

DECLARATION OF KEVIN R. TOWERS

Pursuant to 28 U.S.C. § 1746

1. My name is Kevin R. Towers. I am a United States citizen and am over eighteen years of age. I am employed as an Investigator with the Federal Trade Commission (FTC), assigned to the Division of Enforcement in the Bureau of Consumer Protection. I have been employed as an investigator by the FTC since November 2003. This declaration is made according to my personal knowledge, except where otherwise stated, and I am able to testify to the matters stated herein.

Jordan Whitney, Inc. "Direct Response Television Marketing Reports"

2. On or about April 13, 2004, I reviewed copies (Bates Range: T011000-T011516) of the following thirty-six Jordan Whitney, Inc. "Direct Response Television Marketing Reports" (JW Reports) that were provided by Respondents in connection with Telebrands Corporation (D-9313): (1) September 3 and 10, 2001; (2) September 17, 2001; (3) September 24, 2001; (4) October 1, 2001; (5) October 8, 2001; (6) October 15, 2001; (7) October 22, 2001; (8) November 5, 2001; (9) November 12, 2001; (10) November 19, 2001; (11) November 26, 2001; (12) December 3, 2001; (13) December 10, 2001; (14) December 17, 2001; (15) December 24, 2001; (16) December 31, 2001 and January 7, 2002; (17) January 14, 2002; (18) January 21, 2002; (19) January 28, 2002; (20) February 4, 2002; (21) February 11, 2002; (22) February 18, 2002; (23) February 25, 2002; (24) March 4, 2002; (25) March 11, 2002; (26) March 18, 2002; (27) March 25, 2002; (28) April 1, 2002; (29) April 8, 2002; (30) April 15, 2002; (31) April 22, 2002; (32) April 29, 2002; (33) May 6, 2002; (34) May 13, 2002; (35) May 20, 2002; and (36) May 27, 2002.

Review of Websites for Response Magazine and Jordan Whitney, Inc.

3. On March 22, 2004, I visited the website for Response Magazine at www.responsemag.com. The homepage for this website states that Response Magazine is “the source for electronic direct marketing professionals.” Under the “Research” section of the website is a link to the Top 10 Infomercials and Spots compiled from rankings published in Jordan Whitney’s “Direct Response Monitoring Report” or “Greensheet.” The source information at the bottom of each set of rankings states that the Jordan Whitney rankings are “based on confidential media budgets and Jordan Whitney’s monitoring of national cable and broadcast markets.” Pages from Response Magazine’s website are attached as Exhibit A.

4. On March 22, 2004, I visited the website for Jordan Whitney, Inc. at www.jwgreenshet.com. During my review of the website I noted that Jordan Whitney publishes rankings on a weekly basis which list the (1) Top Infomercials and (2) Top Short-Form Direct Response Spot television commercials. According to its website, Jordan Whitney, Inc. determines its rankings on the basis of “confidential media budgets, frequency of airing, and Jordan Whitney’s own monitoring of national cable and selected broadcast markets for the week preceding each published report.” Furthermore, according to its website, Jordan Whitney’s rankings, in addition to being used as a “constant source of reference for major retailers around the world,” have been used by “The Los Angeles Times, The New York Times, The Wall Street Journal, The Boston Globe, Entertainment Weekly, The Orange County Register, The Philadelphia Enquirer, The Miami Herald, The Washington Post, NBC, CBS, Fox, Fortune Magazine and 60 Minutes.” Copies of relevant pages from the Jordan Whitney, Inc. website are attached as Exhibit B.

Review of Respondent's Exhibits (VHS Tapes)

5. On or about April 8, 2004, in connection with Telebrands, Inc. (D-9313), I reviewed the following Respondent's Exhibits, which are VHS tapes of recorded infomercials and commercial spots: (1) IGIA Electrosage- infomercial dated April 15, 2002 (RX-72); (2) Mini Wireless Massage System- commercial spot dated January 7, 2002 (RX-73); (3) Accusage- commercial spot dated January 7, 2002 (RX-74); (4) Smart Toner- commercial spot that is undated (RX-75); (5) Gym Fitness- infomercial dated November 5, 2001- Volume XI No. 9-A (RX-76); (6) ElectroGym- commercial spot dated January 14, 2002 (RX-77); (7) Slim Tron- commercial spot that is undated (RX-78); and (8) Slendertone- commercial spot dated November 10, 2003 (RX-79). All of the aforementioned VHS tapes were marked as being "Exact Copies."

