

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of

TECHNOBRANDS, INC.,
a corporation, and

CHARLES J. ANTON,
individually and as an officer
of TechnoBrands, Inc.

FILE NO. 992 3034

**AGREEMENT CONTAINING
CONSENT ORDER**

The Federal Trade Commission has conducted an investigation of certain acts and practices of TechnoBrands, Inc. ("TBI"), and Charles J. Anton, individually and as an officer of TBI ("proposed respondents"). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between TBI, by its duly authorized officers, and Anton, individually and as an officer of TBI, and counsel for the Federal Trade Commission that:

1.a. Proposed respondent TBI is a Virginia corporation with its principal office or place of business at 1998 Ruffin Mill Road, Colonial Heights, Virginia 23834.

1.b. Proposed respondent Anton is a shareholder and president of TBI. His principal office or place of business is the same as that of TBI.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondents waive:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.
5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.
6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondents' address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.
7. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

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

1. "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.
2. Unless otherwise specified, "respondents" shall mean TBI, its successors and assigns and its officers; Anton, individually and as an officer of TBI; and each of the above's agents, representatives, and employees.
3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the Hollywood 48-Hour Miracle Diet or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

- A. Consumers who use such product can lose 10 lbs. in 48 hours; or
- B. Many celebrities, actors, actresses, and models – including some that star in the television shows E.R. and Friends – have lost substantial weight by using such product;

unless at the time the representation is made, respondents possess and rely upon competent and reliable evidence that substantiates the representation. In the case of the representation set forth in subparagraph A (regarding weight loss) the substantiation must consist of competent and reliable scientific evidence.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the Enforma System or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

- A. Consumers who use such product can lose substantial weight without the need for a restricted calorie diet or exercise; or
- B. Consumers who use such product can avoid weight gain without the need for a restricted calorie diet or exercise;

unless at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the BMI Magnetic Kit or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

- A. Such product relieves severe pain, whether chronic or occasional, anywhere in the body, including lower back pain, tennis elbow, carpal tunnel syndrome, hand pain, ankle strains, neck pain, shoulder pain, hip pain, muscle strains, and knee pain;
- B. Such product can relieve pain more effectively than traditional medicine, anti-inflammatory drugs, massage, acupuncture, or chiropractic treatment; or
- C. Such product relieves pain through magnetic field therapy, which enlarges the diameter of veins, arteries and capillaries, increases blood flow, aids circulation, reduces inflammation, and suppresses the body's production of pain-causing chemicals;

unless at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the Nisim New Hair Biofactors System or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

- A. Consumers who use such product can stop excessive hair loss in a matter of days; or
- B. Such product is as effective at stimulating hair growth as prescription products, or other heavily advertised restorers (such as Rogaine or Propecia);

unless at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

V.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the Clarion Ionic Filter Ceiling Fan or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

- A. Consumers who use such product will experience relief from allergies and other respiratory problems; or
- B. Such product eliminates dust mites and pet dander from a user's environment;

unless at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

VI.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the Sila Ionic Air Purifier or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that the Sila air purifier eliminates mold, mildew, bacteria, chemicals, and pollutants from a user's environment, unless at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

VII.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the comparative or absolute benefits, performance, or efficacy of such product or service, unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

VIII.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

IX.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, shall not represent, in any manner, expressly or by implication, that: (A) Any user testimonial or endorsement of the product reflects the actual and current opinions, findings, beliefs, or experiences of the user or (B) the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

1. the representation is true and, at the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or
2. respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:
 - a. what the generally expected results would be for users of the product, or

- b. the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

X.

IT IS FURTHER ORDERED that, no later than the date this order becomes final, respondents shall pay to the Federal Trade Commission the sum of two hundred thousand dollars (\$200,000), under the following terms and conditions:

- A. The payment shall be made by wire transfer or certified or cashier's check made payable to the Federal Trade Commission. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.
- B. The funds paid by respondents, together with any accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of the products outlined in the attached draft complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty or punitive assessment.
- C. Respondents relinquish all dominion, control and title to the funds paid, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondent, respondent acknowledges that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

XI.

IT IS FURTHER ORDERED that respondent TBI, and its successors and assigns, and respondent Anton shall, for three (3) 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.

XII.

IT IS FURTHER ORDERED that respondent TBI, and its successors and assigns, and respondent Anton (when Anton is the majority shareholder or officer of a business involved in the advertising and sale of products to the public) shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current above referenced personnel within thirty (30) days after the date of service of this order, and to future above referenced personnel within thirty (30) days after the person assumes such position or responsibilities. Respondents shall maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this order.

XIII.

IT IS FURTHER ORDERED that respondent TBI, and its successors and assigns, and respondent Anton (when Anton is the majority shareholder or officer of a business involved in the advertising and sale of products to the public) shall deliver a copy of Attachment A to this order to all current and future employees, agents, and representatives having responsibilities with respect to the advertising and sale of products to the public, and shall secure from each such person a signed and dated statement acknowledging receipt of Attachment A. Respondents shall deliver Attachment A 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. Respondents shall maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of Attachment A.

XIV.

IT IS FURTHER ORDERED that respondent TBI and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation 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, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

XV.

IT IS FURTHER ORDERED that respondent Anton, for a period of three (3) 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 involving the sale of consumer products and/or services. The notice shall include respondent's new business address and telephone 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, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

XVI.

IT IS FURTHER ORDERED that respondent TBI, and its successors and assigns, and respondent Anton 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.

XVII.

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 pursuant to 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.

Signed this _____ day of _____, 2001

TECHNOBRANDS, INC.

By: _____
CHARLES J. ANTON, individually
and as an officer of TBI

As to Form:

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