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

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

16 **FEDERAL TRADE COMMISSION,**

17 **Plaintiff,**

18 **v.**

19 **JAIVIN KARNANI, and BALLS OF**  
20 **KRYPTONITE, LLC, a California**  
21 **Limited Liability Company, all doing**  
22 **business as Bite Size Deals, LLC and Best**  
**Priced Brands, LLC**

23 **Defendants.**

CV09-5276 ROWL (EX)

Civil No. DDP

Complaint for Permanent  
Injunction and Other  
Equitable Relief

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

26 1. The FTC brings this action pursuant to Section 13(b) of the Federal  
27 Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a permanent  
28 injunction, restitution, disgorgement of ill-gotten gains, and other equitable relief

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

5 **JURISDICTION AND VENUE**

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

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

10 **THE PARTIES**

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

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

26 6. Defendant Jaivin Karnani is the sole officer and member of Balls of  
27 Kryptonite, LLC. Prior to the incorporation of Balls of Kryptonite, LLC,  
28 Defendant Karnani was manager and partner of Best Priced Brands, LLC, a

1 California limited liability company that was voluntarily dissolved in June 2007.  
2 At all times material to this Complaint, acting alone or in concert with others, he  
3 has formulated, directed, controlled, and/or participated in the acts and practices set  
4 forth in this Complaint. Defendant Karnani transacts or has transacted business in  
5 this district.

### 6 COMMERCE

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

### 10 DEFENDANTS’ COURSE OF CONDUCT

11 8. Since at least November 2006, and continuing thereafter, Defendants  
12 have engaged in a plan, program, or campaign to deceptively advertise and sell  
13 consumer electronic products, such as cameras, video game systems, and computer  
14 software, in the UK via the internet at [www.bestpricedbrands.co.uk](http://www.bestpricedbrands.co.uk) and  
15 [www.bitesizedeals.co.uk](http://www.bitesizedeals.co.uk).

16 9. Through these internet sites, Defendants induce UK consumers to  
17 purchase their products under the pretext of being located within the UK.  
18 Defendants accomplish this by using websites ending in “co.uk,” exclusively  
19 stating prices in pounds sterling, promising a low total price delivered (often lower  
20 than other UK competitors), and referring to the “Royal Mail,” the UK’s postal  
21 service. Defendants do not disclose applicable customs duties and import taxes  
22 typically imposed on shipments from outside the UK, or clearly and conspicuously  
23 disclose their physical address or phone number in the United States. In some  
24 communications, Defendants list an address in the UK, furthering the false  
25 impression that they are physically located in the UK.

26 10. The UK has enacted regulations known as the Consumer Protection  
27 (Distance Selling) Regulations (“DSRs”) governing sales by mail, phone, and  
28 internet. UK Statutory Instrument 2000 No. 2334. The DSRs provide various

1 protections to consumers, including the right to cancel a transaction within seven  
2 days of receipt of the goods and the right to receive full refunds for cancelled  
3 orders or returned goods. Because Defendants purport to be located in the UK via  
4 the means described in Paragraph 9, many UK consumers who deal with  
5 Defendants assume they are protected by the DSRs, including these specific  
6 provisions.

7 11. Defendants frequently ship products to UK consumers that are not the  
8 products ordered, but are instead different models, or are products not intended for  
9 distribution in the UK and the European Union (“EU”). In many instances, these  
10 products have US-compatible chargers that are incompatible with UK power  
11 systems. Defendants sometimes include a power converter. In other instances the  
12 user manuals and camera controls are entirely in Spanish or Chinese.

13 12. Defendants advertise that their products come with “full warranties”  
14 and that products are warranted “directly by us through the manufacturers.”  
15 Consumers expect to receive full manufacturer warranties. Because Defendants  
16 substitute products not intended for distribution in the UK or in the EU, consumers  
17 do not receive manufacturer warranties. When consumers complain about this  
18 after purchase Defendants respond that they offer an undefined “warranty,” which  
19 requires consumers to ship back defective or damaged products to California.  
20 Consumers do not receive any paperwork or description of what Defendants’  
21 “warranty” covers.

22 13. Although Defendants represent that merchandise will be shipped  
23 quickly (for example, in 48 hours), Defendants fail to deliver products in the time  
24 frame stated on their website and by their representatives. In numerous instances,  
25 consumers do not receive their orders for weeks or more. Consumers who do not  
26 receive their orders on time are frequently charged on their credit cards right away,  
27 are not notified of the delay, and are not given an opportunity to consent to the  
28 delay or cancel the order and receive a refund.

1           14. Defendants do not respond to consumers’ emails inquiring about their  
2 late orders. Only after numerous unanswered emails (and often, complaints to  
3 agencies such as the Better Business Bureau) do consumers learn that their products  
4 are purportedly out of stock. Many consumers who try to cancel before their  
5 products are shipped are told by Defendants that cancellations are not allowed, due  
6 to previously undisclosed return or cancellation policies.

7           15. Defendants fail to clearly and conspicuously disclose material terms  
8 and conditions relating to refund policies, such as a 50% restocking fees or time  
9 limits. In some cases these restocking fees are charged even for refusal of delivery  
10 when consumers realize for the first time that the product is being shipped from the  
11 United States. On many occasions when UK consumers request refunds or returns  
12 for damaged products, different product models than the ones ordered, or products  
13 not made for distribution in the UK and the EU, Defendants refuse these requests  
14 based on previously undisclosed terms and conditions, or fail to respond to  
15 consumers’ emails entirely.

16           16. 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.-E.U. Safe Harbor Framework (“Safe  
19 Harbor”) with respect to their handling of personal information from the European  
20 Union. *See infra*, ¶¶ 27 - 30.

