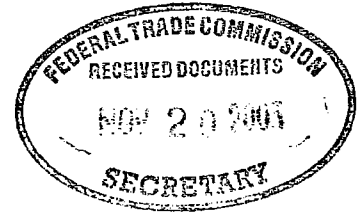


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION



In the Matter of

DOCKET NO. 9313

TELEBRANDS, CORP., TV SAVINGS, LLC,  
and AJIT KHUBANI

MOTION TO QUASH

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Counsel for Thane International, Inc. ("Thane") respectfully submits this motion to quash certain discovery requests propounded by the respondents in this matter upon the Federal Trade Commission ("FTC") or in the alternative for a Protective Order Designating the responsive documents as "Restricted Confidential, Attorney of Record Eyes Only - FTC Docket No. 9313" pursuant to paragraph 2.(c) of the Protective Order in this matter and pursuant to sections 3.34 and 4.10 of the FTC Rules of Practice.

**FACTS**

On September 30, 2003, the FTC issued an administrative complaint against Telebrands Corp, TV Savings, LLC, and Ajit Khubani (collectively, the "Telebrands respondents") alleging "[t]he 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." *In the Matter of Telebrands Corp.*, No. 9313, at 12 (September 30, 2003). The complaint alleges that the "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." *Id.* at 2.,

The complaint further stated that "[t]hrough 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." *Id.* One of the other EMS devices named by the FTC in the complaint is

the AbTronic, which was “substantially similar in appearance to the Ab Force, [was] comprised of components substantially similar to those identified in [the complaint], and [was] widely advertised through television infomercials.” *Id.* at 7.

The AbTronic is the subject of a separate litigation filed by the FTC. See *FTC v. Hudson Berkley Corporation, et al.*, No. CV-S-02-0649-PMP-RJJ (U.S.D.C. for the District of Nevada, filed May 7, 2002) (the “AbTronic litigation”). The gravamen of the FTC’s complaint in the AbTronic litigation relates to certain advertising claims made for the AbTronic EMS device. While Thane was never a party to the AbTronic litigation, the FTC had issued a C.I.D. to Thane in early 2002 to investigate Thane’s involvement, if any, with the domestic production, distribution and/or advertisement of the AbTronic. Thane fully cooperated with the FTC’s investigation and produced numerous binders of confidential, proprietary documents, including financial statements and business descriptions, as well as other documentation related to a frivolous lawsuit brought by a competitor of Thane’s, Bio-Medical Research, Ltd.<sup>1</sup>

Thane is not a party to the AbTronic litigation and Thane has provided no discovery therein. Rather, the documents at issue pursuant to the Telebrands respondents’ discovery are financial disclosures, compensation records, communications with various individuals, diaries, and journals which Thane voluntarily produced to the FTC as part of the FTC’s investigation of Thane that refer, relate, or pertain in any manner to the AbTronic and to the business of Thane.

On November 10, 2003, the FTC notified Thane “that certain documents relating to the EMS device known as the AbTronic that Thane International, Inc. previously produced to the Federal Trade Commission ... [and] are responsive to a request for documents the Commission has received in a separate administrative proceeding.” See FTC letter to Lawrence B. Steinberg, November 10, 2003 (Exhibit “A”). The letter failed to inform Thane the name or nature of the

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<sup>1</sup> Thane, among other defendants, obtained Summary Judgment against the plaintiffs in Bio-Medical Research Ltd. et al. v. Thane International, Inc., et al. (U.S.D.C. Case No. CV-02-01179-R (Mcx) (the “BMR Civil Litigation”) on November 4, 2002; and Thane was subsequently dismissed with prejudice from the appeal which plaintiffs filed thereafter.

administrative hearing, what documents were specifically requested, when the request was made, when the responses were due or any other relevant information.<sup>2</sup>

## ARGUMENT

### **I. Thane Objects To The Scope Of The Discovery Requests As Being Overbroad, As Seeking The Production Of Information That Is Not Relevant, And As Not Being Reasonably Calculated To Lead To The Discovery Of Admissible Evidence.**

Because Thane has not been provided with copies of the discovery requests themselves,<sup>3</sup> Thane's only knowledge of the Telebrands respondents' discovery request comes from the FTC letter received on November 10, 2003. The FTC cites only one document request as being at issue, "a request for documents" (Exhibit "A"). According to a brief telephonic call with the FTC, the relevant discovery request seeks: "All documents relating to any investigation conducted by you or on your behalf relating to any advertising claims or representations relating to the Ab Force or any other EMS device." Clearly, the FTC's investigation into the AbTronic would constitute an investigation into an EMS device, thus, as written, this request calls for *all documents* produced by Thane pursuant to that investigation.

