

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA**

|                                  |   |          |
|----------------------------------|---|----------|
| FEDERAL TRADE COMMISSION,        | ) |          |
|                                  | ) |          |
| Plaintiff,                       | ) |          |
|                                  | ) | Case No. |
| v.                               | ) |          |
|                                  | ) |          |
| LOU LENTINE, individually and as | ) |          |
| an officer of VIATEK CONSUMER    | ) |          |
| PRODUCTS GROUP INC., and         | ) |          |
|                                  | ) |          |
| VIATEK CONSUMER PRODUCTS         | ) |          |
| GROUP INC., a corporation,       | ) |          |
|                                  | ) |          |
| Defendants.                      | ) |          |
|                                  | ) |          |

**COMPLAINT FOR CIVIL PENALTIES, INJUNCTION AND OTHER RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its Complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(l), 13(b), and 16(a) of the Federal Trade Commission Act as amended (“FTC Act”), 15 U.S.C. §§ 45(a), 45(l), 53(b), and 56(a), to obtain monetary civil penalties, permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ violations of a Commission Order entered on March 14, 2003, in a Commission proceeding bearing Docket No. 9303 (“Commission Order”), and to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with the promoting or offering for sale of Viatek Mosquito Shield Bands.

## **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(a), 45(l), 53(b), and 56(a).

3. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(1), (c)(2), and (d) and 1395(a) and 15 U.S.C. § 53(b).

## **DEFENDANTS**

4. Defendant Lou Lentine (“Lentine”) is the president and owner of Viatek Consumer Products Group (“Viatek”), with his principal place of business at 6011 Century Oaks Drive, Chattanooga, Tennessee 37416. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts or practices of Defendant Viatek, including the acts and practices set forth in this Complaint. Defendant Lentine, in connection with the matters alleged herein, transacts or has transacted business in this district. Under the Commission Order, Defendant Lentine, individually and as an officer of Lentek International, Inc. (“Lentek”), is enjoined from making any representation about the benefits, performance, or efficacy of any product, unless, at the time the representation is made, he possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

5. Defendant Viatek is a Florida corporation with its principal place of business at 6011 Century Oaks Drive, Chattanooga, Tennessee 37416. Defendant Viatek transacts or has transacted business in this district. At all times material to this Complaint, Defendant Viatek has participated in the acts and practices described in this Complaint, with notice of the Commission Order as served upon its president and owner, Defendant Lentine.

## COMMERCE

6. At all times material 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.

## PRIOR COMMISSION PROCEEDING

7. In a Commission proceeding bearing Docket No. 9303, the Commission charged Lentek, Lentine, and Joseph Durek (collectively referred to in the Commission Order as “respondents”) with making false, misleading, or unsubstantiated representations.

8. On March 14, 2003, the Commission entered its Decision and Order approving a settlement with Lentek, Lentine, and Durek.

9. The Commission Order includes the following provisions:

### ORDER

#### DEFINITIONS

For 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.

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5. Unless otherwise specified, “respondents” shall mean Lentek International, Inc., a corporation, its successors and assigns and its officers; Joseph Durek, individually; Lou Lentine, individually and as an officer of the corporation; and each of the above’s agents, representatives, and employees.

\*\*\*

V.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, 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, unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

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10. A copy of the Commission Order is attached to the Complaint as Exhibit A. The FTC served the Commission Order upon Lentine, and it remains in full force.

#### **DEFENDANTS' CONDUCT**

11. Defendants offer for sale, sell, and distribute Viatek Mosquito Shield Bands (also marketed as Viatek Mosquito Bands and Viatek Bug Repellant Bands) throughout the United States. Viatek Mosquito Shield Bands were sold online, at retail stores, and through distributors.