21                           **THE FEDERAL TRADE COMMISSION ACT**

22           17. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or  
23 deceptive acts or practices in or affecting commerce. Misrepresentations or  
24 omissions of material fact constitute deceptive acts or practices prohibited by  
25 Section 5(a) of the FTC Act.

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

3   **COUNT ONE**

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

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

12          20.    Therefore, the representation set forth in Paragraph 18 is false and  
13 misleading and constitutes a deceptive act or practice in violation of Section 5(a) of  
14 the FTC Act, 15 U.S.C. § 45(a).

15   **COUNT TWO**

16          21.    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 the price for goods sold was the total cost  
19 delivered.

20          22.    In truth and in fact, the price for goods sold was not the total cost  
21 delivered. Rather, consumers were required by law to pay substantial customs  
22 duties and import taxes in addition to the Defendants' advertised total price for the  
23 goods.

24          23.    Therefore, the representation set forth in Paragraph 21 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 THREE**

28          24.    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 they were located in the UK and thus subject to  
3 UK DSRs giving consumers the unconditional right to cancel orders within seven  
4 days of receiving merchandise, and prohibiting the imposition of restocking fees for  
5 returned merchandise.

6 25. In truth and in fact, defendants are not located in the UK, and do not  
7 comply with the UK DSRs. In fact, on numerous occasions, defendants have  
8 refused to accept cancellation of orders received within seven days of receipt of  
9 merchandise, and they have imposed large restocking fees when merchandise was  
10 returned to them by consumers.

11 26. Therefore, the representation set forth in Paragraph 24 is false and  
12 misleading, and constitutes deceptive acts or practices in violation of Section 5(a) of  
13 the FTC Act, 15 U.S.C. § 45(a).

#### 14 **JOINT US - EU SAFE HARBOR FRAMEWORK**

15 27. The European Union Data Directive (“Directive”) requires Member  
16 States of the European Union (“EU”) to implement legislation that prohibits the  
17 transfer of personal data outside the EU, unless the EU has made a determination  
18 that the laws of the recipient jurisdiction are substantially equivalent to those of the  
19 EU. *See* Directive 95/46/EC of the European Parliament and of the Council (Oct.  
20 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)  
21 [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  
22 meeting the EU’s “adequacy” standard.

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

1 standard.

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

8 30. Companies under the jurisdiction of the FTC or the U.S. Department of  
9 Transportation are eligible to join the Safe Harbor. A company under the FTC’s  
10 jurisdiction that self-certifies to the Safe Harbor principles but fails to implement  
11 them may be subject to an enforcement action based on the FTC’s deception  
12 authority under Section 5 of the FTC Act.

#### 13 **COUNT FOUR**

14 31. In numerous instances, in connection with the offering for sale or  
15 selling of goods over the internet, Defendants have represented to consumers,  
16 expressly or by implication, that they have self-certified to Commerce that they are  
17 complying with the Safe Harbor.

18 32. In truth and in fact, Defendants have never self-certified to Commerce  
19 that they are complying with the Safe Harbor.

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

#### 23 **THE MAIL ORDER RULE**

24 34. The Mail Order Rule was promulgated by the Commission on October  
25 22, 1975, under the FTC Act, 15 U.S.C. § 41, *et seq.*, and became effective  
26 February 2, 1976. The Commission amended the Rule on September 21, 1993,  
27 under Section 18 of the FTC Act, 15 U.S.C. § 57a, and these amendments became  
28 effective on March 1, 1994. The Rule applies to orders placed by telephone, by



1 facsimile transmission, or on the Internet.

2 **VIOLATIONS OF THE MAIL ORDER RULE**

3 **COUNT FIVE**

4 35. Beginning in 2006, Defendants have engaged in the sale of  
5 merchandise in commerce, as “commerce” is defined in Section 4 of the FTC Act,  
6 15 U.S.C. § 44.

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

- 13 a. Violated Section 435.1(b)(1) of the Rule by failing to timely  
14 offer to the buyer, clearly and conspicuously and without prior  
15 demand, an option either to consent to a delay in shipping or to cancel  
16 the order and receive a prompt refund;
- 17 b. Violated Section 435.1(b)(1) of the Rule by failing to provide  
18 the buyer with a definite revised shipping date;
- 19 c. Violated Section 435.1(b)(2) of the Rule by failing to timely  
20 offer to the buyer, clearly and conspicuously and without prior  
21 demand, a renewed option either to consent to a delay in shipping or to  
22 cancel the order and receive a prompt refund;
- 23 d. Violated Section 435.1(b)(2)(ii) of the Rule by failing to advise  
24 the buyer in a renewed option notice that the order will be  
25 automatically canceled and a prompt refund provided unless the buyer  
26 gives specific consent to a further delay prior to expiration of the old  
27 definite revised shipping date; and  
28

1  
2 e. Violated Section 435.1(c)(3) of the Rule by failing to deem  
3 orders cancelled and make prompt consumer refunds when consumers  
4 have not consented to further delay of shipments.

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

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

10 **PRAYER FOR INJUNCTIVE AND MONETARY RELIEF**

11 WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Section  
12 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court’s own equitable powers,  
13 requests that the Court:

14 39. Enter a permanent injunction to prevent future violations by  
15 Defendants of the FTC Act and the Mail Order Rule;


16 40. Award such relief as the Court finds necessary to redress injury to  
17 consumers resulting from Defendants’ violations of the FTC Act and the Mail  
18 Order Rule, including but not limited to restitution and disgorgement of ill-gotten  
19 gains by Defendants; and

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1           41. 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: 7/20/09

Respectfully submitted,  
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GENERAL COUNSEL

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