In no way can *all documents* produced by Thane be relevant to the FTC's investigation of Ab Force, or the Telebrands respondents' defense of that investigation. The Telebrands investigation is centered upon claims made by Ab Force comparing that device to other EMS devices. But as written, the discovery request goes well beyond that scope and compels the FTC to produce the entire universe of AbTronic documents provided to the FTC by Thane, a universe that includes, among other things, financial disclosures, tax returns, information of individuals associated with Thane and other confidential commercial documents. It can not be argued that Thane's documents such as individual financial disclosures could directly relate or even in any

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<sup>2</sup> According to the FTC website (<http://www.ftc.gov/os/adjpro/d9313/index.htm>), the document requests were issued on October 23, 2003, yet notification was not provided to Thane until November 10, 2003.

<sup>3</sup> While the existence of the discovery requests is noted on the FTC website (<http://www.ftc.gov/os/adjpro/d9313/index.htm>), the discovery requests themselves are not available.

way lead to the discovery of admissible evidence relating to advertising claims made by the Ab Force device.

As such, the Telebrands respondents' document request referenced by the FTC, and any other discovery requests that may relate to Thane's confidential documents, must be quashed for being overbroad, irrelevant, and not reasonably calculated to lead to admissible evidence.

**II. The Documents Produced By Thane Were Part Of A Confidential Production And Thus Should Not Be Publicly Released.**

The documents produced by Thane to the FTC were produced as confidential documents.<sup>4</sup> Moreover, many of the Thane documents were part of the separate BMR Civil Litigation and are governed by a protective order entered by United States District Court Judge Manuel L. Real (Exhibit "B"). These documents were produced accordingly as confidential to the FTC in light of the sensitive nature of the documents, and the FTC never objected to Thane's designation. If the Telebrands respondents' discovery request is allowed to stand as written, and were the FTC to produce all documents in its possession regarding the AbTronic to the Telebrands respondents, the result of this disclosure would be the passing of confidential operating and financial information directly to the hands of a competitor, defeating the confidentiality Thane sought before it had produced even a single document to the FTC.

The FTC Rules of Conduct provide that "confidential commercial or financial information protected by section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and § 4.10(a)(2) of this part, may be disclosed in Commission administrative or court proceedings subject to Commission or court protective or *in camera* orders as appropriate." 16 C.F.R. § 4.10(g)(3) (2003). The financial and commercial documents produced by Thane to the FTC fall

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<sup>4</sup> Numerous statutes and regulations relate to the FTC's handling of confidential documents. See 15 U.S.C. § 46(f) ("the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential"); 16 C.F.R. § 4.10 ("Except as provided in paragraphs (f) or (g) of this section or in § 4.11 (b), (c), (d), or (i); no material that is marked or otherwise identified as confidential and that is within the scope of § 4.10(a)(8), and no material within the scope of § 4.10(a)(9) that is not otherwise public, will be made available, without the consent of the person who produced the material").

under the protections of both 15 U.S.C. 46(f), and 16 C.F.R § 4.10(a)(2) and thus their disclosure must be subject to a protective or *in camera* order.

Thane understands that there is now a protective order in the instant case, but requests that if the Thane documents are ordered produced, they should be designated under paragraph 2.(c), "Restricted Confidential, Attorney or Record Eyes Only - FTC Docket No. 9313. The absence of such designation must preclude the disclosure of Thane's documents under the FTC Rules of Procedure.

Likewise, Thane is unable to seek an *in camera* order under the procedures outlined in the FTC Rules. The Rules provide that "[a] party or third party may obtain *in camera* treatment for material, or portions thereof, offered into evidence only by motion to the Administrative Law Judge. Parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least ten (10) days notice of the proposed use of such material. Each such motion must include an attachment containing a copy of each page of the document in question on which *in camera* or otherwise confidential excerpts appear." 16 C.F.R § 3.45 (2003). Because the FTC has not provided Thane with a list of the Thane documents they intend to produce, Thane is unable to attach copies of the documents in question.

