

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Robert Pitofsky, Chairman
Mary L. Azcuenaga
Janet D. Steiger
Roscoe B. Starek, III
Christine A. Varney

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)	
In the Matter of)	
)	DOCKET NO. C-3699
TELEBRANDS CORP.,)	
a corporation; and)	
)	
AJIT KHUBANI,)	
individually and as an officer)	
and director of said corporation.)	
)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in

Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. 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.

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. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

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 on December 13, 2016, 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.

By the Commission.

Donald S. Clark
Secretary

ISSUED: December 13, 1996