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

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**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

**v.**

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

**Defendants.**

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**Civil No. CV 09-05276 DDP  
TEMPORARY RESTRAINING  
ORDER with Other  
Equitable Relief; Show  
Cause Hearing for Plaintiff’s  
Application for Preliminary  
Injunction**

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Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Complaint for Permanent Injunction and Other 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.

**DEFINITIONS**

1  
2 1. “Balls of Kryptonite” means Balls 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, routing slip, chart, graph, paper, index,  
21 map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary,  
22 agenda, minute, code book, opened electronic 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, and 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, an organization or other legal entity,  
8 including a corporation, partnership, sole proprietorship, limited liability company,  
9 association, cooperative, or any other group of 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 electronic files or documents, usually a  
13 home page and subordinate pages, readily viewable on a computer by anyone with  
14 access to the Internet and standard Internet browser software.

15 11. A "webpage" means a single electronic document on the World Wide  
16 Web, readily viewable on a computer by anyone with access to the Internet and  
17 standard Internet browser software. Every webpage on the World Wide Web is  
18 identified by a globally unique address.

## 19 **PROHIBITED BUSINESS ACTIVITIES**

### 20 **I.**

21 **IT IS HEREBY ORDERED** that Defendants and their successors, assigns,  
22 officers, agents, servants, employees, and attorneys, and those persons or entities in  
23 active concert or participation with any of them who receive actual notice of this  
24 Order by personal service, facsimile transmission, email, or otherwise, whether  
25 acting directly or through any corporation, subsidiary, division, or other device, in  
26 connection with the advertising, marketing, promotion, offering for sale or sale of  
27 any goods over the Internet, in or affecting commerce, are hereby temporarily  
28 restrained and enjoined from misrepresenting, or from assisting others in

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, or 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, and 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 or affecting 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 he owns, controls, or is associated with in  
2 any capacity. Defendant Jaivin Karnani 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 the 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 or 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, and 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, concealing, altering, transferring, or

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

4 B. Failing to create and maintain books, records, and accounts which, in  
5 reasonable detail, accurately, fairly, and completely reflect the incomes, assets,  
6 disbursements, transactions and use of monies by any Defendant or other entity  
7 directly or indirectly under the control of any Defendants;

8 C. Failing to maintain records of communications with consumers,  
9 including consumer complaints and disputes, and any responses made to those  
10 complaints or disputes, whether those complaints or disputes come from the  
11 consumer or any intermediary located anywhere in the world, such as a  
12 government agency, Better Business Bureau, or any other source; and

13 D. Destroying or erasing any websites or webpages and any  
14 electronically stored information on websites, web servers, web logs, webpages  
15 and email used by Defendants for the advertising, marketing, promotion, offering  
16 for sale or sale of goods over the Internet, however, changes to such websites,  
17 webpages or electronically stored information for the purpose of complying with  
18 this Order shall not be deemed in violation of this subsection.

19 **NOTIFICATION OF BUSINESS ACTIVITIES**

20 **V.**

21 **IT IS FURTHER ORDERED** that:

22 A. Jaivin Karnani is hereby temporarily restrained and enjoined from  
23 directly or indirectly creating, operating, or exercising any control over any  
24 internet retail business, including any partnership, limited partnership, joint  
25 venture, sole proprietorship or corporation, without first serving on counsel for the  
26 Commission a written statement disclosing the following: (1) the name of the  
27 business entity; (2) the address and telephone number of the business entity; (3) the  
28 names of the business entity's officers, directors, principals, managers and



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 not 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 provided 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.

2  
3 **LIMITED EXPEDITED DISCOVERY**

4 **VIII.**

5 **IT IS FURTHER ORDERED** that, notwithstanding the provisions of  
6 Federal Rules of Civil Procedure 26(d) 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 after 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 of 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 their depositions. The limitations and conditions  
17 set forth in Fed. R. Civ. P. 30(a)(2)(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 dates 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, no later 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' 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 COMMISSION**

15 **XIII.**

16 **IT IS FURTHER ORDERED** that for the purposes of this Order, all  
17 service on and correspondence to the FTC shall sent via Federal Express or by  
18 email addressed to:

19 James A. Prunty  
20 Serena Viswanathan  
21 Federal Trade Commission  
22 600 Pennsylvania Avenue, NW, Room NJ-3212  
23 Washington, DC 20580  
24 Fax: (202) 326-3259  
25 [jprunty@ftc.gov](mailto:jprunty@ftc.gov)  
26 [sviswanathan@ftc.gov](mailto:sviswanathan@ftc.gov)

27 **SERVICE OF THIS ORDER**

28 **XIV.**

**IT IS FURTHER ORDERED** that copies of this Order may be served by  
facsimile transmission, personal or overnight delivery, or U.S. Express Mail, by  
agents and employees of the FTC or any state or federal law enforcement agency

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  
11 UNITED STATES DISTRICT JUDGE

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