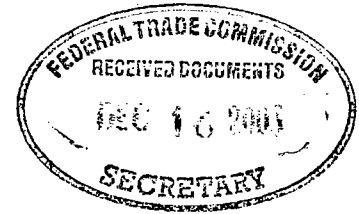


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION



\_\_\_\_\_  
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

PUBLIC DOCUMENT

TO: The Honorable Stephen J. McGuire  
Chief Administrative Law Judge

**COMPLAINT COUNSEL'S FIRST REQUEST FOR ADMISSIONS**

Pursuant to Rule 3.32 of the Commission's Rules of Practice and the Pretrial Scheduling Order entered on November 5, 2003, complaint counsel hereby requests that respondents within twenty (20) days after service of this request, admit the truth of the statements set forth below.

**DEFINITIONS**

1. "Ab belt" means an electronic muscle stimulation ("EMS") device designed to fit around the waist like a belt as distinct from an EMS device that attaches to the body by means of cables and leads.
2. "Infomercial" means a television advertisement the length of which is similar to the length of television programming rather than conventional television commercials - for example, one half hour in length rather than one or two minutes, or a fraction of a minute

3. **“Ab Force”** shall mean the Electronic Muscle Stimulation (“EMS”) device advertised as “Ab Force.”
4. **“Ab Force spot”** means the one minute and two minute commercials attached as Exhibits A, C, and E to the Complaint, or any substantially similar version thereof.
5. **“And”** as well as **“or”** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any admission information that otherwise might be construed to be outside the scope of the admission.
6. **“Any”** shall be construed to include the word **“all,”** and the word **“all”** shall be construed to include the word **“any.”**
7. **“Complaint”** shall mean the complaint issued by the Federal Trade Commission, and any amendments thereto, in the above-captioned action, Docket No. 9313.
8. **“Document”** shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, pamphlet, book, periodical, contract, file, invoice, memorandum, note,

telegram, report, record, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, tests, reports, clinical studies, test reports, scientific literature, articles, expert opinions, handwritten notes, correspondence, written or recorded communications, opened electronic mail, computer (including handheld computer) material (including print-outs, cards, magnetic or electronic tapes, discs and such codes or instructions as will transform such computer materials into easily understandable form), and video and audio recordings.

9. **“EMS device”** shall mean any appliance or machine, or any accessories thereof, used to stimulate the muscles of the human body with electricity.
10. **"Including"** means "including but not limited to," so as to avoid excluding any information that might otherwise be construed to be within the scope of any admission.
11. **“Respondents”** shall mean Telebrands Corp., TV Savings, LLC, and/or Ajit Khubani.
12. **“You”** or **“your”** shall mean the Respondents or the Respondents’, individually and collectively.
13. The singular shall be construed to include the plural, and the plural shall be construed to include the singular.
14. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

### **INSTRUCTIONS**

1. For the purposes of this request, each paragraph and subparagraph constitutes a separate statement and is to be admitted or denied separately.
2. Pursuant to Rule 3.32, you must specifically admit or deny the requested admission, or set

forth in detail the reasons why you cannot admit or deny the matter. A denial must fairly meet the substance of the requested admission, and when good faith requires that you qualify your answer or deny only a part of the requested admission, you must specify what portion of it is true and qualify or deny the remainder. In addition, you may not give lack of information or knowledge as a reason for failure to admit or deny unless you state that you have made reasonable inquiry and that the information known or readily obtainable by you is insufficient to enable you to admit or deny.

3. Rule 3.32 (b) requires that your responses be sworn to under oath.
4. It is not grounds for objection that the requested admission relates to opinions of fact or the application of law to fact. Your belief that the matter on which an admission is requested presents a genuine issue for trial does not, on that ground alone, provide a valid basis for objection.
5. The requested admissions identify by bates stamp number or complaint exhibit number the documents described in the requests. All of these documents are known to be in Respondents' possession.

### **ADMISSION REQUESTS**

Complaint counsel requests the following admissions:

1. Respondents do not possess any evidence that use of the Ab Force will cause users to develop well-defined abdominal muscles.
2. Respondents do not possess any evidence that use of the Ab Force will cause users to lose weight.
3. Respondents do not possess any evidence that use of the Ab Force will cause users to lose inches of girth.

4. Respondents do not possess any evidence that use of the Ab Force will cause users to lose or reduce body fat.
5. Respondents do not possess any evidence that use of the Ab Force is an effective alternative to regular exercise.
6. Respondents do not possess any evidence that use of the Ab Force will tone, strengthen, or firm the abdominal muscles of a user.
7. The Ab Force is not intended for medical use, for the treatment of any medical condition or for any permanent physical changes
8. Respondents are not aware of any ab belt being advertised in the United States by means of infomercials before or during the time period when the Ab Force was advertised in the United States other than the Ab Energizer, the Fast Abs, and the AbTronic.
9. An ab belt, as opposed to a cable and lead EMS device, allows the user to walk around while using the device.
10. The Ab Force uses electronic stimulation which is intended to cause contractions of the muscles.
11. The Ab Force is an instrument, apparatus, implement, machine or contrivance intended to affect the structure or function of the human body which does not achieve its primary intended purposes through chemical action with the body and which is not dependent upon being metabolized for the achievement of its primary intended purposes.
12. The U.S. Food and Drug Administration ("FDA") classifies EMS devices such as the Ab Force as medical devices within the meaning of 21 U.S.C. section 321(h) of the Food, Drug, and Cosmetic Act.
13. The Ab Force was not introduced into interstate commerce in the United States prior to May 28, 1976.
14. FDA requires premarket approval for medical devices for human use that were not introduced into interstate commerce in the United States prior to May 28, 1976 unless FDA reclassifies the device or the sponsor of the device submits a premarket notification to FDA for the device and obtains an FDA decision that the device is substantially equivalent to a legally marketed device.
15. FDA has not reclassified the Ab Force.
16. No premarket notification or 510k premarket notification for the Ab Force was submitted

