

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Timothy J. Muris, Chairman**
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary
 Pamela Jones Harbour

In the Matter of)
)
TELEBRANDS CORP.,)
 a corporation,)
)
TV SAVINGS, LLC,)
 a limited liability company, and)
)
AJIT KHUBANI,)
 individually and as president of)
 Telebrands Corp. and sole member)
 of TV Savings, LLC.)
_____)

DOCKET NO. 9313

COMPLAINT

The Federal Trade Commission (“FTC” or “Commission”), having reason to believe that Telebrands Corp. (“Telebrands”), TV Savings, LLC (“TV Savings”), and Ajit Khubani (“Khubani”), individually and as president of Telebrands and sole member of TV Savings (collectively “respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Telebrands is a New Jersey corporation with its principal office or place of business at 79 Two Bridges Road, Fairfield, NJ 07004.
2. Respondent TV Savings is a Connecticut limited liability company with its principal office or place of business at 79 Two Bridges Road, Fairfield, NJ 07004.
3. Respondent Khubani is president of Telebrands and sole member of TV Savings. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of these two business entities, including the acts and practices alleged in this complaint. His principal office or place of business is the same as those of Telebrands and TV Savings.

4. The foregoing respondents have operated as a common enterprise to label, advertise, offer for sale, sell, and distribute the Ab Force, an electronic muscle stimulation (“EMS”) device, which is a “device” within the meaning of Sections 12 and 15 of the FTC Act.
5. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

The Ab Force EMS Device

6. The Ab Force EMS device is comprised of: (1) a black elasticized belt; (2) a thin black pad measuring approximately 8 inches by 4 inches; and (3) a small control unit, powered by a coin-sized battery, which attaches to the pad and, in some models, enables the user to control the intensity of electronic stimulation. These three components assemble to form a belt with the pad and unit in the middle. According to respondents’ instructions, the user should apply a water-based gel to the pad and place this pad against the abdomen, bicep, or thigh to send the electrical current generated by the control unit to the body.

Advertising and Promotion of the Ab Force EMS Device

7. From December 2001 to May 2002, respondents disseminated, or caused to be disseminated, advertisements and promotional materials for the Ab Force, including but not necessarily limited to 60 and 120 second television commercials, Internet advertisements, radio advertisements, and print advertisements. Respondents offered the Ab Force for the price of \$10. Gross sales of the Ab Force, including accessories like batteries and gels, exceeded \$19 million.
8. Respondents spent more than four million dollars to televise commercials for the Ab Force. These commercials appeared more than 10,000 times on cable, satellite, and broadcast television outlets, and were among the most frequently aired commercials on cable television during the weeks and months in which they appeared, according to an industry monitoring service.
9. Through advertisements for the Ab Force, respondents represented that the Ab Force used the same technology and was just as powerful and effective as other more expensive EMS devices that were advertised on program-length television commercials (“infomercials”) during or shortly before the time period in which the Ab Force commercials appeared.

10. The Ab Force advertisements, including but not limited to the attached Exhibits A through H, contained the following statements or depictions, among others:

a. PAT MURPHY: I'm sure you've seen those fantastic electronic ab belt infomercials on TV. They're amazing. They're the latest fitness craze to sweep the country and everybody wants one.

ON SCREEN: UP TO \$120 EACH!

PAT MURPHY: The problem is, they're expensive, selling for up to \$120 each.

ON SCREEN:

AB FORCE

PAT MURPHY: Well, that's why we developed the Ab Force that you can buy right now for just \$10.

ON SCREEN: JUST \$10!

PAT MURPHY: That's right, just \$10.

...

PAT MURPHY: . . . The Ab Force is just as powerful and effective as those expensive ab belts sold by others - -

ON SCREEN: ELECTRONIC STIMULATION

PAT MURPHY: - - designed to send just the right amount of electronic stimulation to your abdominal area!

—Exhibit A (videotape of television commercial); Exhibit B (Certified transcript of 60-second television commercial).

These statements are accompanied by the following images, among others:

(1) over a dozen depictions of well-muscled, bare-chested men and lean, shapely women wearing Ab Force belts and experiencing abdominal muscle contractions; and (2) two close-up images of a bikini-clad woman showing off her trim waist and well-defined abdominal muscles.

b. PAT MURPHY: I'm sure you've seen those fantastic electronic ab belt infomercials on TV. They're amazing. They're the latest fitness craze to sweep the country and everybody wants one.