12. To induce consumers to purchase Viatek Mosquito Shield Bands, Defendants have advertised and promoted the product on Viatek's website and blog, on packaging, and in product brochures. The advertisements and promotional material Defendants disseminated or caused to be disseminated, include, but are not limited to, the attached Exhibits B through J, as well as referenced video presentations broadcast on home shopping channel HSN, which contain the statements described below, among others.

13. Defendants have disseminated, or caused to be disseminated, packaging for the product which makes representations about Viatek Mosquito Shield Bands, including, but not limited to, instructions for users to "[s]implify place on wrist, ankle, belt, stroller or walker" and

claims that the product “[k]eeps bugs and flying insects away” and “Protects Against Mosquitoes!” (Exhibit B).

14. Defendants have disseminated, or caused to be disseminated, product brochures that make representations about Viatek Mosquito Shield Bands, including, but not limited to, the following:

GREAT FOR ALL OUTDOOR ACTIVITIES  
Vapor barrier protects up to 5 feet. Apply to wrist, ankle, bag or stroller. Safe and effective for up to 120 hours ...

\*\*\*

Simply place on wrist, ankle, belt, stroller or walker [sic] One size fits all  
Keeps *mosquitoes* away

\*\*\*

Protects Against: Mosquitoes, No See-ums, Biting Flies and more!

\*\*\*

SCIENTIFICALLY PROVEN TO REPEL MOSQUITOS ...[.]

\*\*\*

(Exhibits C and D).

15. On Viatek’s website, [www.viatekproducts.com](http://www.viatekproducts.com), Defendants made various representations about Viatek Mosquito Shield Bands, including, but not limited to, the following claims:

Mosquito Shield Bands are great for all outdoor activities. Scientifically proven to repel mosquitoes, ticks, flies, gnats, and other annoying insects. Vapor barrier protects up to a 5-foot radius. Apply to wrist, ankle, bag, or stroller. Safe and effective for up to 120 hours, even when wet.

\*\*\*

Protects against mosquitoes, no see-ums, and other biting flies.

(Exhibits E and F).

16. Viatek's blog quotes an entomologist as saying, "We are bracing for a major bug war," and asks, "Are you ready to protect yourself this summer?" in the post *It's Going To Be a Buggy Summer*, <http://viatekblogspot.com/2012/06/its-going-to-be-buggy-summer.html> (June 21, 2012, 7:09 a.m.). The post says, "According to Lara Ingle, a writer from Fox News, mosquitoes, ants, water bugs, ticks and bees, are coming out all over the U.S with a **vengeance** this summer." (emphasis in original) The post also says, "Laura continues to write that one of the biggest concerns of having extra mosquitoes around the summer is the possibility of West Nile Virus. For those of you who don't know, West Nile virus is a disease spread by mosquitoes." The post lists several ways to "protect yourself" from mosquitoes, one of which says:

2. Protect Yourself with Bug Spray/Mosquito Bands

If you know that you are going to be outdoors on reasonably warm day (or during mosquitoes peak feeding times), make sure to spray or adorn yourself with mosquito repelling bands.

We suggest Mosquito Shield Bands featured on HSN.com. These mosquito bands offer up to 96 hours of protection and can easily be attached to your wrists, ankles, belts, backpacks, or even the stroller.

(Exhibit G).

17. In two other blog posts, *To Watch: Mosquito Bands on HSN*, <http://viatekblogspot.com/2012/05/to-watch-mosquito-bands-on-hsn.html> (May 10, 2012, 1:02 p.m.) (Exhibit H) and *Are you a Mosquito Magnet?*, <http://viatekblogspot.com/2012/05/are-you-mosquito-magnet.html> (May 18, 2012, 9:46 a.m.) (Exhibit I), Viatek states:

Effective for up to 120 hours, Viatek Mosquito Bands are great for all outdoor activities and scientifically proven to repel mosquitos, ticks, flies, gnats, and other annoying insects. It's [sic] simple, effective design and vapor barrier protects you up to five feet away.

Simply apply to wrist, ankle, bag, or even the stroller for superior protection.

(Exhibits H and I).

