

WILLIAM E. KOVACIC
General Counsel
BARBARA ANTHONY
Regional Director
Northeast Region

RONALD L. WALDMAN (RW 2003)
DONALD G. D'AMATO (DG 3008)
Federal Trade Commission
1 Bowling Green, Suite 318
New York, NY 10004
(212) 607-2829

Attorneys for Plaintiff

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

**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 “WaveGuard,” a device that purportedly blocks electromagnetic waves emitted from cellular 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 Safety Cell, Inc. (“Safety Cell”) is a New York corporation with its principal office located at 1307 43rd Street, Brooklyn, New York 11219. It had marketed devices

intended to block electromagnetic energy emitted from cellular phones. Safety Cell transacts business in the Eastern District of New York.

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

COMMERCE

7. 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

8. Since at least 2000, and continuing through 2001, defendants marketed a product that purportedly blocks electromagnetic waves emitted from cellular telephones to consumers throughout the United States. Defendants marketed this product under the name WaveGuard. This product consists of metallic fiber patches that are placed over the earpieces of cellular telephones.

9. Defendants have advertised, promoted, offered for sale, sold, and distributed WaveGuard to consumers throughout the United States by means of Internet advertisements, including but not limited to the attached Exhibits A-1 and A-2.

10. To induce consumers to purchase WaveGuard, defendants disseminated or caused to be disseminated advertisements and promotional materials for WaveGuard which includes, among others, the following statements and depictions:

a. (Exhibit A-1: Internet advertisement for WaveGuard)

Cell phones have become an integral part of our everyday lives. Whether at home, business, on the road, or to check up on the kids at school, cell phones have become a necessity.

However, in the back of their minds, most people have that niggling worry.

Are cell phones dangerous to your health???

Many tests have been conducted and have proven that when using a cellular phone, electromagnetic waves have access to the user's body, and its harmful effects can cause a variety of serious diseases like cancer, memory loss, as well as side affects [sic] like [a] headache etc. . . .

Until now, there was not much one could do about these concerns, except to limit cellular phone use.

Now 'SAFETY CELL™' brings you the answer you have been waiting for!!

We at Safety Cell™ are dedicated to ensuring that you get the utmost protection while using your cellular phone. With our unswerving dedication to excellence, we bring you the top-of-the-line products with the maximum degree of safety and protection. Each of our products is made of only the best materials, to ensure that it is superior quality.

Now you can enjoy the convenience of your cell phone without the worry of harmful consequences.

b. (Exhibit A-2: Internet advertisement for WaveGuard: FAQs)

Could cell phones cause cancer?

There has been mounting evidence that exposure to electromagnetic radiation waves which are emitted by cell phones can cause brain cancer and other cancers. . . .

Is it true that cellular phones cause memory loss?

Henry Lai, PHD. [sic] has proven in his recent studies that there is an increase of 50% in damage to DNA molecule[s] when exposed to cell phone radiation. 'Memory loss is another damaging effect' he says.

I am on my cell phone at least two three hours a day is there something that I should worry about?

A 27-year-old British woman, thought to be a senior executive with a cellular phone company, is preparing to sue a phone company after suffering a brain tumor. The women [sic], so far unnamed, used a cell phone for more than an hour a day for two or three years.

What is this about electromagnetic waves coming out of the antenna and directly into the brain?

As per Dr. Ross Adey, depending on how close the cell phone's antenna is to the head, as much as 60 percent of the microwave radiation is absorbed by and actually penetrates the area around the head, and into the brain.

Do cell phones have any effect on my health?

Dr. Henry Lai and a colleague, Dr. Narendra Singh, had [sic] discovered that low-level microwave radiation could split the DNA molecules in the brains of live rats; such splitting is associated with Alzheimer's disease, Parkinson's disease and cancer.

Could cell phones effect [sic] my nervous system?

Yes. Most of the energy from a cellular telephone antenna is deposited in the skin and the outer portion of the brain. These effects could lead to temporary or permanent functional changes in the nervous system.

Could cell phones effect [sic] my immune system?

Radiation from cellular phones can severely damage the human immune system, a scientist has claimed. Biologist Roger Coghill.

11. Defendants typically charged \$39.99 for WaveGuard. Defendants offered for sale and sold WaveGuard to consumers throughout the United States.

DEFENDANTS' VIOLATIONS OF THE FTC ACT

12. 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 WaveGuard.

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

COUNT ONE

14. Through the use of representations and statements contained in advertisements, including but not limited to Exhibits A-1 and A-2, defendants have represented, expressly or by implication, that WaveGuard substantially protects consumers from electromagnetic energy emitted by cellular telephones.

15. In truth and in fact, WaveGuard does not substantially protect consumers from electromagnetic energy emitted by cellular telephones. Therefore, the making of the representation set forth in Paragraph 14 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

16. Through the use of representations and statements contained in advertisements, including but not limited to Exhibits A-1 and A-2, defendants have represented, expressly or by implication, that WaveGuard substantially protects consumers from electromagnetic energy emitted by cellular telephones.

17. Defendants did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 16 at the time the representation was made. Therefore, the making of the representation set forth in Paragraph 16 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.

CONSUMER INJURY

18. 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

19. 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

20. 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:

WILLIAM E. KOVACIC
General Counsel

BARBARA ANTHONY
Regional Director

RONALD WALDMAN
DONALD G. D'AMATO
Federal Trade Commission
One Bowling Green, Suite 318
New York, NY 10003
(212) 607-2829 (phone)
(212) 607-2822 (fax)

Attorneys for Plaintiff