

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

WELLCO, INC., a corporation, and

GEORGE M. MOSCONE, individually and as an
officer of WELLCO, INC.,

Defendants.

Case No. 1:21-cv-02081-MKV

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint For Permanent Injunction And Other Equitable Relief (“Complaint”), for a permanent injunction, and other equitable relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The Commission and Defendants stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint alleges that Defendants participated in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with the advertising, marketing, distribution, and sale of television antennas and related amplifiers.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as

specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.

4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.

5. Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

A. **“Competent and Reliable Evidence”** means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that (1) have been conducted and evaluated in an objective manner by qualified persons and (2) are generally accepted in the profession to yield accurate and reliable results.

B. **“Defendants”** means the Individual Defendant and the Corporate Defendant, individually, collectively, or in any combination.

1. **“Corporate Defendant”** means Wellco, Inc. and its successors and assigns.

2. **“Individual Defendant”** means George M. Moscone.

ORDER

I. PROHIBITION AGAINST MISLEADING CLAIMS

IT IS ORDERED that Defendants, Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the labeling, advertising,

promotion, offering for sale, sale, or distribution of any product, are permanently restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation, about:

A. the product's absolute or relative ratings or ranking, or the product's superiority to other products;

B. the channels, cable channels, subscription channels, favorite channels, premium channels, or clear channels users of the product can or will likely receive, including the number of such channels users can or will likely receive; or

C. any material aspect of the product's performance, efficacy, nature, or central characteristics,

unless the representation is non-misleading, including that, at the time such representation is made, Defendants possess and rely upon competent and reliable evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant fields when considered in light of the entire body of relevant and reliable evidence, to substantiate that the representation is true.

II. PROHIBITION AGAINST FALSE CLAIMS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product, are permanently restrained and enjoined from making, or assisting others in making, any

misrepresentation, expressly or by implication:

- A. that any endorsement is a truthful endorsement or by an actual user of such product;
- B. through the use of any endorsement of such product;
- C. that any website or other publication is an objective news report;
- D. that objective news reporters have performed independent tests of any product; or
- E. that independent tests demonstrate the effectiveness of any product.

III. MONETARY JUDGMENT AND PARTIAL SUSPENSION

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of 31.82 Million Dollars (\$31,820,000) is entered in favor of the Commission against Individual Defendant and Corporate Defendant, jointly and severally, as equitable monetary relief.
- B. Defendants are ordered to pay to the Commission Six Hundred Fifty Thousand Dollars (\$650,000), which, as Defendants stipulate, their undersigned counsel holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission. Upon such payment, the remainder of the judgment is suspended, subject to the Subsections below.
- C. The Commission's agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely:

1. the Financial Statement of Individual Defendant, George M. Moscone, signed on July 27, 2020, including the attachments;
2. the Financial Statement of Corporate Defendant, Wellco, Inc., signed by George M. Moscone, President, CEO, and owner on July 27, 2020, including the attachments;
3. the following additional documentation submitted by Defendants' counsel to Commission counsel, Michael Ostheimer and Carl Settlemeyer:
 - a. Letter attachment to email dated August 21, 2020 from Ari Rothman and the documents referenced therein, including the loan agreement and those in the "Docs for Closing" ZIP file;
 - b. Letter attachment to email dated September 2, 2020, from Shahin Rothermel and accompanying document titled "2019 Estimated Tax (Moscone)";
 - c. Email from Ari Rothman dated October 27, 2020 (5:12pm), and the attachment thereto;
 - d. Email from Ari Rothman dated November 9, 2020; and
 - e. Email from Ari Rothman dated December 10, 2020 (5:26pm).

D. The suspension of the judgment will be lifted as to any Defendant if, upon motion by the Commission, the Court finds that Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

E. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that Defendant in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), less any

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