

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

)	
)	
In the Matter of)	
)	FILE NO. 932 3297
TELEBRANDS CORP.,)	
a corporation; and)	AGREEMENT CONTAINING
)	CONSENT ORDER TO
AJIT KHUBANI,)	CEASE AND DESIST
individually and as an officer)	
and director of said corporation.)	

The Federal Trade Commission, hereinafter sometimes referred to as Commission, having initiated an investigation of certain acts and practices of Telebrands Corp., a corporation; and Ajit Khubani, individually and as an officer and director of Telebrands Corp.; hereinafter sometimes referred to as proposed respondents; and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

IT IS HEREBY AGREED by and between Telebrands Corp., by its duly authorized officer Ajit Khubani; and Ajit Khubani, individually and as an officer and director of Telebrands Corp.; and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Telebrands Corp., also doing business as Uncle Bernie's and U.S. Buyers Network, and previously having been known as Telebrands Direct Response Corp. and Telebrands Wholesale Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal place of business located at 2428 Patterson Avenue, Roanoke, Virginia 24016.

Proposed respondent Ajit Khubani is an officer and director of Telebrands Corp. Mr. Khubani, individually or in concert with others, formulates, directs, and controls the policies, acts, and practices of said corporation, and his business address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

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 the 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 of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (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 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 § 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 draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist 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 by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement 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, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I.

IT IS ORDERED that Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of the "Sweda Power Antenna" or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, that such product:

A. provides the best, crispest, clearest, or most focused television reception achievable without cable installation; or

B. will more effectively improve a television's or radio's reception, sound, or image than the installation of a television or radio satellite or external dish antenna.

For purposes of this paragraph "substantially similar product" shall mean any product or device that relies or purports to rely on house wiring to serve as the antenna to capture television or radio signals.

II.

IT IS FURTHER ORDERED that Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and

as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of the "Sweda Power Antenna" or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, that such product takes a television or radio signal and electronically boosts it before it gets to a television or radio unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For purposes of this order, "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 have 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.

For purposes of this paragraph "substantially similar product" shall mean any product or device that relies or purports to rely on house wiring to serve as the antenna to capture television or radio signals.

III.

IT IS FURTHER ORDERED that Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any product or device intended to improve a television's or radio's reception, sound, or image in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, the relative or absolute performance, attributes, or effectiveness of such product or device, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For purposes of this order, "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 have 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.

IV.

IT IS FURTHER ORDERED that Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, by act or omission, any guarantee of satisfaction or refund offer in connection with the promotion, advertising, offering for sale, sale or distribution of any product. Any such guarantee of satisfaction or refund offer shall be deemed to require the full refund of the purchase price of a product, as well as any shipping, insurance, handling charges, or any other fee or charge paid by the consumer, within seven (7) business days of the respondents' receipt of the consumer's request for a refund pursuant to any guarantee of satisfaction or refund offer made by respondents; **provided, however,** that respondents may exclude shipping, insurance, handling charges, or any other fee or charge paid by the consumer from the terms of any guarantee of satisfaction or refund offer if such exclusion is clear, conspicuous, and in close proximity to the guarantee of satisfaction or refund offer.

V.

IT IS FURTHER ORDERED that Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of the "WhisperXL" or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, that such product:

- A. is a major breakthrough in sound enhancement technology;
- B. is an effective hearing aid;
- C. is designed to produce or produces clear amplification of whispered or normal speech, television, radio, or other mid- to high-frequency sounds at a distance of more than a few feet;
- D. allows the user to hear a whisper from as far as 100 feet away; or
- E. allows the user to hear a pin drop from 50 feet away.

For purposes of this paragraph "substantially similar product" shall not include any hearing aid that has received pre-market approval and/or pre-market clearance from the United States Food & Drug Administration, which approval and/or clearance remains in effect at the time of the making of any of the representations set forth as A. through E. above.

VI.