ON SCREEN: UP TO \$120 EACH!

PAT MURPHY: But the problem is they're expensive, selling for up to \$120 each.

ON SCREEN:

AB FORCE

PAT MURPHY: Well, that's why we developed the Ab Force that you can buy right now for just \$10.

can

ON SCREEN: JUST \$10!

PAT MURPHY: That's right, just \$10.

ON SCREEN:

AB FORCE

PAT MURPHY: But don't be fooled by the price. The Ab Force is just as powerful and effective as those ab belts sold by other companies on infomercials.

ON SCREEN: HIGH QUALITY

PAT MURPHY: The Ab Force is truly a high quality product.

**ON SCREEN: SOPHISTICATED COMPUTER COMPONENTS
ELECTRONIC STIMULATION**

PAT MURPHY: Using sophisticated electronic technology, the Ab Force is designed to send just the right amount of electronic stimulation to your abdominal area.

...

PAT MURPHY: . . . It is so comfortable that you can even wear it under your clothes. In fact, I'm wearing one right now and it's working while I'm working.

ON SCREEN:

AB FORCE

High Quality

Powerful

Comfortable

PAT MURPHY: The Ab Force is high quality, powerful, comfortable - -

ON SCREEN:

AB FORCE

JUST \$10

PAT MURPHY: - - and best of all it's just \$10

ON SCREEN: 30 DAY

SATISFACTION GUARANTEE!

PAT MURPHY: . . demand for the ab force is overwhelming and - -

ON SCREEN: NOT AVAILABLE IN STORES

PAT MURPHY: - - it's not available in stores anywhere. So, don't miss out on this incredible opportunity. Call to reserve your electronic Ab Force now.

—Exhibit C (videotape of television commercial); Exhibit D (Certified transcript of 120-second test television commercial).

These statements are accompanied by the following images, among others:

(1) over a dozen depictions of well-muscled, bare-chested men and lean, shapely women wearing Ab Force belts and experiencing abdominal muscle contractions; (2) two close-up images of a bikini-clad woman showing off her trim waist and well-defined abdominal muscles; and (3) one close-up image of a well-muscled, bare-chested man performing a crunch on an exercise bench.

c. **ON SCREEN: Consult Your Physician Before Using the Ab Force**

PAT MURPHY-STARK: Hi, Pat Murphy-Stark here.

ON SCREEN:

AB FORCE

Do not use if you have a pacemaker, a heart or medical condition, or are pregnant.

PAT MURPHY-STARK: I'm sure you've seen those fantastic electronic ab belt infomercials on TV. They're amazing. They're the latest craze to sweep the country and everybody wants one.

ON SCREEN: Up to \$120 Each

PAT MURPHY-STARK: But the thing is, they're expensive, selling for up to \$120 each.

ON SCREEN:

AB FORCE

PAT MURPHY-STARK: Well, that's why we developed the Ab Force that you can buy right now for just \$20.

...

PAT MURPHY-STARK: The Ab Force uses the same powerful technology as those expensive ab belts - -

ON SCREEN: RELAXING MASSAGE

10 INTENSITY LEVELS

PAT MURPHY-STARK: - - Capable of directing 10 different intensity levels at your abdominal area.

ON SCREEN: HERE'S AN EVEN BETTER DEAL!

PAT MURPHY-STARK: And here's an even better deal

ON SCREEN: 1-800-322-4343

PAT MURPHY-STARK: Call right now and we'll double your order.

ON SCREEN: 2 for \$20

1-800-322-4343

PAT MURPHY-STARK: That's two electronic Ab Force belts for just \$20. Don't miss out on this incredible opportunity. Call Now.

—Exhibit E (videotape of television commercial); Exhibit F (Certified transcript of 60-second television commercial).

others:

These statements are accompanied by the following images, among (1) over a dozen depictions of well-muscled, bare-chested men and lean, shapely women wearing Ab Force belts and experiencing abdominal muscle contractions; and (2) two close-up images of a bikini-clad woman showing off her trim waist and well-defined abdominal muscles.

- d. “I’m sure you’ve seen those fantastic electronic ab belt infomercials on TV. They’re amazing! They’re the latest craze to sweep the country and everybody wants one. The thing is they’re expensive selling for up to \$120 each. That’s why we developed the Abforce that you can buy right now for just \$10.

