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14 UNITED STATES DISTRICT COURT
15 DISTRICT OF NEVADA

16 FEDERAL TRADE COMMISSION,
17
18 Plaintiff,

19 v.

Docket No. CV-S-_____

20 HUDSON BERKLEY CORPORATION, d/b/a
HUDSON BERKELEY, INC.,
21 MATTHIAS GRANIC,
BISMARCK LABS CORPORATION, d/b/a
22 BLC BISMARCK LABS CORPORATION,
TMI TRICOM MARKETING, INC.,
23 CCI CAD CAM INDUSTRIES LTD., INC., and
BERND EBERT,

24 Defendants.
25

26 **COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

1 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”) through its
2 undersigned attorneys, alleges as follows:

3 1. Plaintiff FTC brings this action under Section 13(b) of the Federal Trade Commission
4 Act (“FTC Act”), 15 U.S.C. § 53(b), to secure a permanent injunction, consumer redress,
5 disgorgement, and other equitable relief against Defendants for engaging in deceptive acts or
6 practices in connection with the advertising, marketing, and sale of the AbTronic Electronic
7 Fitness System (“the AbTronic”), in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C.
8 §§ 45(a) and 52.

9 JURISDICTION AND VENUE

10 2. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. §§
11 45(a), 52, and 53(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

12 3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c),
13 and (d).

14 THE PARTIES

15 4. Plaintiff, the Federal Trade Commission, is an independent agency of the United
16 States Government created by statute. 15 U.S.C. §§ 41-58. The Commission enforces Section
17 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in
18 or affecting commerce. The Commission also enforces Section 12 of the FTC Act, 15 U.S.C. §
19 52, which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or
20 affecting commerce. The Commission may initiate federal district court proceedings to enjoin
21 violations of the FTC Act and to secure such equitable relief, including consumer redress, as
22 may be appropriate in each case. 15 U.S.C. § 53(b).

23 5. Defendant Hudson Berkley Corporation is a Nevada corporation with its registered
24 office located at 723 South Casino Center Boulevard, 2nd Floor, Las Vegas, Nevada 89101-6716.
25 Hudson Berkley Corporation also has done business as Hudson Berkeley, Inc. At times relevant
26 to the complaint, acting individually or in concert with others, Hudson Berkley has advertised,

1 marketed, distributed, and/or sold the AbTronic to consumers throughout the United States.

2 Hudson Berkley transacts or has transacted business in this district.

3 6. Defendant Matthias Granic is a director and the president, secretary, and treasurer of
4 Hudson Berkley Corporation. At times relevant to the complaint, acting individually or in
5 concert with others, he had the authority to formulate, direct, or control the policies, acts, or
6 practices of Hudson Berkley Corporation, including the various acts or practices alleged in this
7 complaint. Granic transacts or has transacted business in this district.

8 7. Defendant Bismarck Labs Corporation (“BLC”) is a California corporation located at
9 401 West Radio Rd. # A-4, Palm Springs, California 92262 and/or at 68-565 Senora Rd.,
10 Cathedral City, California 92234. BLC also has done business as TMI Tricom Marketing, Inc.
11 and CCI CAD CAM Industries, Inc. At times relevant to the complaint, acting individually or in
12 concert with others, BLC has been involved in the acts or practices alleged, including but not
13 limited to, direct participation and control over the funding and production of the infomercial
14 advertisement at issue herein. BLC transacts or has transacted business in this district.

15 8. Defendant TMI Tricom Marketing, Inc. (“TMI”) is a Delaware corporation with its
16 registered office located at Three Christina Centre, 201 North Walnut Street, Wilmington,
17 Delaware 19801, and other offices located at 1013 Centre Rd. # 301, Wilmington, Delaware
18 19805, and 1047 Diana Circle, Palm Springs, California 92262. TMI also has done business as
19 BLC and CAD CAM Industries, Inc. At times relevant to the complaint, acting individually or
20 in concert with others, TMI has been involved in the acts or practices alleged, including but not
21 limited to, direct participation and control over the funding and production of the infomercial
22 advertisement at issue herein. TMI owns or has owned the rights to advertise, market, distribute
23 and/or sell the AbTronic to consumers throughout the United States, and has transferred those
24 rights, or a portion thereof, to Defendant CCI CAD CAM Industries, Inc. TMI transacts or has
25 transacted business in this district.

26 9. Defendant CCI CAD CAM Industries Ltd., Inc. (“CCI”) is a Hong Kong corporation

1 located at GPO 5264, Central, Hong Kong. CCI also has done business as BLC and TMI. At
2 times relevant to the complaint, acting individually or in concert with others, CCI has
3 advertised, marketed, distributed, and/or sold the AbTronic to consumers throughout the United
4 States. CCI has registered the U.S. trademark for the AbTronic name, manufactures the
5 AbTronic devices, and has registered the Internet domain name www.abtronic.net through
6 which the AbTronic can be ordered. CCI has transferred a portion of the rights to advertise,
7 market, distribute and/or sell the AbTronic to Defendant Hudson Berkley. CCI transacts or has
8 transacted business in this district.

