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

FEDERAL TRADE COMMISSION, :
 :
Plaintiff, : Civil No. CV 09-05276 DDP
 :
v. : TEMPORARY RESTRAINING
 : ORDER with Other
JAIVIN KARNANI, and BALLS OF : Equitable Relief; Show
KRYPTONITE, LLC, a California : Cause Hearing for Plaintiff's
Limited Liability Company, all doing : Application for Preliminary
business as Bite Size Deals, LLC and Best : Injunction
Priced Brands, LLC :
 :
Defendants. :

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed its
Complaint for Permanent Injunction and for Equitable Relief in this matter on
July 20, 2009, pursuant to Section 13(b) of the Federal Trade Commission Act
("FTC Act"), 15 U.S.C. § 53(b). At that time Plaintiff also moved this Court for
issuance of a temporary restraining order pursuant to Rule 65 of the Federal Rules
of Civil Procedure, and for an order to show cause why a preliminary injunction
should not be granted, together with a memorandum and five volumes of exhibits
in support of that request. The Defendants were served with these pleadings on
July 21, 2009, through their attorney, Michael Bishop. The Defendants filed
opposition papers on July 29, 2009. The parties have stipulated to entry of a

1 temporary restraining order, which shall continue, at their request, until September
2 25, 2009, when a show cause hearing will be held.

3 FINDINGS:

4 1. This Court has jurisdiction of the subject matter of the case and over
5 all named parties;

6 2. Venue lies properly with this Court;

7 3. The complaint states a claim upon which relief may be granted against
8 Defendants under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

9 4. Defendants have marketed and sold various consumer electronic
10 goods to consumers in the United Kingdom ("UK") via Internet websites which
11 use "co.uk" names, and which state prices in pounds sterling.

12 5. At times Defendants have represented that merchandise will be
13 shipped quickly and, in certain instances, failed to deliver products within the time
14 anticipated time frame. Sometimes Defendants do not provide notice of delays or
15 request consent for delays.

16 6. On some occasions Defendants have advertised on their websites that
17 they have self-certified to the U.S. Department of Commerce ("Commerce") that
18 they are in voluntary compliance with the U.S.-EU Safe Harbor Framework with
19 respect to their handling of personal information from the European Union.
20 Commerce has no record of Defendants' participation in that program.

21 7. This temporary restraining order and other relief are in the public
22 interest, there is just cause for this Order to be entered, and this Order is authorized
23 by Section § 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b).

24 8. No security is required of any agency of the United States in
25 connection with the issuance of a temporary restraining order. Fed. R. Civ. P.
26 65(c).

27 9. There is good cause to continue this Temporary Restraining Order
28 until September 25, 2009 and the parties have consented to do so.

1 DEFINITIONS

2 1. "Balls of Kryptonite" means Ball of Kryptonite, LLC, a California
3 limited liability company with a registered address at 356 E. Colorado Blvd.,
4 Pasadena, CA 91101.

5 2. "Defendants" means Balls of Kryptonite and Jaivin Karnani.

6 3. "Assets" means any legal or equitable interest in, right to, or claim to,
7 any real or personal property, including without limitation, chattels, goods,
8 instruments, equipment, fixtures, general intangibles, leaseholds, mail or other
9 deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares
10 of stock, and all cash, wherever located.

11 4. "Commerce" means as defined in Section 4 of the FTC Act, 15 U.S.C.
12 § 44.

13 5. "Document" means the complete original and any non-identical copy
14 (whether different from the original because of notations on the copy or otherwise),
15 regardless of origin or location, of any written, typed, printed, transcribed, taped,
16 recorded, filmed, punched, computer-stored or graphic matter of every type and
17 description, however and by whomever prepared, produced, disseminated or made,
18 including but not limited to any advertisement, book, pamphlet, periodical,
19 contract, correspondence, file, invoice, memorandum, note, telegram, report,
20 record, handwritten note, working paper, cutting slip, chart, graph, paper, index,
21 map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary,
22 agenda, minute, code book, opened e-mail, and computer material
23 (including print-outs, cards, magnetic or electronic tapes, discs and such codes or
24 instructions as will transform such computer materials into easily understandable
25 form).