18. In the post *Gardening Tips*, <http://viatekblogspot.com/2012/06/gardening-tips.html> (June 14, 2012, 9:57 a.m.), Viatek asserts:

Tip #4: Protect Yourself From Annoying Insects!  
Mosquitoes carry threatening diseases! Rid yourself of potential illness by ordering your set of Viatek Mosquito Bands.

(Exhibit J).

19. On numerous occasions, HSN offered Viatek Mosquito Shield Bands for sale on its home shopping channel. During many of those broadcasts, a Viatek representative made claims about Mosquito Shield Bands, including, but not limited to, claims that wearing the band provides users with a “cocoon of protection,” whether the product is worn on the wrist or hung on objects like a chair or stroller. During numerous broadcasts, the Viatek representative claimed that the protection offered by the band would last for 96 hours or up to 96 hours. In numerous broadcasts, the Viatek representative spoke of a testimonial from a man who went hiking in the jungles of Colombia. The representative said that the man, who was wearing a Mosquito Shield Band, got no mosquito bites, and that a woman hiker did not wear a band and got numerous bites. The representative also said that, after the woman put on a Mosquito Shield Band, she got no more bites.

## **COMMISSION ORDER VIOLATIONS**

### **FIRST CAUSE OF ACTION**

20. Through the statements described in Paragraphs 13-19, Defendants have represented, directly or indirectly, expressly or by implication, that Viatek Mosquito Shield Bands will:

A. Protect or prevent users from being bitten by mosquitoes;

B. Create a vapor barrier that protects or prevents any person within five feet of the product from being bitten by mosquitoes; and

C. Protect or prevent users from being bitten by mosquitoes for 96 to 120 hours.

21. Defendants do not possess, and did not possess at the time they made the representations, competent and reliable scientific evidence to substantiate the representations described in Paragraph 20. Therefore, Defendants have violated Part V of the Commission Order.

### **VIOLATIONS OF SECTION 5(A) OF THE FTC ACT**

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

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

### **SECOND CAUSE OF ACTION**

24. Through the statements described in Paragraphs 13-19, Defendants have represented, directly or indirectly, expressly or by implication, that Viatek Mosquito Shield Bands will:

A. Protect or prevent users from being bitten by mosquitoes;

B. Create a vapor barrier that protects or prevents any person within five feet of the product from being bitten by mosquitoes; and

C. Protect or prevent users from being bitten by mosquitoes for 96 to 120 hours.

25. The representations set forth in Paragraph 24 were not substantiated at the time the representations were made.

26. Therefore, the making of the representations as set forth in Paragraph 24 of this Complaint constitutes 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).

### **CONSUMER INJURY**

27. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the Commission Order and the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

### **CIVIL PENALTIES AND EQUITABLE RELIEF**

28. Each representation Defendants have made in violation of the Commission Order constitutes a separate violation for which Plaintiff may seek civil penalties.

29. Each day Defendants have made, or have continued to make, representations in violation of the Commission Order constitutes a separate violation for which Plaintiff may seek civil penalties.

30. Section 5(l) of the FTC Act, 15 U.S.C. § 45(l), as modified by Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(c) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(c), authorizes the Court to award monetary civil penalties of up to \$16,000 for each such violation of the Commission Order.

31. Sections 5(l) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(l) and 53(b), empower this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of a Commission Order and the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of

contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

**PRAYER FOR RELIEF**

32. WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Sections 5(a) 5(l), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(l), 53(b), and 56(a), and the Court's own equitable powers, requests that the Court:

A. Enter a permanent injunction to prevent future violations of the FTC Act and the Commission Order by Defendants;

B. Award Plaintiff monetary civil penalties from Defendants for each violation of the Commission Order alleged in this Complaint;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the Commission Order and Section 5 of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may deem to be just and proper.

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

Respectfully submitted,

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General Counsel

DAMA J. BROWN  
Regional Director  
Southwest Region

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