IT IS FURTHER ORDERED that Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any hearing aid or other sound amplification device intended to be worn or carried by the user, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, the relative or absolute performance, attributes, or effectiveness of any such aid or device, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For purposes of this order, "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 have 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.

For purposes of this paragraph "other sound amplification device intended to be worn or carried by the user" shall not include any television, radio, tape player, compact disc player, or similar device, marketed solely for listening to broadcast, cablecast, or pre-recorded material.

VII.

IT IS FURTHER ORDERED that respondents, their successors and assigns, and their officers, for three (3) years after the last date of dissemination of any representation covered by this order, shall maintain and, within ten (10) business days of their receipt of a written request, make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VIII.

IT IS FURTHER ORDERED that respondents, their successors and assigns, and their officers, for three (3) years after service of this order, shall maintain and, within ten (10) business days of their receipt of a written request, make available to the Federal Trade Commission for inspection and copying records demonstrating compliance with the terms and provisions of this order.

IX.

IT IS FURTHER ORDERED that respondents, their successors and assigns, and their officers, within thirty (30) days after service of this order, shall provide a copy of this order to each of respondents' current principals, officers, and directors, and to all supervising employees, agents, and representatives having any sales, advertising, recordkeeping, fulfillment, customer service, or policy responsibility with respect to the subject matter of this order.

X.

IT IS FURTHER ORDERED that respondents, their successors and assigns, and their officers, for a period of three (3) years from the date of service of this order, shall provide a copy of this order to each of respondents' principals, officers, and directors, and to each of respondents' supervising employees, agents, and representatives having any sales, advertising, recordkeeping, fulfillment, customer service, or policy responsibility, within three (3) days after such person assumes his or her position; **provided, however,** that a person who previously has been provided a copy of the order pursuant to Paragraph IX. need not be provided with another copy pursuant to this paragraph.

XI.

IT IS FURTHER ORDERED that the corporate respondent, its successors and assigns, and its officers, shall notify the Federal Trade Commission at least thirty (30) days prior to any change in the corporate respondent's structure, including but not limited to, change of corporate name or address, place(s) of business, merger, incorporation, dissolution, assignment, or sale which results in the emergence of a successor corporation, the creation or dissolution of a subsidiary or parent, or any other change which may affect respondents' obligations arising out of this order.

XII.

IT IS FURTHER ORDERED that the individual respondent, for a period of seven (7) years from the date of issuance of this order, shall notify the Federal Trade Commission within thirty (30) days of any change in his affiliation with, or change in his active participation in the management or direction of, any business which is engaged in the sale or distribution of any merchandise covered by the terms and conditions of this order.

XIII.

IT IS FURTHER ORDERED that this order will terminate twenty (20) years from the date of its issuance, or twenty 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 paragraph in this order that terminates in less than twenty 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 paragraph.

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 paragraph as though the complaint was never 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.

XIV.

IT IS FURTHER ORDERED that respondents shall, within sixty (60) days after the service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission reports, in writing, setting forth in detail the manner and form in which respondents have complied with this order, including but not limited to the name and title of each person to whom a copy of the order has been provided pursuant to the requirements of Paragraphs IX and X.

Signed this _____ day of _____, 1995.

Telebrands Corp.,
a corporation

By: _____
Ajit Khubani
President, Telebrands Corp.
2428 Patterson Avenue
Roanoke, Virginia 24016

Ajit Khubani, individually and as an officer
and director of Telebrands Corp.

Robert Ullman, Counsel For Respondents
BASS & ULLMAN, P.C.
747 Third Avenue
New York, New York 10017

Donald G. D'Amato
Counsel for the Federal Trade Commission

APPROVED:

APPROVED:

Michael Joel Bloom
Director
New York Regional Office
Federal Trade Commission

Joan Z. Bernstein
Director
Bureau of Consumer Protection
Federal Trade Commission

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
)
) DOCKET NO.
TELEBRANDS CORP.,)
 a corporation; and)
)
AJIT KHUBANI,)
 individually and as an officer)
 and director of said corporation.)
)

COMPLAINT

The Federal Trade Commission, having reason to believe that Telebrands Corp., a corporation; and Ajit Khubani, individually and as an officer and director of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH ONE: Respondent Telebrands Corp., also doing business as Uncle Bernie's and U.S. Buyers Network, and previously having been known as Telebrands Direct Response Corp. and Telebrands Wholesale Corp., is a Virginia corporation with its office and principal place of business located at 2428 Patterson Avenue, Roanoke, Virginia 24016.