...

Don’t Be Fooled By the Price!

The Abforce uses the same powerful technology as those Ab Belts sold by other companies on infomercials.

...

Using sophisticated computer components, the Abforce is capable of directing 10 completely different intensity levels at your abdominal area. .

...

So why would you want to buy a more expensive ab belt from the competition when the Abforce is as low as just \$10?”

—Exhibit G (print advertisement).

Adjacent to these statements is an image of a well-muscled man wearing an Ab Force belt. Superimposed on this image is a red-and-white, square-shaped “AS SEEN ON TV” logo, and the statement, “Ab Force uses the same powerful technology as those expensive Ab Belts on infomercials.”

- e. “Have you seen those fantastic Electronic Ab Belt infomercials on TV? They’re amazing...promising to get our abs into great shape fast—without exercise! They’re the latest fitness craze to sweep the country. But, they’re expensive, selling for up to 120 dollars each! But what if you could get a high quality electronic ab belt for just 10 dollars? That’s right, just 10 dollars! The Ab Force is just as powerful and effective as the expensive ab belts on TV—designed to send just the right amount of electronic stimulation to your abdominal area. . . . Don’t miss out. Get the amazing electronic Ab [F]orce belt—the latest fitness craze for just \$10.”

—Exhibit H (radio advertisement).

Advertising and Promotion of Other EMS Devices on Infomercials

11. From April 2001 through May 2002, during or shortly before the time period in which the Ab Force commercials appeared, several other EMS devices were offered for sale, sold,

and distributed throughout the United States. Three of these EMS devices, the “AbTronic,” “AB Energizer,” and “Fast Abs,” were substantially similar in appearance to the Ab Force, were comprised of components substantially similar to those identified in Paragraph 6, and were widely advertised through television infomercials. All three EMS devices were more expensive than the Ab Force.

12. The AbTronic EMS device was offered for the price of \$120. According to an industry monitoring service, AbTronic infomercials appeared more than 2,000 times on cable television stations from April 2001 through March 2002, at an estimated cost of more than \$18 million. AbTronic infomercials were among the most frequently-aired infomercials on cable television during the weeks and months in which they appeared. Gross sales of the AbTronic EMS device, including accessories like batteries and gels, exceeded \$106 million dollars.
13. The AB Energizer EMS device was offered for the price of \$59.95. According to an industry monitoring service, AB Energizer infomercials appeared more than 1,600 times on cable television stations from October 2001 through February 2002, at an estimated cost of more than \$11 million. AB Energizer infomercials were among the most frequently-aired infomercials on cable television during the weeks and months in which they appeared. Gross sales of the AB Energizer EMS device, including accessories like batteries and gels, exceeded two million units, that is, approximately \$120 million.
14. The Fast Abs EMS device was offered for the price of \$39.95. According to an industry monitoring service, Fast Abs infomercials appeared more than 1,200 times on cable television stations between November 2001 and February 2002, at an estimated cost of more than \$12 million. Fast Abs infomercials were among the most frequently-aired infomercials on cable television during the weeks and months in which they appeared. Gross sales of the Fast Abs EMS device, including accessories like batteries and gels, exceeded 660,000 units, that is, more than \$26 million dollars.
15. Infomercials for the AbTronic, AB Energizer, and Fast Abs devices contained the following depictions, among others: (1) well-muscled, bare-chested men and lean, shapely women wearing EMS devices around the waist and experiencing abdominal muscle contractions; (2) men and women performing conventional abdominal exercises such as sit-ups or crunches; and (3) close-up images of men and women in revealing clothes showing off their trim waists and well-defined abdominal muscles.