6. During my review of the VHS tapes I noted that Respondent's Exhibit RX-72, dated April 15, 2002, is a VHS tape of a recorded infomercial for the IGIA Electrosage, which consists of a control box that is attached by wires about twenty-four inches long to eight (8) pads or "isometric electronic massaging units," and not an "ab belt" that is secured around the waist. The infomercial contained images of models with the IGIA Electrosage attached to various body parts or areas including, but not limited to, the abdomen, back, thigh, calf, buttocks, and face.

7. During my review of the VHS tapes I noted that Respondent's Exhibit RX-73, dated January 7, 2002, is a VHS tape of a recorded commercial spot for the Mini Wireless Massage System, which is what I would describe as a small "butterfly-like" unit about four to six inches in length with two self-adhesive pads, and not an "ab belt" that is secured around the waist. The commercial spot contained images of models with the Mini Wireless Massage System attached to various body parts or areas including, but not limited to, the abdomen, back,

shoulders, arm, thigh, and foot.

8. During my review of the VHS tapes I noted that Respondent's Exhibit RX-74, dated January 7, 2002, is a VHS tape of a recorded commercial spot for the Accusage, which consists of a control unit that is attached by wires to two (2) pads, and not an "ab belt" that is secured around the waist. The commercial spot contained images of models with the Accusage attached to various body parts or areas including, but not limited to, the abdomen, waist, back, shoulders, arm and thigh.

9. During my review of the VHS tapes I noted that Respondent's Exhibit RX-79, a commercial spot for the Slendertone product, dated November 10, 2003, was recorded at a time that was well beyond the time period that Telebrands, Inc., marketed the Ab Force belt.

Review of Respondent's Exhibits (VHS Tapes) and Jordan Whiney, Inc. Top Fifty Infomercial & Top Forty Direct Response Spots Lists

10. On or about April 13, 2004, I reviewed the JW Reports (see paragraph 2) in order to determine whether any of the Respondent's Exhibits (see paragraph 3) appeared in the "Top Fifty Infomercials" and/or "Top Forty Direct Response Spots" rankings.

11. The following four Respondent's Exhibits did not appear in the thirty-six JW Top Fifty Infomercials or Top Forty Direct Response Spots rankings that I reviewed: (1) Mini Wireless Massage System (RX-73); (2) Smart Toner (RX-75); (3) Gym Fitness (RX-76); and (4) Slender Tone.

12. The IGIA Electrosage (RX-72), which is an infomercial, was not ranked in any of the thirty-six JW Report Top Fifty Infomercial rankings that I reviewed; however, the IGIA Electrosage (a/k/a IGIA Electrosage 8) commercial spot was ranked in the top ten of the Top

Forty Direct Response Spots rankings for twenty-two weeks from September 3, 2001 through February 4, 2002. It was also ranked either first or second in seven of those same time periods.

13. The IGIA Accusage (RX-74), a commercial spot, only appeared in one (December 24, 2001) of the thirty-six Top Forty Direct Response Spots rankings I reviewed, and it was ranked #30. The IGIA Accusage did not appear in any of the thirty-six Top Fifty Infomercial rankings that I reviewed.

14. The ElectroGym (RX-77), a commercial spot, was ranked eight times and had an average ranking of 28 in the Top Forty Direct Response Spots rankings from December 31, 2001 through March 18, 2002. The ElectroGym did not appear in any of the thirty-six Top Fifty Infomercial rankings that I reviewed.

15. The Slim Tron (RX 78), a commercial spot, was ranked three times and had an average ranking of 30 in the Top Forty Direct Response Spots rankings from April 22, 2002 through May 20, 2002. The Slim Tron did not appear in any of the thirty-six Top Fifty Infomercial rankings that I reviewed.

Search of Internet for Web Pages for Rejuvenique and Dermal Tone.

16. On or about April 19, 2004, I searched Internet websites for web pages regarding two products, Rejuvenique and Dermal Tone. As a result of my search, I downloaded and attached the web pages featuring products named Rejuvenique (Exhibit C) and Dermal Tone (Exhibit D) to this declaration.

I declare under penalty of perjury that the foregoing statement is true and correct.

Executed on: _____, in _____

By: _____
Kevin R. Towers