26 6. "Internet" means a worldwide system of linked computer networks
27 that use a common protocol (TCP/IP) to deliver and receive information. The
28 "Internet" includes but is not limited to the following forms of electronic

1 communication: electronic mail and email mailing lists, the World Wide Web,
2 websites, newsgroups, Internet Relay Chat, file transfers protocols thereon, and
3 remote computer access from anywhere in the world thereto.

4 7. "Mail Order Rule" means the Federal Trade Commission's Trade
5 Regulation Rule Concerning Mail or Telephone Order Merchandise, 16 C.F.R. Part
6 435, or as the Rule may hereafter be amended.

7 8. "Person" means a natural person, organization or other legal entity,
8 including a corporation, partnership, proprietorship, limited liability company,
9 association, cooperative, or any other group or combination acting as an entity.

10 9. "World Wide Web" means a system used on the Internet for cross-
11 referencing and retrieving information.

12 10. A "website" means a set of electr

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1 misrepresenting, expressly or by implication, any of the following:

- 2 A. Defendants' location, including but not limited to any
3 misrepresentation that Defendants are physically located in or operate
4 from the United Kingdom or European Union, by any means.
- 5 B. The qualities, characteristics, or model names and numbers of any
6 goods sold, including but not limited to any representation about the
7 existence and/or validity of any manufacturers' warranty;
- 8 C. The total price for goods sold; or
- 9 D. The extent to which Defendants are members of, adhere to, comply
10 with, are certified by, are endorsed by, otherwise participate in any
11 privacy, security, or any other compliance program sponsored by any
12 government or third party.

13 IT IS FURTHER ORDERED the Defendants shall clearly and
14 conspicuously disclose cancellation, exchange, or refund policies on their websites.

15 II.

16 IT IS FURTHER ORDERED that Defendants and their successors,
17 assigns, officers, agents, servants, employees, and those persons or entities in
18 active concert or participation with any of them who receive actual notice of this
19 Order by personal service, facsimile transmission, email, or otherwise, whether
20 acting directly or through any corporation, subsidiary, division, or other device, in
21 connection with the advertising, marketing, promotion, offering for sale or sale of
22 any goods over the Internet, in online commerce, are hereby temporarily
23 restrained and enjoined from violating any provision of the Mail Order Rule in any
24 way, including but not limited to:

- 25 A. Violating Section 435.1(b)(1) of the Rule by failing to timely offer to
26 the buyer, clearly and conspicuously and without prior demand, an
27 option either to consent to a delay in shipping or to cancel the order
28 and receive a prompt refund;

- 1 B. Violating Section 435.1(b)(1) of the Rule by failing to provide the
- 2 buyer with a definite revised shipping date;
- 3 C. Violating Section 435.1(b)(2) of the Rule by failing to timely offer to
- 4 the buyer, clearly and conspicuously and without prior demand, a
- 5 renewed option either to consent to a delay in shipping or to cancel
- 6 the order and receive a prompt refund;
- 7 D. Violating Section 435.1(b)(2)(ii) of the Rule by failing to advise the
- 8 buyer in a renewed option notice that the order will be automatically
- 9 canceled and a prompt refund provided unless the buyer gives specific
- 10 consent to a further delay prior to expiration of the old definite revised
- 11 shipping date; or
- 12 E. Violating Section 435.1(c)(3) of the Rule by failing to deem orders
- 13 cancelled and make prompt consumer refunds when consumers have
- 14 not consented to further delay of shipments.

15 FINANCIAL AND BUSINESS ACCOUNTING

16 III.

17 IT IS FURTHER ORDERED that no later than August 18, 2009:

18 A. Defendant Jaivin Karnani shall complete and deliver to the FTC the

19 Financial Statement captioned "Financial Statement of Individual Defendant," a

20 copy of which is attached hereto as Attachment A. Defendant Jaivin Karnani shall

21 not be obligated to provide information or documentation otherwise required under

22 Item 27 of Attachment A titled "Tax Returns." The FTC may reserve the right to

23 request those documents at a later date;