- to FDA on or prior to September 30, 2003.
17. No premarket notification or 510k premarket notification for the Ab Force has been submitted to FDA since September 30, 2003.
  18. Respondents did not submit a premarket approval application or 510k premarket notification for the Ab Force to FDA before promoting, advertising, marketing, or selling the Ab Force in the United States or at any other time.
  19. Prior to promoting, advertising, marketing, or selling the Ab Force in the United States, Ajit Khubani was aware that no premarket approval application or 510k premarket notification for the Ab Force had been submitted to FDA.
  20. As far as respondents are aware, no one has ever applied for approval or clearance of the Ab Force by FDA.
  21. FDA never approved or cleared the Ab Force for sale in the United States.
  22. Respondents sold the Ab Force in the United States to entities operating Internet websites on which the Ab Force was offered for sale to consumers.
  23. Respondents sold the Ab Force directly to consumers or end-users in the United States.
  24. The 60 second and 120 second Ab Force spots, which are attached to the Complaint as Exhibits A and C, were aired approximately 96 times on cable television, including the Food Network and MSNBC, between January 5, 2002 and January 27, 2002.
  25. The 60 second Ab Force television spot, which is attached to the Complaint as Exhibit E, and the 120 second Ab Force television spot which Respondents labeled as AB-E-120, were aired on cable and broadcast television, including the Food Network, MSNBC, CBNC, MTV and the Fox New Channel, between January 19, 2002 and April 7, 2002.
  26. The Ab Force email advertisements, which respondents bates numbered T000018 - T000022 in their October 3, 2002 CID submission, were disseminated from February 26, 2002 to April 6, 2002.
  27. The Ab Force radio advertisement, a transcript of which is attached to the Complaint as Exhibit H, was disseminated from December 23, 2001 to January 23, 2002.
  28. The Ab Force print advertisement, attached to the Complaint as Exhibit G, ran between February 14, 2002 and April 6, 2002.
  29. The Ab Force print advertisement, attached to the Complaint as Exhibit G, ran in the

following newspapers: Miami Herald, St. Paul Pioneer Press, Wilmington News, Dayton Daily News, Lexington Herald, Washington Post, Greensboro/Pittsburgh, Newark Star Ledger, St. Louis Post, Atlanta Constitution, Ft. Lauderdale Sun, Chicago Tribune, and Denver Post.

30. The Ab Force print advertisement, attached to the Complaint as Exhibit G, ran in News America free standing inserts nationally on March 10, 2002, and March 17, 2002.
31. T.V. Savings, L.L.C. was formed on January 22, 2002.
32. T.V. Savings, L.L.C. did not exist prior to January 22, 2002.
33. As of June 27, 2002, the only documents in the possession of T.V. Savings, Telebrands, and Ajit Khubani constituting, referring or relating to advertisements for EMS devices other than Abforce, were instruction manuals for the AB Energizer and the Fast Abs devices, which respondents bates numbered T050024 - T050068 in their June 27, 2003 CID submission.
34. Prior to the formation of T.V. Savings on January 22, 2002, Ajit Khubani had legal title to distribute the Ab Force.
35. Prior to the formation of T.V. Savings on January 22, 2002, Telebrands had legal title to distribute the Ab Force.
36. As of January 22, 2002, T.V. Savings had legal title to distribute the Ab Force.
37. Employees of Telebrands performed work for the Ab Force campaign
38. Employees of T.V. Savings performed work for the Ab Force campaign
39. Telebrands provided the financing necessary to perform media management services, credit card processing, customer response services, customs clearance, accounting and bookkeeping services and to act as an importer of record for T.V. Savings with respect to the Ab Force.

40. Proceeds from the sale of the Ab force were shared by Telebrands and T.V. Savings.
41. Use of the Ab Force will not cause users to develop well-defined abdominal muscles.
42. Use of the Ab Force will not cause users to lose weight.
43. Use of the Ab Force will not cause users to lose inches of girth.
44. Use of the Ab Force will not cause users to lose or reduce body fat.
45. Use of the Ab Force is not an effective alternative to regular exercise.

Respectfully submitted,



Connie Vecellio (202) 326-2966  
Walter Gross (202) 326-3319  
Amy M. Lloyd (202) 326-2394

Division of Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

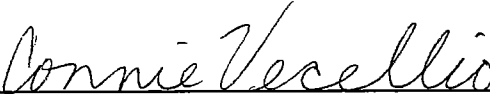
Dated: December 16, 2003



**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of December 2003, I caused a true copy of Complaint Counsel's First Requests for Admissions to be served by electronic mail, facsimile, and U.S. mail upon:

Edward F Glynn, Jr.  
Theodore Atkinson, Esq.  
Venable, Baetjer, Howard & Civiletti, LLP  
575 7<sup>th</sup> Street, N.W.  
Washington, D.C. 20004-1601  
(202) 344-8300 fax  
Attorneys for Respondents  
[efgynn@venable.com](mailto:efgynn@venable.com)  
[twatkinson@venable.com](mailto:twatkinson@venable.com)

  
Connie Vecellio  
Connie Vecellio  
Complaint Counsel