16. Infomercials for the AbTronic, AB Energizer, and Fast Abs devices contained the following representations, among others, that the advertised device causes the loss of weight, inches, or fat:
- a. **ON SCREEN: K.T. Roberge
Homemaker
Results based on use and muscle response**
TESTIMONIALIST K.T. ROBERGE: When I first started using the AbTronic System, I was skeptical at first, thinking it's just too easy, strapping it on, nothing to plug in, and it just contracts your muscles. But for three weeks, I have used it now and I've lost two inches in my waist.
—*Federal Trade Commission v. Hudson Berkley, Corporation, et al.*, CV-S-02-0649-PMP, (May 7, 2002), Complaint Exhibit 2 at 19.
 - b. **ON SCREEN: Kathy Horn
Tanning Salon Owner**
TESTIMONIALIST KATHY HORN: After using the AbTronic System, I've lost three inches on my waist in the matter of two weeks and my abdominals look so much better.
—*Federal Trade Commission v. Hudson Berkley, Corporation, et al.*, CV-S-02-0649-PMP, (May 7, 2002), Complaint Exhibit 2 at 32-33.
 - c. **ON SCREEN: Before and After photographs**
UNIDENTIFIED MALE: The Ab Energizer System I've used for five weeks and I've gotten incredible results.
**ON SCREEN: Lost 40 lbs.
Size 37 to 34
Results not typical. Individuals results may vary.**
UNIDENTIFIED MALE: I've lost 40 pounds. I've gone from a waist 37 to a waist 34. The Ab Energizer and the Ab Energizer System has changed my life and it's really given my life back to me.
—*Federal Trade Commission v. Electronic Products Distribution, LLC, et al.*, 02CV0888 H(AJB), (May 7, 2002), Complaint Exhibit 2 at 30-31
 - d. **SPOKESWOMAN KITA PELLY: The AB Energizer System is absolutely incredible for people who want tighter abs and want to lose inches around the midsection.**
—*Federal Trade Commission v. Electronic Products Distribution, LLC, et al.*, 02CV0888 H(AJB), (May 7, 2002), Complaint Exhibit 2 at 29-30.
 - e. **MALE ANNOUNCER: People everywhere are sitting back and relaxing while they firm up, slim down, and shed inches quickly.**

—*Federal Trade Commission v. United Fitness of America, LLC, et al.*, CV-S-02-0648-KJD-LRL, (May 7, 2002), Complaint Exhibit B at 4, 23, 54; Complaint Exhibit D at 4, 23-24, 45, 57.

- f. MALE ANNOUNCER: You'll drop four inches in the first 30 days. We guarantee it.
—*Federal Trade Commission v. United Fitness of America, LLC, et al.*, CV-S-02-0648-KJD-LRL, (May 7, 2002), Complaint Exhibit B at 31, 59; Complaint Exhibit D at 32, 63.

17. Infomercials for the AbTronic, AB Energizer, and Fast Abs devices contained the following representations, among others, that the advertised device causes well-defined abdominal muscles:

- a. MALE ANNOUNCER: AbTronic is the electronic dream machine that will show you immediate improvement without strenuous time-consuming workouts. You'll develop that six-pack you've always wanted in the easiest way imaginable.
—*Federal Trade Commission v. Hudson Berkley, Corporation, et al.*, CV-S-02-0649-PMP, (May 7, 2002), Complaint Exhibit 2 at 13, 27, 38.
- b. MALE ANNOUNCER: Now, with one touch of a button, you can get that six-pack you always wanted, guaranteed.
—*Federal Trade Commission v. Hudson Berkley, Corporation, et al.*, CV-S-02-0649-PMP, (May 7, 2002), Complaint Exhibit 4 at 3.
- c. MAIL ANNOUNCER: Now, with a touch of a button, you can go from flab to rock-hard abs.
—*Federal Trade Commission v. Electronic Products Distribution, LLC, et al.*, 02CV0888 H(AJB), (May 7, 2002), Complaint Exhibit 2 at 22, 39, 50, 62.
- d. MALE ANNOUNCER: Do you want rock-hard abs without sweating in a gym for hours? Do you want to have toned muscles all over your body without lifting heavy weights? Well, now, you can. Introducing Fast Abs— the no-sweat, full body workout.
—*Federal Trade Commission v. United Fitness of America, LLC, et al.*, CV-S-02-0648-KJD-LRL, (May 7, 2001), Complaint Exhibit B at 3-4, 22.
- e. SPOKESWOMAN KATHY DERRY: "The simple, fast, easy, effective tool to help tool and reshape your body and help(s) get those washboard lean sexy abs is finally here. With Fast Abs, we'll guarantee fast results with no sweat."

—*Federal Trade Commission v. United Fitness of America, LLC, et al.*, CV-S-02-0648-KJD-LRL, (May 7, 2002), Complaint Exhibit B at 52; Complaint Exhibit D at 54.

