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CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT CALIF.  
LOS ANGELES

BY FAX

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14 **IN THE UNITED STATES DISTRICT COURT**  
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

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16 **FEDERAL TRADE COMMISSION,**

17 **Plaintiff,**

18 **v.**

19 **JAVIN KARNANI, BALLS OF**  
 20 **KRYPTONITE, LLC, a California**  
 Limited Liability Company, all doing  
 21 business as Bite Size Deals, LLC and Best  
 Priced Brands, LLC, and  
 22 **INTRIGUE INC., a Belize corporation,**

23 **Defendants.**

17 **Civil No. CV 09-5276 DPP**

18 **First Amended Complaint**  
 19 **for Permanent Injunction**  
 20 **and Other Equitable Relief**

24  
 25 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), by its  
 26 undersigned attorneys, for its complaint alleges:

27 1. The FTC brings this action pursuant to Section 13(b) of the Federal  
 28 Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a permanent

1 injunction, restitution, disgorgement of ill-gotten gains, and other equitable relief  
2 against Defendants for engaging in deceptive acts or practices in violation of  
3 Section 5(a) of the FTC Act, 15 U.S.C. §§ 45(a), and the Commission’s Trade  
4 Regulation Rule Concerning the Sale of Mail or Telephone Order Merchandise  
5 (“Mail Order Rule”), 16 C.F.R. Part 435.

6 **JURISDICTION AND VENUE**

7 2. This Court has jurisdiction over this matter pursuant to 15 U.S.C.  
8 §§ 45(a) and 53(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

9 3. Venue in the Central District of California is proper under 28 U.S.C.  
10 §§ 1391(b) and (c) and 15 U.S.C. § 53(b).

11 **THE PARTIES**

12 4. Plaintiff Federal Trade Commission is an independent agency of the  
13 United States Government created by the FTC Act, 15 U.S.C. § 41 *et seq.* The  
14 FTC enforces the FTC Act, which prohibits unfair or deceptive acts or practices in  
15 or affecting commerce. The FTC also enforces the Mail Order Rule, which applies  
16 to orders placed by telephone, by facsimile transmission, or on the Internet. The  
17 FTC may initiate federal district court proceedings, through its own attorneys, to  
18 enjoin violations of the FTC Act and the Mail Order Rule, and to secure such other  
19 equitable relief, including restitution and disgorgement of ill-gotten gains, as may  
20 be appropriate in each case. 15 U.S.C. § 53(b).

21 5. Defendant Balls of Kryptonite, LLC, is a California limited liability  
22 company with its primary place of business in Pasadena, California. It also does  
23 business as Best Priced Brands, LLC and Bite Size Deals, LLC through the  
24 websites [www.bestpricedbrands.co.uk](http://www.bestpricedbrands.co.uk) and [www.bitesizedeals.co.uk](http://www.bitesizedeals.co.uk). Defendant  
25 Balls of Kryptonite, LLC sells consumer electronic products in the United  
26 Kingdom (“UK”) through these websites.

27 6. Defendant Intrigue Inc., is a Belize corporation with its primary place  
28 of business in Pasadena, California. It also does business as Crazy Cameras and

1 Specialty Software through the websites [www.crazycameras.co.uk](http://www.crazycameras.co.uk) and  
2 [www.specialtysoftware.co.uk](http://www.specialtysoftware.co.uk). Intrigue Inc. sells digital cameras and computer  
3 software programs in the UK through these websites.

4 7. Defendant Jaivin Karnani is the sole officer and member of Balls of  
5 Kryptonite, LLC and sole officer and shareholder of Intrigue Inc.

6 8. Prior to the incorporation of Balls of Kryptonite, LLC, Defendant  
7 Karnani was manager and partner of Best Priced Brands, LLC, a California limited  
8 liability company that was voluntarily dissolved in June 2007. At all times  
9 material to this Complaint, acting alone or in concert with others, he has  
10 formulated, directed, controlled, and/or participated in the acts and practices set  
11 forth in this Complaint. Defendant Karnani transacts or has transacted business in  
12 this district.

### 13 COMMERCE

14 9. At all times material herein, Defendants have maintained a course of  
15 trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC  
16 Act, 15 U.S.C. § 44.