9 10. Defendant Bernd Ebert is a California resident, a director and president, chief
10 executive officer, and chief financial officer of BLC, the managing director of TMI, and the
11 president of CCI. At times relevant to the complaint, acting individually or in concert with
12 others, he has formulated, directed, or controlled the policies, acts, or practices of BLC, TMI,
13 and CCI, including the acts or practices alleged in this complaint. Ebert negotiated and formed
14 an agreement with a Las Vegas-based production company to produce the infomercial at issue in
15 this complaint, traveled to Las Vegas to participate in the production and editing of the
16 infomercial at issue herein, and entered into an agreement with Defendant Hudson Berkley to
17 market, distribute, and/or sell the AbTronic devices in the United States. Ebert transacts or has
18 transacted business in this district.

19 11. Defendants Ebert, BLC, TMI, and CCI have operated a common business enterprise
20 while engaging in the deceptive acts and practices alleged below and are therefore jointly and
21 severally liable for said acts and practices.

22 COMMERCE

23 12. The acts and practices of Defendants alleged in this complaint have been in or
24 affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission
25 Act, 15 U.S.C. § 44.
26

DEFENDANTS' COURSE OF CONDUCT

1
2 13. Since at least April 2001, Defendants have manufactured, labeled, advertised,
3 offered for sale, sold, and/or distributed the AbTronic. The AbTronic is an electronic muscle
4 stimulation (“EMS”) device composed of one longer and two shorter elasticized belts, a flexible
5 rectangular pad, and a matchbook-sized, plastic electronic unit that snaps into the pad and is
6 powered by a penny-sized three-volt battery. The elastic belts hold the electronic unit pad in
7 place over the targeted area of the body, which, according to the advertisements, can be the
8 abdominal area, chest, arms, legs, thighs, or buttocks. When activated over the body’s mid-
9 section, the AbTronic device purportedly sends gentle electronic impulses through the skin to
10 the abdominal muscles, causing them to contract just as if the user were performing exercises
11 like sit-ups and crunches.

12 14. Defendants have advertised and/or sold the AbTronic through a variety of media,
13 including a 30-minute commercial (“infomercial”), a two-minute television commercial, and an
14 Internet website, www.abtronic.net. See Ex. 1 (copy of 30-minute infomercial), Ex. 2 (transcript
15 of 30-minute infomercial), Ex. 3 (copy of two-minute commercial), Ex. 4 (transcript of two-
16 minute commercial), Ex. 5 (still images from infomercial and commercial), and Ex. 6 (copy of
17 web pages from www.abtronic.net).

18 15. Consumers have been able to purchase the AbTronic for \$119.80, plus shipping and
19 handling, by calling a toll-free telephone number, placing an order on the Internet at
20 www.abtronic.net, or mailing in an order form. Consumers also have been able to purchase the
21 AbTronic at retail outlets such as Kohl’s Department Store and Walgreen Co. Consumers who
22 order the AbTronic receive the AbTronic device and several so-called “extras”: an instruction
23 manual, a weight-loss plan, an extra battery, an “Extra Strength Slim Down Gel,” and a travel
24 case. The “Extra Strength Slim Down Gel” gel purportedly contains caffeine, ground ivy,
25 retinol, and seaweed.

1 **Defendants' Ads and Claims for the AbTronic**

2 16. Defendants first aired the 30-minute infomercial for the AbTronic in April 2001.
3 Beginning in January 2002, Defendants began airing a two-minute commercial. Through
4 February 2002, the infomercial and commercial had aired more than two thousand (2,000) times.
5 Since at least December 2001, the AbTronic infomercial had been among the ten most
6 frequently aired infomercials in the United States and was ranked sixth as recently as the end of
7 February 2002. Defendants had spent over eighteen million dollars (\$18,000,000) on television
8 advertising through February 22, 2002.

9 17. The AbTronic infomercial features two hosts – Todd Jensen and Julie Shipley, the
10 latter described as having “placed third in the Fitness America Nationals” two years in a row.
11 Throughout the infomercial, Jensen and Shipley make various claims about the purported
12 benefits of the device. The hosts’ claims are reinforced by testimonials from purported
13 AbTronic users and from two purported experts – Idrise Ward-El, a professional body builder,
14 and Dr. Julio Garcia, described as a board certified plastic surgeon who, according to the
15 abtronic.net website, “tested the AbTronic System.” The infomercial also includes: (1) “before-
16 and-after” images of flabby torsos becoming thin, lean, and sculpted; (2) computer-generated
17 animations that purport to illustrate how the AbTronic functions; and (3) frequent images of
18 male and female models with exceptional abdominal definition dressed in revealing bathing
19 suits.