In short, the FTC should not be required to produce the Thane confidential documents because the FTC can only produce the Thane confidential information via the procedures outlined in 16 C.F.R. § 4.10(g)(3), and the protections specifically provided for in that regulation are not available here for Thane.

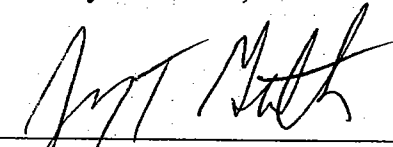
### CONCLUSION

Thane respectfully request that the Telebrands respondents' discovery requests that relate to Thane's confidential documents in the possession of the FTC be quashed for being overbroad, irrelevant, and not reasonably calculated to lead to admissible evidence. In the alternative, if the Telebrands respondents' discovery requests are allowed to stand as written, then Thane respectfully request that no Thane documents be produced by the FTC without the Thane

documents being afforded the highest degree of protection in accordance with paragraph 2.(c) of the Protective Order in this case and the FTC Rules of Practice.

DATED: November 19, 2003

Respectfully Submitted,



---

Joseph T. Gauthier  
JGauthier@haldickler.com

HALL DICKLER KENT GOLDSTEIN &  
WOOD LLP  
9665 Wilshire Boulevard, Suite 1050  
Beverly Hills, CA 90212  
310-887-4000  
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Attorneys for Thane International, Inc.

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

In the Matter of

TELEBRANDS, CORP., TV SAVINGS, LLC,  
and AJIT KHUBANI

DOCKET NO. 9313

**ORDER ON MOTION TO QUASH**

Having read Thane International, Inc.'s Motion to Quash, and having fully considered the same, I hereby rule that the Motion is GRANTED.

IT IS THEREFORE ORDERED, that all discovery requests previously issued by the respondents in this case are quashed as to any documents in the possession of the FTC relating to the FTC investigation into the AbTronic EMS device previously submitted by Thane International, Inc. to the FTC.

ORDERED:

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Stephen J. McGuire  
Chief Administrative Law Judge







UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Division of Advertising Practices

Edward B. Glennon  
(202) 326-3126

November 10, 2003

**Via Federal Express and Facsimile**

Lawrence B. Steinberg, Esq.  
Hall, Dickler, Kent, Goldstein & Wood, LLP  
9665 Wilshire Blvd.  
Suite 1050  
Beverly Hills, CA 90212  
Facsimile: (310) 887-1820

Re: Federal Trade Commission v. Hudson Berkley Corporation, et al.,  
Docket No. CV-S-02-0649-PMP-RJJ (United States District Court for the District  
of Nevada)

Dear Mr. Steinberg:

Please be advised that certain documents relating to the EMS device known as the AbTronic that Thane International, Inc. previously produced to the Federal Trade Commission pursuant to compulsory process or derivative thereof are responsive to a request for documents the Commission has received in a separate administrative proceeding. This letter shall constitute notice that the Commission plans to produce these responsive documents following the appropriate notice period. Should you object to the production of such documents, or have questions regarding this matter, please contact Amy Lloyd of the Commission's Division of Enforcement, at (202) 326-2394.

Sincerely,

A handwritten signature in black ink, appearing to read "E. B. Glennon".

Edward B. Glennon

cc: Amy Lloyd, Esq.



COPY

- 1 BRIAN J. DONATO - State Bar No. 156198  
HYMAN, PHELPS & McNAMARA
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Irvine, CA 92614
- 3 Tel: 949-553-7400 - Fax: 949-553-7433
- 4 ROBERT A. DORMER (admitted pro hac vice)  
DOUGLAS B. FARQUEAR (admitted pro hac vice)
- 5 JOHN R. FLEDER (admitted pro hac vice)  
HYMAN, PHELPS & McNAMARA, P.C.
- 6 700 13TH Street, N.W., Suite 1200  
Washington, D.C. 20005
- 7 Tel: 202-737-5600 - Fax: 202-737-9329
- 8 VINCENT J. MARELLA - State Bar No. 057702  
MARK T. DROOKS - State Bar No. 123561
- 9 PAUL S. CHAN - State Bar No. 183406  
BIRD, MARELLA, BOXER & WOLPERT, APC
- 10 A Professional Corporation  
1875 Century Park East, 23rd Floor
- 11 Los Angeles, CA 90067-2561  
Tel: 310-201-2100 - Fax: 310-201-2110