### 17 DEFENDANTS’ COURSE OF CONDUCT

18 10. Since at least November 2006, and continuing thereafter, Defendants  
19 have engaged in a plan, program, or campaign to deceptively advertise and sell  
20 consumer electronic products, such as cameras, video game systems, and computer  
21 software, in the UK via the internet at [www.bestpricedbrands.co.uk](http://www.bestpricedbrands.co.uk), [www.bite  
22 sizedeals.co.uk](http://www.bitesizedeals.co.uk), [www.crazycameras.co.uk](http://www.crazycameras.co.uk), and [www.specialty software.co.uk](http://www.specialtysoftware.co.uk).

23 11. Through these internet sites, Defendants induce UK consumers to  
24 purchase their products under the pretext of being located within the UK.  
25 Defendants accomplish this by using websites ending in “co.uk,” exclusively  
26 stating prices in pounds sterling, promising a low total price delivered (often lower  
27 than other UK competitors), referring to the “Royal Mail,” the UK’s postal service,  
28 and using UK mail forwarding addresses. Defendants do not disclose applicable

1 customs duties and import taxes typically imposed on shipments from outside the  
2 UK, or clearly and conspicuously disclose their physical addresses or phone  
3 numbers in the United States. In some communications, Defendants list an address  
4 in the UK, furthering the false impression that they are physically located in the  
5 UK.

6 12. The UK has enacted regulations known as the Consumer Protection  
7 (Distance Selling) Regulations (“DSRs”) governing sales by mail, phone, and  
8 internet. UK Statutory Instrument 2000 No. 2334. The DSRs provide various  
9 protections to consumers, including the right to cancel a transaction within seven  
10 days of receipt of the goods and the right to receive full refunds for cancelled  
11 orders or returned goods. Because Defendants purport to be located in the UK via  
12 the means described in Paragraph 9, many UK consumers who deal with  
13 Defendants assume they are protected by the DSRs, including these specific  
14 provisions.

15 13. Defendants frequently ship products to UK consumers that are not the  
16 products ordered, but are instead different models, products not intended for  
17 distribution in the UK and the European Union (“EU”), or software programs not  
18 licensed for such distribution. In many instances, the electronic products have US-  
19 compatible chargers that are incompatible with UK power systems. Defendants  
20 sometimes include a power converter. In other instances the user manuals and  
21 camera controls are entirely in Spanish or Chinese.

22 14. Defendants advertise that their electronic products come with “full  
23 warranties” and that products are warranted “directly by us through the  
24 manufacturers.” Consumers expect to receive full manufacturer warranties.  
25 Because Defendants substitute products not intended for distribution in the UK or  
26 in the EU, consumers do not receive manufacturer warranties. When consumers  
27 complain about this after purchase Defendants respond that they offer an undefined  
28 “warranty,” which requires consumers to ship back defective or damaged products

1 to California. Consumers do not receive any paperwork or description of what  
2 Defendants' "warranty" covers.

3 15. Although Defendants represent that merchandise will be shipped  
4 quickly (for example, in 48 hours), Defendants fail to deliver products in the time  
5 frame stated on their websites and by their representatives. In numerous instances,  
6 consumers do not receive their orders for weeks or more. Consumers who do not  
7 receive their orders on time are frequently charged on their credit cards right away,  
8 are not notified of the delay, and are not given an opportunity to consent to the  
9 delay or cancel the order and receive a refund.

10 16. In many cases consumers do not receive a product or a refund.

11 17. Defendants frequently do not respond to consumers' emails inquiring  
12 about their late orders. Only after numerous unanswered emails (and often,  
13 complaints to agencies such as the Better Business Bureau) do consumers learn that  
14 their products are purportedly out of stock. Many consumers who try to cancel  
15 before their products are shipped are told by Defendants that cancellations are not  
16 allowed, due to previously undisclosed return or cancellation policies. In some  
17 cases defendants respond that they are processing refunds immediately, but the  
18 actual refunds are delayed eight (8) weeks or more.

19 18. Defendants charge consumers for products that they do not have in  
20 stock and that they have no reasonable basis to believe they will obtain by the  
21 promised shipment date.

22 19. Defendants fail to clearly and conspicuously disclose material terms  
23 and conditions relating to refund policies, such as a 50% restocking fees or time  
24 limits. In some cases these restocking fees are charged even for refusal of delivery  
25 when consumers realize for the first time that the product is being shipped from the  
26 United States. On many occasions when UK consumers request refunds or returns  
27 for damaged products, different product models than the ones ordered, or products  
28 not made for distribution in the UK and the EU, Defendants refuse these requests

1 based on previously undisclosed terms and conditions, or fail to respond to  
2 consumers' emails entirely.