Respondent Ajit Khubani is an officer and director of the corporate respondent. Individually or in concert with others, he has formulated, directed, or controlled the acts and practices of the corporate respondent, including the various acts and practices alleged in this complaint. His business address is the same as that of the corporate respondent.

PARAGRAPH TWO: Respondents have advertised, labelled, offered for sale, sold, and distributed to consumers the Sweda Power Antenna, a device intended to capture television and radio

signals; the WhisperXL, a sound amplification device intended to be worn by the user; and other products.

PARAGRAPH THREE: The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

Sweda Power Antenna

PARAGRAPH FOUR: Respondents have disseminated or have caused to be disseminated advertisements for the Sweda Power Antenna, including but not necessarily limited to the attached Exhibit A. These advertisements contain the following statements:

A. "Amazing New Product Gives Crisp, Clear TV Reception WITHOUT Cable!";

B. "Until recently, the only convenient way to guarantee great TV reception was to get cable installed. But who wants to pay those irritating monthly cable fees just to get clear reception? Now . . . a new device has been developed . . . [i]t's called the SWEDA Power Antenna and is without a doubt 'the single most important thing you should own if you have a TV!';

C. "Just imagine watching TV and seeing a picture so brilliantly clear that you'd almost swear you were there live! Just plug this tiny 2" x 4" Power Antenna into any ordinary AC outlet, connect your TV and get ready for the best reception you've ever had without cable.";

D. "You'll watch in amazement as YOUR TV set suddenly displays a sharp, focused picture. You literally 'won't believe your eyes!' Even older TV sets suddenly come to life.";

E. ". . . Power Antenna takes that signal and electronically boosts it before it gets to your TV set. The results are amazing!";

F. "WHAT ABOUT MY TV 'DISH' ANTENNA? Return it! . . . The truth is that they're no more effective than rabbit-ears, a loop, or rod antenna . . . The incredible SWEDA Power Antenna makes everything else seem obsolete. Just plug it in and watch it work."; and

G. "[Sweda Power Antenna] Works just as good for radio reception too!".

PARAGRAPH FIVE: Through the use of the statements contained in the advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the attached Exhibit A, respondents have represented, directly or by implication, that:

A. The Sweda Power Antenna provides the best, crispest, clearest, or most focused television reception achievable without cable installation;

B. The Sweda Power Antenna takes a television or radio signal and electronically boosts it before it gets to a television or radio; and

C. The installation of a Sweda Power Antenna will more effectively improve a television's or radio's reception, sound, or image than the installation of a television or radio dish antenna.

PARAGRAPH SIX: In truth and in fact:

A. The Sweda Power Antenna does not provide the best, crispest, clearest, or most focused television reception achievable without cable installation;

B. The Sweda Power Antenna does not take a television or radio signal and electronically boost it before it gets to a television or radio; and

C. The installation of a Sweda Power Antenna will not more effectively improve a television's or radio's reception, sound, or image than the installation of a television or radio dish antenna.

Therefore, the representations set forth in PARAGRAPH FIVE were, and are, false and misleading.

PARAGRAPH SEVEN: Through the use of the statements contained in the advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the attached Exhibit A, respondents have represented, directly or by implication, that at the time they made the representations set forth in PARAGRAPH FIVE, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH EIGHT: In truth and in fact, at the time they made the representations set forth in PARAGRAPH FIVE, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in PARAGRAPH SEVEN was, and is, false and misleading.