18. Infomercials for the AbTronic, AB Energizer, and Fast Abs devices contained the following representations, among others, that use of the advertised device is equivalent to or more effective than regular exercise:
- a. MALE ANNOUNCER: You'll see how the AbTronic System gives you the results of 600 sit-ups in just 10 minutes without any effort.
—*Federal Trade Commission v. Hudson Berkley, Corporation, et al.*, CV-S-02-0649-PMP, (May 7, 2002), Complaint Exhibit 2 at 3-4.
 - b. **ON SCREEN: Idrise Ward-El Professional Bodybuilder**
IDRISE WARD-EL: When I first used the AbTronic System, it looked small and I didn't have any idea what it would feel like. When I did use it, I had a very strong contraction, a lot stronger than doing sit-ups. Even after 100 sit-ups, you don't get the kind of contraction you get here, because normally, when doing sit-ups you get tired first. Then it starts to work. Doing the first AbTronic systems, the first contraction feels like you've done already 100, 150 sit-ups.
—*Federal Trade Commission v. Hudson Berkley, Corporation, et al.*, CV-S-02-0649-PMP, (May 7, 2002), Complaint Exhibit 2 at 20.
 - c. MALE ANNOUNCER: [W]atch as your ab muscles contract as if you're doing a sit-up. . . . Ten minutes on the AbTronic is the equivalent of 600 sit-ups. That's why we guarantee you'll lose two inches off your midsection in less than a month or your money back.
—*Federal Trade Commission v. Hudson Berkley, Corporation, et al.*, CV-S-02-0649-PMP, (May 7, 2002), Complaint Exhibit 2 at 14, 27, 39; Complaint Exhibit 4 at 3.
 - d. MALE ANNOUNCER: The secret is Ab Energizer's electronic impulses that stimulate your abs so they contract and relax as if you're doing a sit-up.
ON SCREEN: Up to 700 Muscle Contractions 10 Minutes!
MALE ANNOUNCER: Now you can get up to 700 muscle contractions in just 10 minutes and get the tone and definition you've always wanted.
—*Federal Trade Commission v. Electronic Products Distribution, LLC, et al.*, 02CV0888 H(AJB), (May 7, 2002), Complaint Exhibit 2 at 62,63.

- e. DR. DONALD FURNIVAL [introduced as a chiropractor specializing in “natural healthcare”]: There are several studies that have been done that show that electrical muscle stimulation is more effective and more efficient than regular working out or going to the gym.
—*Federal Trade Commission v. United Fitness of America, LLC, et al.*, CV-S-02-0648-KJD-LRL, (May 7, 2002), Complaint Exhibit B at 15.
- f. MALE ANNOUNCER: The secret is EMS, electronic muscle stimulation. This tiny transformer sends out safe, gentle impulses that trigger your motor nerves and activate deep muscle contractions. Tests have proven that this unique isometric action can be—
ON SCREEN: 30% More Effective!
MALE ANNOUNCER: —30 percent more effective than anything you can do on your own with normal exercise.
—*Federal Trade Commission v. United Fitness of America, LLC, et al.*, CV-S-02-0648-KJD-LRL, (May 7, 2002), Complaint Exhibit B at 24.
- g. SPOKESWOMAN KATHY DERRY: In fact, just 10 minutes of Fast Abs is like doing 600 sit-ups. Imagine that. 600 sit-ups.
ON SCREEN: 10 minutes = 600 sit ups.
—*Federal Trade Commission v. United Fitness of America, LLC, et al.*, CV-S-02-0648-KJD-LRL, (May 7, 2002), Complaint Exhibit B at 11; see also Fast Abs Ex. B at 5, 23, 35, 43, 50, 54-55

Violations of Sections 5 and 12 of the FTC Act

- 19. Through the means described in Paragraphs 9 and 10, respondents represented, expressly or by implication, including, but not limited to, references to products and infomercials with representations such as those described in Paragraphs 11 through 18, that:
 - a. Ab Force causes loss of weight, inches, or fat;
 - b. Ab Force causes well-defined abdominal muscles; and
 - c. Use of Ab Force is an effective alternative to regular exercise.
- 20. In truth and in fact:
 - a. Ab Force does not cause loss of weight, inches, or fat;
 - b. Ab Force does not cause well-defined abdominal muscles; and
 - c. Use of Ab Force is not an effective alternative to regular exercise.

