

9

F

1 1 WILLIAM E. KOVACIC
General Counsel

2

3 SERENA VISWANATHAN
4 Federal Trade Commission
600 Pennsylvania Avenue, NW, S-4002
5 Washington, DC 20580
Phone (202) 326-3244
Fax (202) 325-3259

6

7

8 2

9 1

10

11

12

13

14

15

16

17

18

19

20

21

22

23

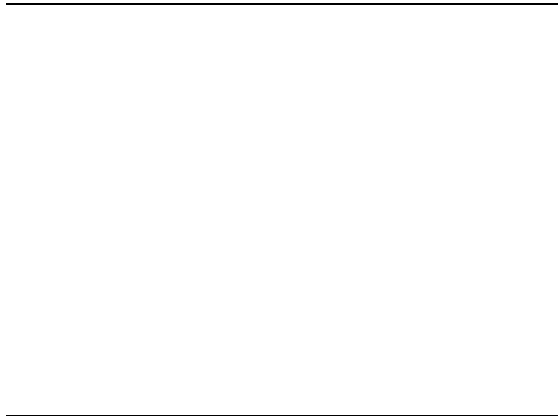
24

25

26

27

28



1 patches called “WaveShield” in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§
2 45(a) and 52.

3 **JURISDICTION AND VENUE**

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

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

8 **PLAINTIFF**

9 4. Plaintiff FTC is an independent agency of the United States Government created by
10 statute. 15 U.S.C. §§ 41-58. The FTC enforces Sections 5(a) and 12 of the FTC Act, 15 U.S.C.
11 §§ 45(a) and 52, which prohibit, respectively, deceptive acts or practices, and false advertisements
12 for food, drugs, devices, services, or cosmetics, in or affecting commerce. The FTC may initiate
13 federal district court proceedings to enjoin violations of the FTC Act, and to secure such equitable
14 relief as may be appropriate in each case. 15 U.S.C. § 53(b).

15 **DEFENDANTS**

16 5. Defendant Comstar Communications, Inc. (“Comstar”), also known as
17 Communications 2000, is a California corporation with its mailing address at P.O. Box 980430,
18 West Sacramento, CA, 95758. Its agent for service of process is Peter J. Stubbs, Esq., 777
19 Campus Commons Road, Suite 200, Sacramento, CA 95825. It markets devices intended to
20 block electromagnetic energy emitted from cellular phones. Comstar transacts business in the
21 Eastern District of California.

22 6. Defendant Randall A. Carasco (“Carasco”) is President of Comstar. His principal
23 office or place of business is the same as that of Comstar. In connection with the matters alleged
24 herein, Carasco transacts business in the Eastern District of California. At all times material to this
25 complaint, Carasco individually or in concert with others, formulated, directed, controlled, or
26 participated in the policies, acts, or practices of Comstar, including the acts or practices alleged in
27 this complaint.

1 **COMMERCE**

2 7. The acts and practices of Defendants, as alleged herein, are in or affecting
3 commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4 **DEFENDANTS' COURSE OF CONDUCT**

5 8. Since at least 1999, and continuing thereafter, Defendants have marketed a product
6 that purportedly blocks electromagnetic energy emitted from cellular telephones to consumers
7 throughout the United States. Defendants have marketed this product under the names
8 "WaveShield," "WaveShield 1000," and "WaveShield 2000" (collectively referred to herein as
9 "WaveShield"). WaveShield is a metallic fiber patch that is placed over the earpiece of the cellular
10 telephone.

11 9. Defendants have advertised, promoted, offered for sale, sold and distributed
12 WaveShield to consumers throughout the United States by means of television commercial, print,
13 and Internet advertisements, including but not limited to the attached Exhibits A through H.

14 10. To induce consumers to purchase WaveShield, Defendants disseminated or caused
15 to be disseminated advertisements and promotional materials for WaveShield which include, among
16 others, the following statements and depictions:

17 a. (Exhibit A: Webpage)

18 **STOP Cell Phone Radiation! with the WaveShield**

19 ***

20 Up to 99% Cellular Radiation Protection!

21 ***

22 Cell phone Radiation is **serious!** ...[M]edia around the world are focusing on the dangers of
23 radiation emitted from cell phones. ...

24 When you purchase a WaveShield for each of your cell phones, you can rest assured you have
25 enhanced the safety of your cell phone use. The WaveShield will block up to 99% of the radiation
26 entering the soft tissue of the ear canal.

26 **Protect yourself and loved ones!**

27 b. (Exhibit B: Webpage)

28 Wave Shield Cellular Protection System

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 STOP the Wave!

2 BLOCKS up to 99% of Electromagnetic Radiation

3 ***

4 The WAVE SHIELD blocks up to 99% of the electromagnetic radiation that may enter through the
5 antenna, without effecting [sic] the quality of transmission.

6 **Without Protection...** Electromagnetic radiation may enter the unprotected area of the brain when
7 phone is in use. [*Depiction: Concentric circles radiating from a point approximately at the*
8 *ear of person's head. The circles radiate into the head area.*] **With the "WAVE SHIELD"...**
9 Electromagnetic radiation is blocked from the brain via the inner ear when the "WAVE SHIELD" is
10 attached." [*Depiction: Concentric circles radiating from a point approximately at the ear of*
11 *a person's head. The circles radiate away from the head area.*]

12 g. (Exhibit G: Revised Packaging for "WaveShield")

13 STOP the Wave!

14 TESTED! PROVEN! BLOCKS up to 97% of Electromagnetic Radiation from your inner ear!

15 ***

16 The WAVE SHIELD blocks up to 97% of the electromagnetic radiation that may enter through the
17 inner ear without affecting the quality of transmission.