PARAGRAPH NINE: Respondents have disseminated or have caused to be disseminated advertisements for the Sweda Power Antenna, including but not necessarily limited to the attached Exhibit A, that make satisfaction or money-back guarantees for the Sweda Power Antenna. These advertisements make the following statement: "Experience the best reception you've ever had or simply return it [Sweda Power Antenna] within 30 days for a prompt and courteous refund."

PARAGRAPH TEN: Through the use of the statement contained in the advertisements referred to in PARAGRAPH NINE, including but not necessarily limited to the attached Exhibit A, respondents have represented, directly or by implication, that the purchaser of a Sweda Power Antenna would readily obtain a prompt refund of the full purchase price upon timely demand and return of the Sweda Power Antenna.

PARAGRAPH ELEVEN: In truth and in fact, in numerous instances, purchasers could not readily obtain a prompt refund of the full purchase price of the Sweda Power Antenna upon timely demand and return of the Sweda Power Antenna. Respondents provided refunds only after delays of several months or only after requiring the purchaser to satisfy other conditions not previously disclosed. Therefore, the representation set forth in PARAGRAPH TEN was, and is, false and misleading.

WhisperXL

PARAGRAPH TWELVE: Respondents have disseminated or have caused to be disseminated advertisements for the WhisperXL, including but not necessarily limited to the attached Exhibits B and C. These advertisements contain the following statements:

- A. "HEAR A WHISPER UP TO 100 FEET AWAY! Incredible WhisperXL Gives You Super Hearing" (Exhibits B and C);
- B. "The WhisperXL may look like a simple device designed to hide right behind your ear, but is actually a major breakthrough in sound enhancement technology." (Exhibit B);
- C. "The WhisperXL . . . is actually a major breakthrough in sound interception and amplification technology." (Exhibit C);
- D. "State-of-the-art electronic engineering actually allows you to hear a whisper up to 100 feet away." (Exhibits B and C);

E. "Incredibly, you'll be able to hear people talking in the next room loudly and clearly, or a pin drop from 50 feet away!" (Exhibit C);

F. "Take a walk outdoors and you'll hear . . . deer coming before they hear you!" (Exhibit C); and

G. **"Don't Miss A Word!** WhisperXL has dozens of practical uses! Take it to the movies, theater, or lecture hall and you'll never miss a word." (Exhibits B).

PARAGRAPH THIRTEEN: Through the use of the statements contained in the advertisements referred to in PARAGRAPH TWELVE, including but not necessarily limited to the attached Exhibits B and C, respondents have represented, directly or by implication, that:

A. the WhisperXL is a major breakthrough in sound enhancement technology;

B. the WhisperXL is an effective hearing aid;

C. the WhisperXL is designed to produce and produces clear amplification of whispered or normal speech, television, radio, and other mid- to high-frequency sounds at a distance of more than a few feet;

D. the WhisperXL allows the user to hear a whisper from as far as 100 feet away; and

E. the WhisperXL allows the user to hear a pin drop from 50 feet away.

PARAGRAPH FOURTEEN: In truth and in fact:

A. the WhisperXL is not a major breakthrough in sound enhancement technology;

B. the WhisperXL is not an effective hearing aid;

C. the WhisperXL is not designed to produce and does not produce clear amplification of whispered or normal speech, television, radio, and other mid- to high-frequency sounds at a distance of more than a few feet;

D. the WhisperXL does not allow the user to hear a whisper from as far as 100 feet away; and

E. the WhisperXL does not allow the user to hear a pin drop from 50 feet away.

Therefore, the representations set forth in PARAGRAPH THIRTEEN were, and are, false and misleading.

PARAGRAPH FIFTEEN: Through the use of the statements contained in the advertisements referred to in PARAGRAPH TWELVE, including but not necessarily limited to the attached Exhibits B and C, respondents have represented, directly or by implication, that at the time they made the representations set forth in PARAGRAPH THIRTEEN, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH SIXTEEN: In truth and in fact, at the time they made the representations set forth in PARAGRAPH THIRTEEN, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in PARAGRAPH FIFTEEN was, and is, false and misleading.