Therefore the representations set forth in Paragraph 19 were, and are, false and misleading.

21. Through the means described in Paragraphs 9 and 10, respondents represented, expressly or by implication, including, but not limited to, references to products and infomercials with representations such as those described in Paragraphs 11 through 18, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 19, at the time the representations were made.
22. In truth and fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 10, at the time the representations were made. Therefore, the representation set forth in Paragraph 21 was deceptive.
23. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

NOTICE

Proceedings on the charges asserted against you in this complaint will be held before an Administrative Law Judge (ALJ) of the Federal Trade Commission, under Part 3 of the Commission's Rules of Practice, 16 C.F.R. Part 3. A copy of Part 3 of the Rules is enclosed with this complaint.

You may file an answer to this complaint. Any such answer must be filed within 20 days after service of the complaint on you. If you contest the complaint's allegations of fact, your answer must concisely state the facts constituting each ground of defense, and must specifically admit, deny, explain, or disclaim knowledge of each fact alleged in the complaint. You will be deemed to have admitted any allegations of the complaint that you do not so answer.

If you elect not to contest the allegations of fact set forth in the complaint, your answer shall state that you admit all of the material allegations to be true. Such an answer will constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the ALJ will file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. Such an answer may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice.

If you do not answer within the specified time, you waive your right to appear and contest the allegations of the complaint. The ALJ is then authorized, without further notice to you, to find that the facts are as alleged in the complaint and to enter an initial decision and a cease and desist order.

The ALJ will schedule an initial prehearing scheduling conference to be held not later than 14 days after the last answer is filed by any party named as a respondent in the complaint. Unless otherwise directed by the ALJ, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within 5 days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

A hearing on the complaint will begin on February 2, 2004, at 10:00 A.M. in Room 532, or such other date as determined by the ALJ. At the hearing, you will have the right to contest the allegations of the complaint and to show cause why a cease and desist order should not be entered against you.

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. If, however, the Commission should conclude from the record facts developed in any adjudicative proceedings in this matter that the proposed order provisions as to Telebrands Corp., TV Savings, LLC, and Ajit Khubani, individually and as president of Telebrands and sole member of TV Savings, might be inadequate to fully protect the consuming public, the Commission may order such other relief as it finds necessary or appropriate, including corrective advertising or other affirmative disclosure.

Moreover, the Commission has reason to believe that, if the facts are found as alleged in the complaint, it may be necessary and appropriate for the Commission to seek relief to redress injury to consumers, or other persons, partnerships or corporations, in the form of restitution and refunds for past, present, and future consumers and such other types of relief as are set forth in Section 19(b) of the Federal Trade Commission Act. The Commission will determine whether to apply to a court for such relief on the basis of the adjudicative proceedings in this matter and such other factors as are relevant to consider the necessity and appropriateness of such action.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
2. “Competent and reliable scientific evidence” shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
3. “EMS device” shall mean any appliance or machine, or any accessories thereof, used to stimulate the muscles of the human body with electricity.
4. “Food,” “drug,” “device,” and “cosmetic” shall mean as “food,” “drug,” “device,” and “cosmetic” are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.
5. Unless otherwise specified, “respondents” shall mean Telebrands (a corporation), TV Savings (a limited liability company), their successors and assigns and their officers; Ajit Khubani, individually and as president of Telebrands and sole member of TV Savings; and each of the above’s agents, representatives, and employees.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the Ab Force EMS device or any substantially similar device in or affecting commerce, shall not represent, in any manner, including through the use of pictures, demonstrations, testimonials or endorsements, expressly or by implication, that:

- A. any such device causes or promotes loss of weight, inches, or fat;
- B. any such device causes or promotes well-defined abdominal muscles, including through the use of terms such as “rock hard abs,” “washboard abs,” “chiseled abs,” “cut abs,” “well-developed abs,” and/or any other terms with substantially similar meaning;
- C. use of any such device for any period of time is an effective alternative to regular exercise, including but not limited to sit-ups, crunches, or any substantially similar exercises;

- D. any such device makes a material contribution to any system, program, or plan that produces the results referenced in Subparts A-C of this Part.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any EMS device, shall not make any misrepresentation, in any manner, including through the use of pictures, demonstrations, testimonials or endorsements, expressly or by implication, that:

- A. any such device causes or promotes loss of weight, inches, or fat;
- B. any such device causes or promotes well-defined abdominal muscles, including through the use of terms such as “rock hard abs,” “washboard abs,” “chiseled abs,” “cut abs,” “well-developed abs,” and/or any other terms with substantially similar meaning;
- C. use of any such device for any period of time is an effective alternative to regular exercise, including but not limited to sit-ups, crunches, or any substantially similar exercises;
- D. any such device makes a material contribution to any system, program, or plan that produces the results referenced in Subparts A-C of this Part.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Ab Force, any other EMS device, or any food, drug, dietary supplement, device, or any other product, service, or program, shall not make any representation, in any manner, expressly or by implication, about weight, inch, or fat loss, muscle definition, or the health benefits, safety, or efficacy of any such product, service, or program, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

Nothing in this Order shall prohibit respondents from making any representation for any device that is specifically permitted in labeling for that device under any premarket approval application or premarket notification approved or cleared by the Food and Drug Administration.

V.

IT IS FURTHER ORDERED that respondent Khubani, directly or through any corporation, subsidiary, division, or other entity, shall not engage in or assist others in engaging in any manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any device, as that term is defined in Section 15(d) of the FTC Act, 15 U.S.C. § 52, unless, prior to engaging in that activity, respondent Khubani first obtains a performance bond (“the bond”) in the principal sum of \$1,000,000. The terms and conditions of the bond requirement are as follows:

- A. The bond shall be conditioned upon compliance with Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and Parts I through III of this Order. The bond shall be deemed continuous and remain in full force and effect as long as defendant is engaging in any manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any device. Respondent Khubani shall maintain the bond for a period of three years after he provides notice to the Commission that he has ceased engaging in any manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any device. The bond shall cite this Order as the subject matter of the bond, and shall provide surety thereunder against financial loss resulting from whole or partial failure of performance due, in whole or in part, to any violation of Sections 5(a) and 12 of the FTC Act, or Parts I through III of this Order.
- B. The bond shall be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each state in which respondent Khubani, or any entity directly or indirectly under his control, is doing business and that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring. The bond shall be in favor of the Federal Trade Commission for the benefit of any consumer injured as a result of any activities that required obtaining the bond.
- C. The bond required pursuant to this Paragraph is in addition to, and not in lieu of, any other bonds required by federal, state or local law.
- D. At least 10 days before commencing any activity that requires obtaining the bond, respondent Khubani shall provide notice to the Commission describing in reasonable detail the activities and include in the notice a copy of the bond obtained.
- E. Respondent Khubani, directly or through any business entity, shall not disclose the existence of the bond to any consumer, or other purchaser or prospective purchaser in connection with advertising, promoting, marketing, offering for sale, or sale of any product, service, or program. *Provided, however,* that this provision does not apply to the handling of consumer complaints and cancellation and refund requests so long as respondent Khubani, directly or through any

business entity, also discloses, at the same time, that the bond is “required by Order of the Federal Trade Commission to resolve an action charging that Ajit Khubani engaged in deceptive practices as alleged in *In the Matter of Telebrands Corp., et al.*, Docket No. 9313.” The disclosure shall be stated or set forth in a clear and prominent manner. If in print, the disclosure shall be separated from all other text, in 100 percent black ink against a light background, in print at least as large as the main text of the sales material or document, and enclosed in a box containing only the required disclosure.

VI.

IT IS FURTHER ORDERED that respondents Telebrands and TV Savings, and their successors and assigns, and respondent Khubani shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. all advertisements and promotional materials containing the representation;
- B. all materials that were relied upon in disseminating the representation; and
- C. all tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VII.

IT IS FURTHER ORDERED that respondents Telebrands and TV Savings, and their successors and assigns, and respondent Khubani shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

IT IS FURTHER ORDERED that respondents Telebrands and TV Savings and their successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation or limited liability company that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution

of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondent Khubani, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and phone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

X.

IT IS FURTHER ORDERED that respondents Telebrands and TV Savings, and their successors and assigns, and respondent Khubani shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XI.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This Order's application to any respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the order has terminated under this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or

upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

THEREFORE, the Federal Trade Commission this thirtieth day of September, 2003, has issued this complaint against respondents.

By the Commission.

Donald S. Clark
Secretary