18 **Without Protection...** Electromagnetic radiation may enter the unprotected area of the brain when
19 phone is in use. [*Depiction: Concentric circles radiating from a point approximately at the*
20 *ear of person's head. The circles radiate into the head area.*] **With the "WAVE SHIELD"...**
21 Electromagnetic radiation is blocked from the brain via the inner ear when the "WAVE SHIELD" is
22 attached. [*Depiction: Concentric circles radiating from a point approximately at the ear of a*
23 *person's head. The circles radiate away from the head area.*]

24 11. Defendants charged \$19.95 to \$24.95 for WaveShield. Defendants offered for
25 sale and sold WaveShield to consumers throughout the United States.

26 DEFENDANTS' VIOLATIONS OF THE FTC ACT

27 12. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits deceptive acts or
28 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, services, or cosmetics. As set
forth below, Defendants have engaged and are continuing to engage 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 WaveShield.

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

3 **COUNT ONE**

4 14. Through the use of representations and statements contained in advertisements,
5 including but not limited to Exhibits A through H, Defendants have represented, expressly or by
6 implication, that WaveShield blocks up to 97 percent or up to 99 percent of radiation and other
7 electromagnetic energy emitted by cellular telephones.

8 15. In truth and in fact, WaveShield does not block up to 97 percent or up to 99
9 percent of electromagnetic energy emitted by cellular telephones. Therefore, the making of the
10 representations set forth in Paragraph 14 was, and is, a deceptive act or practice and constitutes
11 false and misleading advertising for a device in or affecting commerce in violation of Sections 5(a)
12 and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

13 **COUNT TWO**

14 16. Through the use of representations and statements contained in advertisements,
15 including but not limited to Exhibits A through H, Defendants have represented, expressly or by
16 implication, that WaveShield blocks up to 97 percent or up to 99 percent of radiation and other
17 electromagnetic energy emitted by cellular telephones.

18 17. Defendants did not possess and rely upon a reasonable basis that substantiated the
19 representations set forth in Paragraph 16 at the time the representations were made. Therefore, the
20 making of the representations set forth in Paragraph 16 was, and is, a deceptive act or practice and
21 constitutes false and misleading advertising for a device in or affecting commerce in violation of
22 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

23 **COUNT THREE**

24 18. In their advertising and sale of WaveShield, defendants have represented that the
25 product protects consumers from the electromagnetic energy emitted by the earpieces of cellular
26 and cordless phones. Defendants have failed to disclose that the vast majority of electromagnetic
27 energy emitted by cellular and cordless phones comes from the antenna and parts of the phone
28 other than the earpiece. Defendants have also failed to disclose that WaveShield has no effect on

1 this other electromagnetic energy. These facts would be material to consumers in their purchase or
2 use of the products. The failure to disclose these facts, in light of the representation made, was, and
3 is, a deceptive act or practice. Therefore, the making of the representations set forth in Paragraph
4 14 constitutes false and misleading advertising for a device in or affecting commerce in violation of
5 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

6 **COUNT FOUR**

7 19. Through the use of representations and statements contained in advertisements,
8 including but not limited to Exhibits A through H, Defendants have represented, expressly or by
9 implication, that scientific evidence has proven that WaveShield blocks up to 97 percent or up to
10 99 percent of electromagnetic energy emitted by cellular telephones.

11 20. In truth and in fact, scientific testing has not proven that WaveShield blocks up to
12 97 percent or up to 99 percent of electromagnetic energy emitted by cellular telephones.
13 Therefore, the making of the representations set forth in Paragraph 19 above was, and is, a
14 deceptive act or practice and constitutes false and misleading advertising of a device in or affecting
15 commerce in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

16 **CONSUMER INJURY**

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

22 **THIS COURT'S POWER TO GRANT RELIEF**

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

27 **PRAYER FOR RELIEF**

28 23. WHEREFORE, Plaintiff requests that this Court, as authorized by Section 13(b) of

1 the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

- 2 a. Permanently enjoin Defendants from violating Sections 5 and 12 of the FTC Act, as
3 alleged herein, in connection with the advertising or sale of food, drugs, devices,
4 cosmetics or other products, services or programs;
- 5 b. Award such equitable relief as the Court finds necessary to redress injury to
6 consumers resulting from Defendants' violations of the FTC Act, including, but not
7 limited to, consumer notification and/or education, rescission of contracts, the refund
8 of monies paid, and the disgorgement of ill-gotten gains; and
- 9 c. Award Plaintiff the costs of bringing this action, as well as such other and additional
10 equitable relief as the Court may deem just and proper.

11
12 Dated:

Respectfully submitted,

13 WILLIAM E. KOVACIC
14 General Counsel

15 _____
16 SERENA VISWANATHAN
17 Federal Trade Commission
18 600 Penn. Ave., NW, Rm. S-4002
19 Washington, DC 20580
20 (202) 326-3244 (phone)
21 (202) 326-3259 (fax)

22 JOHN K. VINCENT
23 United States Attorney

24 By: _____

25 EDMUND BRENNAN
26 Assistant United States Attorney
27 California Bar No. 092526
28 U.S. Attorney's Office
501 I Street, Suite 10-100
Sacramento, CA 95814
(916) 554-2700 (phone)
(916) 554-2900 (fax)

Attorneys for Plaintiff