24 B. Defendant Balls of Kryptonite LLC shall complete and deliver to the

25 FTC the Financial Statement captioned "Financial Statement of Corporate

26 Defendant," a copy of which is attached hereto as Attachment B. Defendant Jaivin

27 Karnani shall be liable for this obligation. Defendant Karnani shall also complete

28 and deliver to the FTC additional Financial Statements for all corporations,

1 partnerships, trusts or other entities that owns, controls, or is associated with in
2 any capacity. Defendant Jaivin Karina shall not be obligated to provide
3 information or documentation otherwise required under Item 17 of Attachment B
4 titled "Tax Returns." The FTC may reserve the right to request those documents at
5 a later date;

6 C. Defendants shall provide the FTC with access to records and
7 documents pertaining to assets of any of Defendants that are held by financial
8 institutions outside the territory of the United States by signing a Consent to
9 Release of Financial Records, a copy of which is attached hereto as Attachment C.

10 D. Defendants shall provide the address and telephone number for each
11 business premises used by Defendants in connection with sale or offering for sale
12 of goods over the Internet.

13 E. Defendants shall state their: (1) total gross sales revenues for the years
14 2006 through 2009 to date derived from the sale offering for sale of goods over
15 the Internet; (2) total gross operating expenses for the years 2006 through 2009 to
16 date; (3) gross operating expenditures on a monthly basis per category for the years
17 2006 through 2009 to date, including but not limited to payroll, advertising,
18 utilities, and property leases; and (4) gross capital expenditures for the years 2006
19 through 2008 and 2009 to date.

20 PRESERVATION OF RECORDS AND TANGIBLE THINGS

21 IV.

22 IT IS FURTHER ORDERED that Defendants and their successors,
23 assigns, officers, agents, servants, employees, and those persons or entities in
24 active concert or participation with any of them who receive actual notice of this
25 Order by personal service, facsimile transmission, email, or otherwise, whether
26 acting directly or through any corporation, subsidiary, division, or other device, are
27 hereby enjoined from:

28 A. Destroying, erasing, mutilating or ceasing, altering, transferring, or

1 otherwise disposing of, in any manner, directly or indirectly, any documents or
2 records that relate to the business transactions, or business or personal finances, of
3 Defendants, or other entity directly or i

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1 employees, to the extent known or to the extent this information can be obtained
2 through reasonable diligence; and (4) a statement describing the business entity's
3 intended or actual activities. If Defendant Jaivin Karnani is already engaged in any
4 of the afore-noted activities as of the date this Order is entered, he will submit a
5 written statement providing the information required by this paragraph within ten
6 (10) days of entry of this Order.

7 B. On a going-forward basis Jaivin Karnani shall notify the Commission
8 at least seven (7) days prior to affiliating with, becoming employed by, or
9 performing any work for any business that is a named Defendant in this action.
10 Each notice shall include the new business address and a statement of the nature of
11 the business or employment and the nature of his duties and responsibilities in
12 connection with that business or employment.

13 CONFIDENTIALITY ORDER

14 VI.

15 IT IS FURTHER ORDERED that the production of documents and
16 information pursuant to this Stipulation shall be protected by a Confidentiality
17 Order entered into by the parties and presented to the Court for approval herewith.

18 NOTICE TO EMPLOYEES AND AGENTS

19 VII.

20 IT IS FURTHER ORDERED that within six (6) calendar days following
21 this Order, Defendants shall provide a copy of this Order to each of their
22 employees, directors, officers, subsidiaries, affiliates, attorneys, independent
23 contractors, representatives, franchisees and all persons in active concert or
24 participation with Defendants. This section shall not apply to companies that
25 solely supply products to Defendants. Within twelve (12) calendar days following
26 this Order, Defendants shall provide the FTC with an affidavit identifying the
27 names, titles, addresses, and telephone numbers of the persons and entities that
28 Defendants have served with a copy of this Order in compliance with this

1 provision.