3 20. On some occasions Defendants advertise on their websites that they  
4 have self-certified to the U.S. Department of Commerce ("Commerce") that they  
5 are in voluntary compliance with the U.S.-E.U. Safe Harbor Framework ("Safe  
6 Harbor") with respect to their handling of personal information from the European  
7 Union. *See infra*, ¶¶ 34 - 37.

8 **THE FEDERAL TRADE COMMISSION ACT**

9 21. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or  
10 deceptive acts or practices in or affecting commerce. Misrepresentations or  
11 omissions of material fact constitute deceptive acts or practices prohibited by  
12 Section 5(a) of the FTC Act.

13 **FALSE AND MISLEADING REPRESENTATIONS IN VIOLATION**  
14 **OF SECTION 5(a) OF THE FTC ACT**

15 **COUNT ONE**

16 22. In numerous instances, in connection with the offering for sale or  
17 selling of goods over the internet, Defendants have represented to consumers,  
18 expressly or by implication, that they are located in the UK and that their goods are  
19 intended for sale within the UK, and thus, come with valid manufacturers'  
20 warranties.

21 23. In truth and in fact, Defendants are not in the UK and on many  
22 occasions they have sold goods in the UK which were not intended for sale in the  
23 UK, and do not come with valid manufacturers' warranties.

24 24. Therefore, the representation set forth in Paragraph 22 is false and  
25 misleading and constitutes a deceptive act or practice in violation of Section 5(a) of  
26 the FTC Act, 15 U.S.C. § 45(a).

27 **COUNT TWO**

28 25. In numerous instances, in connection with the offering for sale or

1 selling of goods over the internet, Defendants have represented to consumers,  
2 expressly or by implication, that the price for goods sold was the total cost  
3 delivered.

4 26. In truth and in fact, the price for goods sold was not the total cost  
5 delivered. Rather, consumers are required by law to pay substantial customs duties  
6 and import taxes in addition to the Defendants' advertised total price for the goods.

7 27. Therefore, the representation set forth in Paragraph 25 is false and  
8 misleading and constitutes a deceptive act or practice in violation of Section 5(a) of  
9 the FTC Act, 15 U.S.C. § 45(a).

### 10 **COUNT THREE**

11 28. In numerous instances, in connection with the offering for sale or  
12 selling of goods over the internet, Defendants have represented to consumers,  
13 expressly or by implication, that they are located in the UK and thus subject to UK  
14 DSRs giving consumers the unconditional right to cancel orders within seven days  
15 of receiving merchandise, and prohibiting the imposition of restocking fees for  
16 returned merchandise.

17 29. In truth and in fact, Defendants are not located in the UK, and do not  
18 comply with the UK DSRs. In fact, on numerous occasions, Defendants refuse to  
19 accept cancellation of orders received within seven days of receipt of merchandise,  
20 and they impose large restocking fees when merchandise is returned to them by  
21 consumers.

22 30. Therefore, the representation set forth in Paragraph 28 is false and  
23 misleading, and constitutes a deceptive act or practice in violation of Section 5(a) of  
24 the FTC Act, 15 U.S.C. § 45(a).

### 25 **COUNT FOUR**

26 31. In numerous instances, in connection with the offering for sale or  
27 selling of goods over the internet, Defendants have represented to consumers,  
28 expressly or by implication, that they will deliver products offered for sale on their

1 internet websites in exchange for payment in advance.

2 32. In truth and in fact, in numerous instances, Defendants have failed to  
3 deliver the products offered for sale on their internet websites in exchange for  
4 payment in advance.

5 33. Therefore, the representation set forth in Paragraph 31 is false and  
6 misleading, and constitutes a deceptive act or practice in violation of Section 5(a) of  
7 the FTC Act, 15 U.S.C. § 45(a).

