

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

In the Matter of)	
)	
TELEBRANDS CORP.,)	
a corporation,)	
)	
TV SAVINGS, LLC,)	
A limited liability company, and)	Docket No. 9313
)	
AJIT KHUBANI,)	
Individually and as president of)	
Telebrands Corp. and sole member)	
of TV Savings, LLC.)	
_____)	

**MOTION TO COMPEL PRODUCTION OF DOCUMENTS OR,
IN THE ALTERNATIVE, TO PRECLUDE TESTIMONY OF A WITNESS**

Counsel for Respondents, pursuant to Rule 3.38(a)(2) of the Commission's Rules of Practice, 16 CFR § 3.38(a)(2), hereby move for an Order requiring immediate production by Complaint Counsel of a previous study conducted by Dr. Anthony DeLitto on EMS devices or, in the alternative, an Order precluding Doctor DeLitto from testifying in this matter, and in support thereof state:

(1) The present proceeding was commenced by the issuance of an administrative complaint which alleges that Respondents have claimed in advertising that an EMS ab belt previously sold by them called the Ab Force causes loss of weight, inches, or fat, causes well-defined abdominal muscles and is an effective alternative to regular exercise. The Complaint asserts that these claims are false and misleading.

(2) The only expert scientific witness named by Complaint Counsel to address the question of whether the Ab Force could cause these results is Dr. Anthony DeLitto of the

University of Pittsburg. At a deposition on Friday, February 27, 2004, Doctor DeLitto testified that he had conducted testing on other EMS ab belts including the AbTronic, the Ab Energizer and Fast Abs, when previously retained by the Commission as an expert witness to analyze those products in conjunction with prior enforcement action against them. The results of Doctor DeLitto's prior analysis is contained in a report which he furnished to FTC Staff.

(3) As the Complaint in this matter makes clear, the allegations made against the Respondents for advertising claims relating the Ab Force are directly related to previous enforcement actions taken by the Commission against the sellers of the three EMS ab belt devices previously tested by Doctor DeLitto. Consequently, during the deposition, Respondents' counsel asked that Complaint Counsel immediately produce the report described by Doctor DeLitto.

(4) The description by Doctor DeLitto in the deposition on February 27, 2004, was the first that Respondents' counsel knew of the existence of the report. In the request for production of documents served on October 23, 2003, Respondents' counsel had asked for the production of "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." (emphasis supplied). The term "relating" in the definitions preceding the document request is plainly broad enough to encompass the requirement for the production of the report identified by Doctor DeLitto. And, because the Complaint itself describes the relationship between the present action and the previous Commission actions against the sellers of the three EMS ab belts which were analyzed by Doctor DeLitto, the relevance of Doctor DeLitto's analysis cannot be in doubt.

(5) Complaint Counsel and counsel for Respondents have conferred on this matter and, on March 3, 2004, Complaint Counsel advised that the DeLitto report would not be produced on grounds of privilege.

Thus, counsel for Respondents request that an Order requiring production of the document forthwith be immediately issued or, in the alternative, that an Order issue precluding Doctor DeLitto from testifying in this matter.

Respectfully submitted,

Edward F. Glynn

/s/ Edward F. Glynn, Jr.

Theodore W. Atkinson
VENABLE LLP
575 7th Street, N.W.
Washington, DC 20004-1601
(202) 344-8000

Attorneys for Respondents
Telebrands Corp., TV Savings, LLC,
and Ajit Khubani

Dated: March 9, 2004

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Telebrands Corp. and sole member)	
of TV Savings, LLC.)	
_____)	

ORDER REQUIRING PRODUCTION OF DOCUMENT

Having considered the motion of Respondents for an Order pursuant to Rule 3.38(a)(2) of the Commission's Rules of Practice, 16 C.F.R. §3.38(a)(2) and the opposition filed by Complaint Counsel, it is hereby

ORDERED that Complaint Counsel shall produce to counsel for Respondents within 48 hours of receiving notice of this Order the report compiled by Dr. Anthony DeLitto reflecting his review of the AbTronic, Ab Energizer and Fast Abs EMS ab belts; and it is further

ORDERED that Complaint Counsel shall make Doctor DeLitto available for a telephone deposition, if requested by counsel for Respondents, for an additional period not to exceed one (1) hour in order to allow counsel for Respondents to question Doctor DeLitto on the record, under oath, with respect to issues raised by

the prior report of Doctor DeLitto on his examination of the other EMS ab belts;
and it is further

ORDERED that in the event Complaint Counsel do not provide the report
the production of which is required by this Order and do not make Doctor DeLitto
available for deposition as required above, Doctor DeLitto shall be precluded from
testifying in the trial of this matter.

Stephen J. McGuire
Chief Administrative Law Judge

Issued this ____ day of March, 2004

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2004, pursuant to Federal Trade Commission Rules of Practice 4.2(c) and 4.4(b), I caused the foregoing Motion to Compel Production of Documents or, in the alternative, to Preclude Testimony of a Witness, Memorandum In Support of Respondents' Motion to Compel . . . , and [proposed] Order Requiring Production of Document 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 e-mail to:

Constance M. Vecellio, Esq.
Senior Counsel
600 Pennsylvania Avenue, N.W.
NJ-2115
Washington, D.C. 20580
cvecellio@ftc.gov

and

James Reilly Dolan
Assistant Director
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001
jdolan@ftc.gov

(4) one (1) copy each by e-mail to:

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

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

Joshua Millard
600 Pennsylvania Avenue, N.W.
NJ-2127
Washington, D.C. 20580
jmillard@ftc.gov

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.

/s/ Edward F. Glynn, Jr.
Edward F. Glynn, Jr.