piece. Defendants have also failed to disclose that WaveScrambler has no effect on this other electromagnetic energy. These facts would be material to consumers in their purchase or use of the products. The failure to disclose these facts, in light of the representation made, was, and is, a deceptive practice. Therefore, the making of the representation set forth in this Paragraph constitutes false and misleading advertising for a device in or affecting commerce in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT FOUR

20. Through the use of representations and statements contained in advertisements, including but not limited to the representations and statements in Paragraph 11, defendants have represented, expressly or by implication, that scientific evidence proves that WaveScrambler blocks 99 percent of

electromagnetic energy emitted by cellular and cordless telephones.

21. In truth and in fact, scientific testing does not prove that WaveScrambler blocks 99 percent of electromagnetic energy emitted by cellular and cordless telephones. Therefore, the making of the representation set forth in Paragraph 20 above was, and is, a deceptive act or practice and constitutes false and misleading advertising of a device in or affecting commerce in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

CONSUMER INJURY

22. Consumers throughout the United States have suffered monetary loss as a result of defendants' unlawful acts or practices. In addition, defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

23. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer notification and/or education, consumer redress, disgorgement, and restitution, to prevent and remedy any violations of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

24. WHEREFORE, plaintiff requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

- a. Permanently enjoin defendants from violating Sections 5 and 12 of the FTC Act, as alleged herein, in connection with the advertising or sale of food, drugs, devices, cosmetics or

other products, services or programs;

b. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of the FTC Act, including, but not limited to, consumer notification and/or education, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains; and

c. Award plaintiff the costs of bringing this action, as well as such other and additional equitable relief as the Court may deem just and proper.

Dated:

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