8 **JOINT US - EU SAFE HARBOR FRAMEWORK**

9 34. The European Union Data Directive (“Directive”) requires Member  
10 States of the European Union (“EU”) to implement legislation that prohibits the  
11 transfer of personal data outside the EU, unless the EU has made a determination  
12 that the laws of the recipient jurisdiction are substantially equivalent to those of the  
13 EU. *See* Directive 95/46/EC of the European Parliament and of the Council (Oct.  
14 24, 1995), *available at* [http://ec.europa.eu/justice\\_home/fsj/privacy/docs/](http://ec.europa.eu/justice_home/fsj/privacy/docs/95-46-ce/dir1995-46_part1_en.pdf)  
15 [95-46-ce/dir1995-46\\_part1\\_en.pdf](http://ec.europa.eu/justice_home/fsj/privacy/docs/95-46-ce/dir1995-46_part1_en.pdf). This determination is commonly referred to as  
16 meeting the EU’s “adequacy” standard.

17 35. Because the EU has determined that laws of the United States do not  
18 meet its adequacy standard, the U.S. Department of Commerce (“Commerce”) and  
19 the EU developed the Safe Harbor, which went into effect in November 2000. The  
20 Safe Harbor allows U.S. companies to transfer personal data lawfully from the EU.  
21 To join the Safe Harbor, a company must self-certify to Commerce that it complies  
22 with seven principles that have been deemed to meet the EU’s adequacy standard.

23 36. Commerce maintains a public website, [www.export.gov/safeharbor](http://www.export.gov/safeharbor),  
24 where it posts the names of companies that have self-certified to Commerce that  
25 they adhere to a set of principles under the Safe Harbor. The listing of companies  
26 indicates whether their self-certification is “current” or “not current.” Companies  
27 are required to re-certify every year in order to retain their status as “current”  
28 members of the Safe Harbor.



1 of the Mail Order Rule, 16 C.F.R. § 435.1(a)(1), by soliciting orders for the sale of  
2 merchandise when at the time of the sale Defendants had no reasonable basis to  
3 expect they would be able to ship merchandise to buyers either within the time  
4 promised, or within thirty (30) days.

5 44. In numerous instances, after having solicited orders for merchandise  
6 and received “properly completed orders,” as that term is defined in Section  
7 435.2(d) of the Mail Order Rule, 16 C.F.R. § 435.2(d), and having been unable to  
8 ship some or all of the ordered merchandise to the buyer within the Mail Order  
9 Rule’s applicable time periods, as set forth in Section 435.1(a)(1) of the Mail Order  
10 Rule, 16 C.F.R. § 435.1(a)(1) (the “applicable time”), Defendants have:

- 11 a. Violated Section 435.1(b)(1) of the Rule by failing to timely  
12 offer to the buyer, clearly and conspicuously and without prior  
13 demand, an option either to consent to a delay in shipping or to cancel  
14 the order and receive a prompt refund;
- 15 b. Violated Section 435.1(b)(1) of the Rule by failing to provide  
16 the buyer with a definite revised shipping date;
- 17 c. Violated Section 435.1(b)(2) of the Rule by failing to timely  
18 offer to the buyer, clearly and conspicuously and without prior  
19 demand, a renewed option either to consent to a delay in shipping or to  
20 cancel the order and receive a prompt refund;
- 21 d. Violated Section 435.1(b)(2)(ii) of the Rule by failing to advise  
22 the buyer in a renewed option notice that the order will be  
23 automatically canceled and a prompt refund provided unless the buyer  
24 gives specific consent to a further delay prior to expiration of the old  
25 definite revised shipping date; and
- 26 e. Violated Section 435.1(c)(3) of the Rule by failing to deem  
27 orders cancelled and make prompt consumer refunds when consumers  
28 have not consented to further delay of shipments.

1           45. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that “unfair or  
2 deceptive acts or practices in or affecting commerce are hereby declared unlawful.”

3           46. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a  
4 violation of the Mail Order Rule constitutes an unfair or deceptive act or practice in  
5 violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

6                           **PRAYER FOR INJUNCTIVE AND MONETARY RELIEF**

7           WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Section  
8 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court’s own equitable powers,  
9 requests that the Court:

10           47. Enter a permanent injunction to prevent future violations by  
11 Defendants of the FTC Act and the Mail Order Rule;

12           48. Award such relief as the Court finds necessary to redress injury to  
13 consumers resulting from Defendants’ violations of the FTC Act and the Mail  
14 Order Rule, including but not limited to restitution and disgorgement of ill-gotten  
15 gains by Defendants; and

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1           49.   Award Plaintiff such other and additional equitable relief against  
2 Defendants for engaging in deceptive acts or practices as the Court may determine  
3 to be just and proper.  
4

5 Dated: May 16, 2011

Respectfully submitted,

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