

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)	
)	
TELEBRANDS CORP.,)	Docket No. 9313
)	
TV SAVINGS, LLC, and)	PUBLIC DOCUMENT
)	
AJIT KHUBANI.)	
_____)	

**RESPONDENTS' FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 3.37 of the Federal Trade Commission's Rules of Practice, Respondents Telebrands Corp. ("Telebrands"), TV Savings, LLC ("TV SAVINGS") and Ajit Khubani ("Khubani") hereby request that complaint counsel respond to these Requests within the time prescribed by the Federal Trade Commission's Rules of Practice, and produce the following documents and/or tangible things for inspection and copying at the law offices of Venable, LLP, 575 7th Street, N.W., Washington, D.C. 2004-1607, or at such time and place as may be agreed upon by all counsel.

INSTRUCTIONS

1. These instructions and definitions should be construed to require responses based upon the information available to complaint counsel as well as your attorneys, representatives, investigators, and others acting on your behalf.

2. If you are unable to produce a document or property requested, state in writing why you cannot produce the document or the property and, if your inability to produce the document or the property is because it is not in your possession or the possession of a person from whom you

could obtain it, state the name, address, and telephone number of any person you believe may have the original or a copy of any such document or property.

3. If you object to a portion or an aspect of any Request, state the grounds of your objection with specificity and respond to the remainder of the Request.

4. If, in answering these Requests, you encounter any ambiguities when construing a request, instruction, or definition, your response shall set forth the matter deemed ambiguous and the construction used in responding.

Where a claim of privilege is asserted in responding or objecting to any discovery requested in these Requests and information is not provided on the basis of such assertion, you shall, in your response or objection, identify the nature of the privilege (including work product) which is being claimed. When any privilege is claimed, you shall indicate, as to the information requested, whether (a) any documents exist, or (b) any communications took place, and (c) also provide the following information for each such document in a “privileged documents log” or similar format:

- (a) the type of document;
- (b) the general subject matter of the document;
- (c) the date of the document;
- (d) the author(s) of the document;
- (e) the addressee(s) and any other recipient(s) of the document; and
- (f) the custodian of the document, where applicable.

5. If the requested documents are maintained in a file, the file folder is included in the request for production of those documents.

DEFINITIONS

Notwithstanding any definition below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the Federal Trade Commission's Rules of Practice.

A. The terms "FTC," "Complaint Counsel," "you," or "your" means the United States Federal Trade Commission, including its employees, agents, attorneys, consultants, representatives, officers, and all other persons acting or purporting to act on its behalf.

B. The term "EMS device," "EMS devices," or "EMS products" means electronic muscle stimulation devices including powered muscle stimulation products, as that term is defined in 21 C.F.R. 890.5850, and transcutaneous electric nerve stimulator products, as that term is defined in 21 C.F.R. 882.5890, and which are regulated by the Food and Drug Administration.

C. The term "person" is defined as any natural person or any business, legal or governmental entity or association.

D. The term "communication" means the transmittal of information by any means.

E. The terms "document" and "documents" are synonymous in meaning and equal in scope to the usage of the terms as defined by 16 C.F.R. § 3.34(b), and includes, without limitation, any written material, whether typed, handwritten, printed or otherwise, and whether in draft or final form, of any kind or nature, or any photograph, photostat, microfilm or other reproduction thereof, including, without limitation, each note, memorandum, letter, telegram, telex, circular, release, article, report, prospectus, memorandum of any telephone or in-person conversation, any financial statement, analysis, drawing, graph, chart, account, book, notebook, draft, summary, diary, transcript, computer data base, computer printout or other computer

generated matter, contract or order, technical report, laboratory report or notebook, engineering report, patent, registration or mark, application for a copyright, trademark or patent, patent appraisal, infringement search or study, and all mechanical and electronic audio and video recordings or transcripts thereof, and other data compilations from which information can be obtained and translated; if necessary, by Defendant/Counter-Plaintiffs into reasonably usable form. Electronic mail is included within the definition of the terms “document” or “documents.” A draft or non-identical copy is a separate document within the meaning of the term.

F. The term “relating” (or “relate”) shall mean: pertaining, describing, referring, evidencing, reflecting, discussing, showing, supporting, contradicting, refuting, constituting, embodying, containing, concerning, identifying, or in any way logically or factually connected with the matter discussed.

G. The words “or” and “and” shall be read in the conjunctive and not in the disjunctive wherever they appear, and neither of these words shall be interpreted to limit the scope of a request. The use of a verb in any tense shall be construed as the use of the verb in all other tenses and the singular form shall be deemed to include the plural, and vice-versa. The singular form of any noun shall be deemed to include the plural, and vice-versa.

H. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. “All” means “any and all”; “any” means “any and all.” “Including” means “including but not limited to.” “And” and “or” encompass both “and” and “or.” Words in the masculine, feminine or neuter form shall include each of the other genders.

REQUESTS

REQUEST NO. 1

All documents relating to your contention that representations expressly made in the Ab Force advertisements are false or misleading.

REQUEST NO. 2

All documents relating to your contention that representations made by implication in the Ab Force advertisements are false or misleading.

REQUEST NO. 3

Documents sufficient to identify every EMS device other than Ab Tronic, AB Energizer, and Fast Abs that was offered for sale, sold or distributed in the United States during or in the three-year period before the time period in which the Ab Force advertisements appeared.

REQUEST NO. 4

All documents relating to your contention that any EMS device identified in your answer to Interrogatory No. 3 was referenced, either expressly or by implication, in the Ab Force advertisements.

REQUEST NO. 5

All documents relating to your contention that there were EMS devices that were offered for sale, sold or distributed in the United States during or before the time period in which the Ab Force advertisements appeared that were not referenced, either expressly or by implication, in the Ab Force advertisements.

REQUEST NO. 6

All documents relating to your contention that Respondents made the representations identified in paragraph 19 of the Complaint, either expressly or by implication, other than by reference to other EMS products or infomercials.

REQUEST NO. 7

All documents supporting or relating to every evaluation, survey, or study conducted by you or on your behalf to assess consumer reaction to or consumer perception, comprehension, understanding, "take-away," or recall of statements or representations made in the Ab Force advertisements.

REQUEST NO. 8

All documents supporting or relating to every evaluation, survey, or study conducted by you or on your behalf to assess consumer reaction to or consumer perception, comprehension, understanding, "take-away," or recall of statements or representations made in any EMS device advertisement.

REQUEST NO. 9

All documents that you intend to rely on as evidence including, without limitation, surveys, letters, telephone records, reports and memoranda, that consumers perceive, understand or comprehend the Ab Force advertisements as making the representations identified in paragraphs 16 through 19.

REQUEST NO. 10

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 product or any other EMS device.

REQUEST NO. 11

All documents relating to all information produced, provided, or identified by any party or third party as substantiation for the advertising claims in each of the actions identified in paragraphs 16 through 18 of the Complaint.

REQUEST NO. 12

All documents relating to your contention that the information identified in your answer to Interrogatory No. 11 does not constitute substantiation for the advertising representations at issue in the actions identified in paragraphs 16 through 18 of the Complaint.

REQUEST NO. 13

All documents relating to your allegation that, according to an industry monitoring service, the Ab Force 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.

REQUEST NO. 14

All documents relating to any advertisement or promotional material for the Ab Force product, other than documents produced by Respondents in pre-complaint discovery.

REQUEST NO. 15

All documents relating to Telebrands Corp., TV Savings, LLC or Ajit Khubani, other than documents produced by Respondents in pre-complaint discovery.

REQUEST NO. 16

All documents identified in any answer to any Interrogatory or which you relied on in answering any Interrogatory.

Dated: October 23, 2003

Respectfully submitted,

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CERTIFICATES OF SERVICE AND CONFORMITY

I hereby certify that on October 23, 2003, pursuant to Federal Trade Commission Rules of Practice 4.2(c) and 4.4(b), I caused the foregoing Respondents' First Set of Requests for Production of Documents and Things to be filed and served as follows:

- (1) an original and one (1) paper copy filed by hand delivery and an electronic copy in Microsoft Word format filed by e-mail to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Rm. H-159
Washington, D.C. 20580
E-mail: secretary@ftc.gov

- (2) one (1) paper copy served by hand delivery to:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
600 Pennsylvania Avenue, N.W.
Rm. H-112
Washington, D.C. 20580

- (3) one (1) paper copy by first-class mail and by facsimile to:

Constance M. Vecellio, Esq.
Senior Counsel
600 Pennsylvania Avenue, N.W.
NJ-2115
Washington, D.C. 20580
Fax: (202) 326-2558

- (4) and one (1) paper copy each by first class mail to:

Walter Gross
600 Pennsylvania Avenue, N.W.
NJ-2127
Washington, D.C. 20580

Amy Lloyd
600 Pennsylvania Avenue, N.W.
NJ-2260
Washington, D.C. 20580

I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original, and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.

Theodore W. Atkinson, Esq.