FILED  
CLERK, U.S. DISTRICT COURT

AUG 12 2002

CENTRAL DISTRICT OF CALIFORNIA  
BY

12 Attorneys for Plaintiffs BIO-MEDICAL RESEARCH LTD.  
13 and BMR NEUROTECH, INC.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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15  
16  
17  
18 BIO-MEDICAL RESEARCH LTD., a  
corporation and BMR NEUROTECH,  
19 INC., a corporation,  
20  
21 Plaintiffs,  
22 vs.  
23 THANE INTERNATIONAL, INC., a  
Delaware corporation; et al.,  
24  
25 Defendants.

CASE NO. CV-02-01179-R (MCX)  
STIPULATED PROTECTIVE ORDER

25 The parties hereto, by and through their counsel, have  
26 stipulated to the entry of the following Protective Order  
27 pursuant to Rule 26(c) of the Federal Rules of Civil Procedure to  
28 protect each party's confidential information, including trade

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1 secrets, financial records, customer lists, product safety  
2 information and other non-public or privileged information, from  
3 public disclosure. Disclosure of such confidential information  
4 could potentially be of great value to the parties' competitors,  
5 who could use the information to obtain an unfair, competitive  
6 advantage and cause the parties harm. Once a trade secret is  
7 wrongfully released, it is lost forever and no sanction can  
8 retrieve it. Thus, the parties have a strong interest in  
9 protecting the confidentiality of the information.

10 Good cause appearing therefor, it is hereby ORDERED that:

11 1. Any document, or portion thereof, and any other form of  
12 evidence or discovery contemplated by the Federal Rules of Civil  
13 Procedure which, in the good faith opinion of the party providing  
14 such discovery ("producing party"), contains any trade secret,  
15 proprietary information, or other non-public information, may be  
16 designated by the producing party as "Confidential and  
17 Protected," or "Highly Confidential and Protected."

18 2. As used in this Order, confidential information shall  
19 be designated as follows:

20 (a) Information designated "Confidential and  
21 Protected," shall refer to any document or portion thereof that,  
22 to the best of the knowledge of the producing party: (1) has not  
23 previously been disclosed to individuals other than employees,  
24 agents or representatives of the producing party, or (2) contain  
25 other confidential information, as such terms are used in Rule  
26 26(c)(7) of the Federal Rules of Civil Procedure.

27 (b) Information designated "Highly Confidential and  
28 Protected," shall refer to any document or portion thereof that

1 (1) meets the definition of "Confidential and Protected," and  
2 (2) is extremely sensitive commercial or personnel information  
3 where the need to protect the particular information from undue  
4 dissemination potentially or arguably outweighs the need of the  
5 party seeking such information ("requesting party") to have  
6 access to the information. This information could include, but  
7 is not limited to, customer lists, contract terms of producers or  
8 suppliers and information on planned or actual manufacturing  
9 methods, technical processes, data, formulas, or designs, and  
10 trade secret materials.

11 3. A designation of confidentiality shall constitute a  
12 representation by the producing party, in good faith and after  
13 careful determination, that the material so designated  
14 constitutes confidential material as defined in Paragraph 2 of  
15 this Order and is reasonably believed not to be in the public  
16 domain.

17 4. Documents or copies thereof provided by the producing  
18 party which contain confidential information may be designated by  
19 marking the page or pages which contain such confidential  
20 information (in such a manner as will not interfere with the  
21 legibility) with the legend, "Confidential and Protected," or  
22 "Highly Confidential and Protected."

23 5. Confidential information disclosed at a deposition may  
24 be designated "Confidential and Protected," or "Highly  
25 Confidential and Protected" by counsel for the producing party or  
26 by any counsel for any other party stating on the record at the  
27 deposition that the specific testimony, or the entire transcript,  
28 is to be so designated. Counsel for any party may also designate

1 a deposition transcript, or designated portions thereof,  
2 "Confidential and Protected," or "Highly Confidential and  
3 Protected" by informing all other counsel of record in writing of  
4 such designation(s) within thirty (30) days of such counsel(s)'  
5 receipt of a copy of the deposition transcript.