PARAGRAPH SEVENTEEN: The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this day
of , 199 , has issued its complaint against respondents.

By the Commission.

SEAL:

Donald S. Clark
Secretary

[Exhibits A-C attached to paper copies, but not available in electronic format]

ANALYSIS OF PROPOSED CONSENT
ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Telebrands Corp. ("Telebrands") and Ajit Khubani. Proposed respondents are marketers of varied products, including the Sweda Power Antenna and the WhisperXL, which were subjects of this investigation.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents made the following unsubstantiated and false representations about the Sweda Power Antenna: (1) Sweda Power Antenna provides the best, crispest, clearest, or most focused television reception achievable without cable installation; (2) Sweda Power Antenna takes a television or radio signal and electronically boosts it before it gets to a television or radio; and (3) the installation of a Sweda Power Antenna will more effectively improve a television's or radio's reception, sound, or image than the installation of a television or radio dish antenna.

Further, the complaint alleges that the proposed respondents failed to timely honor their money back guarantee for the Sweda Power Antenna.

Part I of the proposed order prohibits proposed respondents from representing that the Sweda Power Antenna provides the best, crispest, clearest or most focused television reception achievable without cable installation or will more effectively improve a television's or radio's reception, sound, or image than the installation of a television or satellite or external dish antenna.

Part II of the proposed order requires that any claim proposed respondents make that the Sweda Power Antenna takes a television or radio signal and electronically boosts it before it gets to a television or radio be truthful and supported by competent and reliable evidence. Similarly, Part III of the proposed order requires that any claim about the relative or absolute performance, attributes, or effectiveness of any product intended to improve a television's or radio's reception, sound, or image be truthful and supported by competent and reliable evidence.

Part IV of the proposed order prohibits the proposed respondents from misrepresenting, by act or omission, any guarantee of satisfaction or refund offer in connection with the advertising or sale of any product, and requires the proposed respondents to make a full refund of the purchase price, as well as any shipping, insurance, and handling charges, within seven business days of receiving the consumer's request for the guaranteed refund. The proposed order permits the respondents to exclude fees, such as handling charges, paid by the consumer from the terms of the guarantee of satisfaction or refund offer so long as the exclusion is clear, conspicuous, and in close proximity to the guarantee of satisfaction or refund offer.

With respect to the WhisperXL, the complaint charges that the proposed respondents made the following unsubstantiated and false representations about the WhisperXL: (1) WhisperXL is a major breakthrough in sound enhancement technology; (2) WhisperXL is an effective hearing aid; (3) WhisperXL is designed to produce or produces clear amplification of whispered or normal speech, television, radio, or other mid- to high-frequency sounds at a distance of more than a few feet; (4) WhisperXL allows the user to hear a whisper from as far as 100 feet away; and (5) WhisperXL allows the user to hear a pin drop from 50 feet away.

Part V of the proposed order prohibits the proposed respondents from making these claims for the WhisperXL. Further, Part VI of the proposed order requires that any claim respondents make about the relative or absolute performance, attributes, or effectiveness of any hearing aid be truthful and supported by competent and reliable evidence.

The proposed order contains recordkeeping requirements for materials that substantiate, qualify, or contradict claims covered by the proposed order (Part VII), and requires the proposed respondents to keep and maintain all records demonstrating compliance with the terms and provisions of the order (Part VIII). Parts IX and X of the proposed order requires distribution of a copy of the order to current and future officers and agents. Part XI provides for Commission notification upon a change in the corporate respondent and Part XII requires Commission notification when the individual respondent changes his present business or employment.

Part XIII provides for the termination of the order after twenty (20) years under certain circumstances. Part XIV obligates proposed respondents to file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an

official interpretation of the agreement and proposed order or to modify in any way their terms.