3 LIMITED EXPEDITED DISCOVERY

4 VIII.

5 IT IS FURTHER ORDERED that, notwithstanding the provisions of
6 Federal Rules of Civil Procedure 26(a) and (f) and 30(a)(2)(C), and Local Rule
7 26.1, and pursuant to Federal Rules of Civil Procedure 30(a), 34, and 45, the FTC
8 is granted leave, at any time during service of this Order, to:

9 A. Take the deposition, on September 8 and 9, 2009, of any person,
10 whether or not a party, for the purpose of discovering the nature, location, status,
11 and extent of assets of the defendants, or their affiliates or subsidiaries; the
12 nature and location of documents reflecting the business transactions of these
13 defendants, or their affiliates or subsidiaries; and the applicability of any
14 evidentiary privileges to this action. If the persons, sought for deposition are not
15 available on those dates the parties will work with each other to find other mutually
16 agreeable dates on which to take the depositions. The limitations and conditions
17 set forth in Fed. R. Civ. P. 30(a)(B) and 31(a)(2)(B) regarding subsequent
18 depositions of an individual shall not apply to depositions taken pursuant to this
19 Section. Any such depositions taken pursuant to this Section shall not be counted
20 toward the ten-deposition limit set forth in Fed. R. Civ. P. 30(a)(2)(A) and
21 31(a)(2)(A). Service of discovery upon a party, taken pursuant to this Section,
22 shall be sufficient if made by facsimile or by overnight delivery; and

23 B. Demand the production of documents, on five (5) days' notice, from
24 any person, whether or not a party, relating to the nature, status, or extent of
25 Defendants' assets, or of their affiliates or subsidiaries; the location of documents
26 reflecting the business transactions of Defendants, or of their affiliates or
27 subsidiaries; and the applicability of any evidentiary privileges to this action,
28 provided that twenty four (48) hours' notice shall be deemed sufficient for the

1 production of any such documents that are maintained or stored only as electronic
2 data.

3 ORDER TO SHOW CAUSE

4 IX.

5 IT IS FURTHER ORDERED , pursuant to Fed. R. Civ. P. 65(b), that
6 Defendants shall appear on the 25th day of September, 2009, at 2:30 p.m. at the
7 United States Courthouse, Courtroom 3, Second Floor, 312 Spring Street, Los
8 Angeles, California, to show cause, if any, there be, why this Court should not enter
9 a preliminary injunction, pending final ruling on the complaint, against Defendants
10 enjoining them from further violations of the FTC Act and imposing such
11 additional relief as may be appropriate.

12 EXPIRATION OF THIS ORDER

13 X.

14 IT IS FURTHER ORDERED that the Temporary Restraining Order
15 granted herein shall expire on September 25th, 2009, at 5:00 p.m. unless within
16 such time the Order, for good cause shown, is extended, or unless, as to any
17 Defendant, the Defendant consents that it should be extended for a longer period of
18 time.

19 SERVICE OF PLEADINGS, MEMORANDA, AND EVIDENCE

20 XI.

21 IT IS FURTHER ORDERED that Defendants shall file any answering
22 affidavits, pleadings, or legal memoranda with the Court and serve the same on
23 counsel for the FTC no later than four (4) business days prior to the preliminary
24 injunction hearing in this matter. The FTC may file responsive or supplemental
25 pleadings, materials, affidavits, or memoranda with the Court and serve the same
26 on counsel for Defendants no later than one (1) business day prior to the
27 preliminary injunction hearing in this matter, provided that service shall be
28 performed by personal or overnight delivery or by email, and documents shall be

1 delivered so that they shall be received by the other parties no later than 12:00 p.m.
2 (PDST) on the appropriate date listed in this section.

3 NOTIFICATION PRIOR TO HEARING

4 XII.

5 IT IS FURTHER ORDERED that any party who desires to present live
6 testimony at the preliminary injunction hearing in this matter shall file with the
7 Court and serve on all opposing parties, not less than five (5) business days prior to
8 the preliminary injunction hearing in this matter, a witness list that shall include the
9 name, address, and telephone number of any such witness, and either a summary of
10 the expected testimony, or the witness's declaration revealing the substance of such
11 witness' expected testimony. Service shall be performed by personal or overnight
12 delivery or by email, and documents shall be delivered so that they shall be
13 received by the other parties no later than 12:00 p.m. (PDST) on the listed date.

14 CORRESPONDENCE WITH COMMIS mns

1 or by private process server, on Defendants or any other person or entity that may
2 be subject to any provision of this Order.

3 RETENTION OF JURISDICTION

4 XV.

5 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this
6 matter for all purposes.

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8 IT IS SO ORDERED, this 31st day of July, 2009.

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Honorable Dean D. Pregerson
UNITED STATES DISTRICT JUDGE

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