

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Timothy J. Muris, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

In the Matter of

TECHNOBRANDS, INC.,
a corporation, and

CHARLES J. ANTON,
individually and as an officer
of TechnoBrands, Inc.

DOCKET NO. C-4041
DECISION AND ORDER

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 complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by the respondents of all the jurisdictional facts set forth in the draft 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 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 thirty (30) 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 TechnoBrands, Inc. ("TBI") is a Virginia corporation with its principal office or place of business at 1998 Ruffin Mill Road, Colonial Heights, Virginia 23834.
2. Respondent Charles J. Anton ("Anton") is a shareholder and President of TBI. His principal office or place of business is the same as that of TBI.
3. 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

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "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 has 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.
2. Unless otherwise specified, "respondents" shall mean TBI, its successors and assigns and its officers; Anton, individually and as an officer of TBI; and each of the above's agents, representatives, and employees.
3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the Hollywood 48-Hour Miracle Diet or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

- A. Consumers who use such product can lose 10 lbs. in 48 hours; or
- B. Many celebrities, actors, actresses, and models – including some that star in the television shows E.R. and Friends – have lost substantial weight by using such product;

unless at the time the representation is made, respondents possess and rely upon competent and reliable evidence that substantiates the representation. In the case of the representation set forth in subparagraph A (regarding weight loss) the substantiation must consist of competent and reliable scientific evidence.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the Enforma System or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

- A. Consumers who use such product can lose substantial weight without the need for a restricted calorie diet or exercise; or
- B. Consumers who use such product can avoid weight gain without the need for a restricted calorie diet or exercise;

unless at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the BMI Magnetic Kit or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

- A. Such product relieves severe pain, whether chronic or occasional, anywhere in the body, including lower back pain, tennis elbow, carpal tunnel syndrome, hand pain, ankle strains, neck pain, shoulder pain, hip pain, muscle strains, and knee pain;
- B. Such product can relieve pain more effectively than traditional medicine, anti-inflammatory drugs, massage, acupuncture, or chiropractic treatment; or

- C. Such product relieves pain through magnetic field therapy, which enlarges the diameter of veins, arteries and capillaries, increases blood flow, aids circulation, reduces inflammation, and suppresses the body's production of pain-causing chemicals;

unless at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the Nisim New Hair Biofactors System or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

- A. Consumers who use such product can stop excessive hair loss in a matter of days; or
- B. Such product is as effective at stimulating hair growth as prescription products, or other heavily advertised restorers (such as Rogaine or Propecia);

unless at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

V.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the Clarion Ionic Filter Ceiling Fan or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

- A. Consumers who use such product will experience relief from allergies and other respiratory problems; or
- B. Such product eliminates dust mites and pet dander from a user's environment;

unless at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

VI.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the Sila Ionic Air Purifier or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that the Sila air purifier eliminates mold, mildew, bacteria, chemicals, and pollutants from a user's environment, unless at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

VII.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the comparative or absolute benefits, performance, or efficacy of such product or service, unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

VIII.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

IX.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, shall not represent, in any manner, expressly or by implication, that: (A) Any user testimonial or endorsement of the product reflects the actual and current opinions, findings, beliefs, or experiences of the user or (B) the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

1. the representation is true and, at the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the

representation; or

2. respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:
 - a. what the generally expected results would be for users of the product, or
 - b. the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

X.

IT IS FURTHER ORDERED that, no later than the date this order becomes final, respondents shall pay to the Federal Trade Commission the sum of two hundred thousand dollars (\$200,000), under the following terms and conditions:

- A. The payment shall be made by wire transfer or certified or cashier's check made payable to the Federal Trade Commission. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.
- B. The funds paid by respondents, together with any accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of the products outlined in the complaint issued in this proceeding, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty or punitive assessment.
- C. Respondents relinquish all dominion, control and title to the funds paid, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return of the

funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondent, respondent acknowledges that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

XI.

IT IS FURTHER ORDERED that respondent TBI, and its successors and assigns, and respondent Anton shall, for three (3) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

XII.

IT IS FURTHER ORDERED that respondent TBI, and its successors and assigns, and respondent Anton (when Anton is the majority shareholder or officer of a business involved in the advertising and sale of products to the public) shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current above referenced personnel within thirty (30) days after the date of service of this order, and to future above referenced personnel within thirty (30) days after the person assumes such position or responsibilities. Respondents shall maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this order.

XIII.

IT IS FURTHER ORDERED that respondent TBI, and its successors and assigns, and respondent Anton (when Anton is the majority shareholder or officer of a business involved in the advertising and sale of products to the public) shall deliver a copy of Attachment A to this order to all

current and future employees, agents, and representatives having responsibilities with respect to the advertising and sale of products to the public, and shall secure from each such person a signed and dated statement acknowledging receipt of Attachment A. Respondents shall deliver Attachment A to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondents shall maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of Attachment A.

XIV.

IT IS FURTHER ORDERED that respondent TBI and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

XV.

IT IS FURTHER ORDERED that respondent Anton, for a period of three (3) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment involving the sale of consumer products and/or services. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

XVI.

IT IS FURTHER ORDERED that respondent TBI, and its successors and assigns, and respondent Anton shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XVII.

This order will terminate on April 15, 2022, or twenty (20) 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 Part in this order that terminates in less than twenty (20) 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 Part.

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 Part as though the complaint had never been 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.

By the Commission.

Donald S. Clark
Secretary

ISSUED: April 15, 2002