6 6. Tangible objects constituting or containing  
7 confidential information may be designated as such by affixing to  
8 the object or its container a label or tag marked "Confidential  
9 and Protected," or "Highly Confidential and Protected," or if  
10 such marking is not practicable, such designation may be made  
11 orally or in writing.

12 7. Information designated "Highly Confidential and  
13 Protected" shall be disclosed only to: (a) counsel of record for  
14 the parties and their partners, associates, and other employees  
15 of their law firms who are assisting in this action, including,  
16 if necessary, outside copying and/or trial exhibit services;  
17 (b) in-house (and retained) litigation counsel for defendant  
18 Thane International, Inc. (i.e., Jacqueline Bailey and Mary  
19 Gilstrap), whose job responsibilities include supervision and/or  
20 coordination of this lawsuit, provided that such persons agree in  
21 writing to maintain a log of all confidential material actually  
22 reviewed and to abstain from participation in any competitive  
23 decision-making relating to any subject matter contained in  
24 "Highly Confidential and Protected" material that has actually  
25 been reviewed for a period of one year after having last reviewed  
26 the material; (c) outside consultants or experts retained by the  
27 parties for purposes of assisting them in this action;  
28 (d) individuals employed by the court reporting service engaged

1 to prepare the transcript in this action; and (e) the Court,  
2 including Court personnel.

3 8. Information designated "Confidential and Protected"  
4 shall be disclosed only to parties listed in Paragraphs 7(a)  
5 through (e), and also to a limited number of designated company  
6 employees assisting in the preparation and support of this  
7 proceeding (each party may designate up to five employees to have  
8 access to all confidential information under this paragraph  
9 without advance Court permission). In addition, information  
10 designated as "Confidential and Protected" may be disclosed to  
11 any person who, in his or her individual capacity, is named as a  
12 party to this action. Such persons must agree to maintain all  
13 such confidential information disclosed to them in a manner  
14 distinct from the ordinary operations of his/her company so as to  
15 eliminate access to this confidential material by others within  
16 and outside the company.

17 9. Each person or entity (other than parties to this  
18 action, or counsel of record for parties to this action and their  
19 law firms' employees) to whom confidential information is  
20 disclosed pursuant to Paragraphs 7 and 8 of this Order shall,  
21 before receiving any confidential information, read this  
22 Protective Order and acknowledge in writing pursuant to the  
23 agreement attached as Exhibit A that he, she, or it agrees to be  
24 bound by the terms of this Order. Counsel for the producing  
25 party shall retain such written undertakings during the course of  
26 these proceedings.

27 10. Nothing contained herein shall prevent any document  
28 from being shown or disclosed to any person shown on the face of

1 such document to be the document's author, or shown on the face  
2 of such document to be a recipient or copyee of such document.

3 11. Subject to the right of any party to designate the  
4 transcript (or portions of the transcript) as "Confidential" or  
5 "Highly Confidential," nothing contained herein shall prevent any  
6 document from being shown or disclosed to a witness on the record  
7 at a deposition or at trial.

8 12. All parties who are entitled to receive, or who are  
9 afforded access to, any information designated "Confidential and  
10 Protected," or "Highly Confidential and Protected," by reason of  
11 this Protective Order shall not disclose such information to any  
12 third party or any other person not entitled access to such  
13 information under this Protective Order and shall neither use nor  
14 disclose the information for purposes of business or competition  
15 or any other purpose except in furtherance of this action, and  
16 then solely as contemplated herein. In addition, such persons  
17 shall take all reasonable precautions to keep the information  
18 secure in accordance with the purpose of this Protective Order.

19 13. Parties that are unduly burdened by the restrictions  
20 contained in this stipulation and order may seek appropriate  
21 relief from the Court as is deemed necessary. Upon notice to all  
22 parties, any party may apply to the Court to change the  
23 confidential treatment of a document (or other discovery product)  
24 from "Highly Confidential and Protected" to "Confidential and  
25 Protected," or to lift entirely the confidential treatment of a  
26 document (or other discovery product) designated "Highly  
27 Confidential and Protected" or "Confidential and Protected." In  
28 connection with any application or motion made to the Court to



1 alter or remove the designated "Confidential" or "Highly  
2 Confidential" designation placed by a producing party on a  
3 document or other discovery product, the burden shall be on the  
4 party seeking to sustain the "Confidential" or "Highly  
5 Confidential" designation to show good cause for such  
6 "Confidential" or "Highly Confidential" designation.

7 14. The parties may agree in a separate writing signed by  
8 their counsel, without amending or modifying the terms of this  
9 stipulation and order may be applied to documents, deposition  
10 testimony or other discovery product made, or to be made, by a  
11 third party.

12 15. Any documents containing "Confidential and Protected"  
13 or "Highly Confidential and Protected" designations that are  
14 filed with the Court in connection with any pre-trial proceedings  
15 (e.g. memoranda, declarations or exhibits thereto) must be filed  
16 under seal. Upon receipt of Documents containing such  
17 designations, the Clerk shall place the filing in a sealed  
18 envelope or other appropriately sealed container, which the  
19 requesting party shall furnish to the Clerk, on which shall be  
20 endorsed the title of this litigation, an indication of the  
21 nature of the contents of such envelope or other container, the  
22 notation "CONFIDENTIAL" and a statement that reads: "Bio-Medical  
23 Research Ltd., et al. vs. Thane International, Inc., et al. ;  
24 Case No. CV-02-01179-R (Mcx); CONFIDENTIAL - THIS ENVELOPE  
25 CONTAINS DOCUMENTS AND INFORMATION SUBJECT TO A PROTECTIVE ORDER  
26 ISSUED BY THIS COURT, AND IT IS NOT TO BE OPENED EXCEPT IN STRICT  
27 COMPLIANCE WITH THE TERMS AND CONDITIONS OF SUCH PROTECTIVE  
28 ORDER."

1           16. If counsel for a party plans to introduce into evidence  
2 at trial any document or transcript containing confidential  
3 material produced by another party or by a third party, they  
4 shall provide advance notice to the other party or third party  
5 for purposes of allowing that party to seek any appropriate  
6 order, including, where appropriate, an order that the document  
7 or transcript be granted an in camera treatment. Except where  
8 such an order is granted, all documents and transcripts shall be  
9 part of the public record. Where in camera treatment is granted,  
10 a duplicate copy of such document or transcript with the  
11 confidential material redacted therefrom may be placed on the  
12 public record.

13           17. In the event that any information designated as  
14 "Confidential and Protected," or "Highly Confidential and  
15 Protected" is in the form of testimony to be adduced at trial or  
16 is otherwise to be orally stated at trial, the parties may  
17 petition the Court for any appropriate order, including, where  
18 appropriate, an order to close the courtroom to all persons not  
19 entitled to receive information designated as "Confidential and  
20 Protected" or "Highly Confidential and Protected" under the terms  
21 of this Protective Order, and/or an order that the transcript of  
22 such testimony or other statements be kept under seal.

23           18. At the time that any consultant or other person  
24 retained to assist counsel in the preparation of this action  
25 concludes participation in the action, such person shall return  
26 to the counsel retaining him, or shall destroy, all copies of  
27 documents or portions thereof designated confidential that are in  
28 the possession of such person, together with all notes, memoranda

1 or other papers, containing confidential information. At the  
2 conclusion of this action, and upon request of the producing  
3 parties, the requesting party shall return to the producing  
4 party, or shall destroy, all documents obtained in this action  
5 that contain or refer to confidential material or information,  
6 other than deposition transcripts (including deposition exhibits)  
7 or trial transcripts (and trial exhibits) admitted into evidence;  
8 provided, however, that privileged documents or attorney work  
9 product need not be returned or destroyed. If, pursuant to this  
10 paragraph, any consultant expert or party elects to destroy,  
11 rather than return discovery product designated as "Confidential"  
12 or "Highly Confidential," such person shall provide to the  
13 producing party an affidavit attesting to such destruction.

14 19. Nothing herein shall be construed to effect an  
15 abrogation, waiver, or limitation of any kind on the right of the  
16 parties or third parties to assert any applicable discovery or  
17 trial privilege.

18 20. Nothing herein shall create a presumption or  
19 implication that a party is entitled to the production of  
20 documents or materials by virtue of the existence of this Order.

21 21. The obligation to maintain confidentiality pursuant to  
22 this Order shall continue after the conclusion of these actions  
23 and any subsequent or related proceedings.

24 22. Inadvertent failure to designate materials as  
25 "Confidential and Protected" or "Highly Confidential and  
26 Protected" at the time of production may be remedied by  
27 supplemental written notice. If such notice is given, the  
28 identified materials shall thereafter be fully subject to this

1 Order as if they had initially been designated as "Confidential"  
 2 or "Highly Confidential" material, provided that there shall be  
 3 no sanction for any use or disclosure of such material prior to  
 4 designation. The inadvertent disclosure by the producing party  
 5 of confidential materials without proper designation, shall not  
 6 be deemed a waiver, in whole or in part, of a party's claim of  
 7 confidentiality, either as to the specific material disclosed or  
 8 as to any other discovery materials relating thereto or on the  
 9 same or related subject matter.


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AGREED TO IN FORM AND CONTENT:

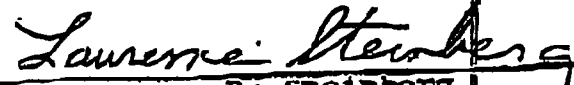
Vincent J. Marella  
 Mark T. Dooks  
 Paul S. Chan  
 BIRD, MARELLA, BOXER & WOLFERT, APC

Brian J. Donato  
 HYMAN, PHELPS & MCNAMARA

Robert A. Doider  
 Douglas B. Farquhar  
 John H. Fleder  
 HYMAN, PHELPS & MCNAMARA, P.C.

BY   
 Paul S. Chan  
 Attorney for Plaintiffs:  
 BIO-MEDICAL RESEARCH LTD. and BMR NEUROTECH, INC.

Lawrence B. Steinberg  
 HALL DICKLER KENT GOLDSTEIN & WOOD LLP

BY   
 Lawrence B. Steinberg  
 Attorney for Defendants TEANE INTERNATIONAL, INC.,  
 TEANE DIRECT, INC., WILLIAM HAY, DENISE DUBARRY-HAY,  
 SUSAN LESLIE, TIME PROPHEETS, INC. and LEEANN JOHNSON

1 Stephen R. Mick  
 David C. Allen  
 2 James K. Lee  
 AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

3  
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5 Attorney for Defendants SMART INVENTIONS, INC.;  
 TV PRODUCTS FULFILLMENT, INC.; SMART LIVING, INC.,  
 6 BISMARCK LABS CORP., BERND EBERT, HUDSON BERKELEY CORP.,  
 MATTHIAS GRANIC, and JOHN NOKES

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ORDER

IT IS SO ORDERED

Date: AUG 12 2002, 2002

**MANUEL L. REAL**  
 Manuel L. Real  
 United States District Judge

[Exhibit A]

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

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I, \_\_\_\_\_, of  
[print your full name]  
\_\_\_\_\_, home telephone  
[print your home address]  
number \_\_\_\_\_, and currently employed by  
[home telephone number]  
\_\_\_\_\_, of  
[your employer's name]  
\_\_\_\_\_, of  
[your employer's address]  
\_\_\_\_\_, of  
[your employer's telephone number]

hereby acknowledge that (1) I have both received and read a copy  
of the Protective Order dated \_\_\_\_\_, entered  
in the matter of *Bio-Medical Research Ltd., et al. vs. Thane  
International, Inc., et al.*, CV 02-01179-R, and (2) I fully  
understand the terms and provisions of the Protective Order.

I hereby agree to be bound by all terms and provisions of  
the Protective Order.

I also agree to be subject to the jurisdiction of the United  
States District Court for the Central District of California for  
purposes of enforcing the Protective Order, including any  
contempt of court citation or other appropriate sanctions for any  
violation of this Agreement or the Protective Order.

DATED: \_\_\_\_\_, 2002

\_\_\_\_\_  
Signature

## CERTIFICATE OF SERVICE

The undersigned hereby certifies as of this 19<sup>th</sup> day of November, 2003, that a true and correct copy of the foregoing MOTION TO QUASH, was delivered via Federal Express for delivery on the 20<sup>th</sup> day of November, 2003 to the following:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Stephen J. McGuire  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

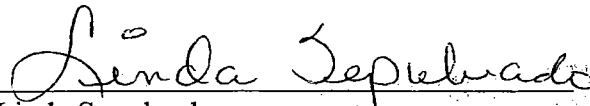
James Reilly Dolan  
Assistant Director  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, DC 20001

Constance Vecellio  
Federal Trade Commission  
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Edward F. Glynn, Jr.  
Theodore W. Atkinson  
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Washington, DC 20004

Counsel of Record for Telebrands respondents

  
Linda Sepulvado