20 18. The AbTronic television advertisements, website, and packaging convey five core
21 messages: (1) use of the AbTronic causes inch and fat loss and eliminates cellulite; (2) use of
22 the AbTronic causes users to get well-defined abdominal muscles, e.g., “six-pack abs” or
23 “washboard abs”; (3) use of the AbTronic (a) for ten minutes on the abdominal area is the
24 equivalent of performing 600 sit-ups, (b) on the abdominal area is superior or equivalent to
25 abdominal exercises, such as sit-ups and crunches, and (c) on the legs is superior to thigh
26 exercises, such as squats and leg lifts; (4) a scientific study proves that use of the AbTronic

1 increases abdominal strength better than exercise alone; and (5) the use of the AbTronic is safe,
2 and is safe to use over the chest.

3 **(1) Lose Inches, Fat, and Cellulite Claims**

4 19. The AbTronic advertisements and packaging include the following representations,
5 among others, about how the AbTronic causes the loss of inches, fat, and cellulite:

6 A. The following representations occur three times in the infomercial:

7 **ON SCREEN: Computer-generated image of a male torso with a**
8 **protruding abdomen wearing the AbTronic device. The abdomen**
9 **recedes and reveals defined abdominal muscles. Ex. 5 at 1-7.**

10 MALE ANNOUNCER: . . . [W]atch as your ab muscles contract
11 as if you're doing a sit-up. . . . Ten minutes on the AbTronic is the
12 equivalent of 600 sit-ups. That's why we guarantee you'll lose two inches
13 off your midsection in less than a month or your money back. Ex. 2 at 14,
14 27, 39. The MALE ANNOUNCER repeats this claim in the commercial.
15 Ex. 4 at 3.

16 B. TODD JENSEN (co-host of infomercial): It's absolutely great for people
17 who want to lose inches and weight around the midsection. In a matter of
18 days, you're going to see how AbTronic firms and tightens your muscles
19 and makes your stomach flatter. Ex. 2 at 6.

20 C. TODD JENSEN: You can go about your normal business while
21 AbTronic slims, trims and firms your upper abs, your lower abs and/or
22 your love handles with no sweat. Ex. 2 at 8.

23 D. Numerous consumer testimonials include the following representations,
24 among others, about how the AbTronic causes the loss of inches and fat:

25 1. STEVE McKIERNAN: . . . It's crystal clear that there's something
26 healthy going on in your body when you're wearing the AbTronic. Ex. 2
at 5.

ON SCREEN:

A "before" photograph depicts a side view of a bulging male
torso. The "after" photograph depicts a side view of a flat male
torso. Ex. 5 at 8-9.

2. **ON SCREEN: "Anita Vaccaro"**
"Hotel Beverage Dept."
"Lost 3 inches"

1 A “before” photograph depicts a side view of a female torso.
2 The “after” photograph depicts a side view of a female torso with a
3 flatter abdomen.

4 ANITA VACCARO: After three weeks of using the AbTronic
5 System, I noticed fantastic results. I have lost three inches in my waist
6 and two inches in my hip area and I was just very happy with it. Ex. 2 at
7 6; Ex. 6 at 7.

8 3. ON SCREEN: **“Lisa Lundy”**
9 **“Real Estate Sales”**
10 **“Lost 5 inches”**

11 A “before” photograph depicts a side view of a female torso.
12 The “after” photograph depicts a side view of a female torso with a
13 flatter abdomen.

14 The message, “Results vary based on use and muscle
15 response,” later appears for a short time at the bottom of the screen
16 in faint lettering, significantly smaller than the “Lost 5 inches”
17 statement. Ex. 5 at 10.

18 LISA LUNDY: I got into a car accident about three months ago
19 and was unable to go work out at the gym. Since then, I have found the
20 AbTronic System. I've used the AbTronic System now for about two and
21 a half months. I've lost five inches on my waist and another three inches
22 on my hips. Ex. 2 at 6.

23 This testimonial also appears on the www.abtronic.net website. Ex. 6
24 at 7.

25 4. ON SCREEN: **“K.T. Roberge”**
26 **“Homemaker”**

27 [Same message and display characteristics described in
28 ¶ 19.D.3 appear at Ex. 2 at 19.]

29 K.T. ROBERGE: When I first started using the AbTronic System,
30 I was skeptical at first, thinking it's just too easy, strapping it on, nothing
31 to plug in, and it just contracts your muscles. But for three weeks, I have
32 used it now and I've lost two inches in my waist. Ex. 2 at 19.

33 5. ON SCREEN: **“Alice Roussos”**
34 **“Interior Designer”**
35 **“Lost 2 inches”**

36 A “before” photograph depicts a front view of a female torso.
37 The “after” photograph depicts the same torso with less flab in the
38 “love handle” area.

39 ALICE ROUSSOS: What I noticed most after using the AbTronic
40 System was a clearer definition in the muscle tone. The muscles show
41 much better, and after only three weeks, I've lost two inches already. Ex.
42 2 at 31-32.

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6. **ON SCREEN: “John Trad”
“Sales Manager”**
[Same message and display characteristics described in ¶ 19.D.3 appear at Ex. 2 at 32.]

JOHN TRAD: Well, I've been using the AbTronic System for three weeks. I've lost three inches in my waist. I feel great. I don't have love handles like I did before and I enjoy it. Ex. 2 at 32.

7. **ON SCREEN: “Charles Magruder”
“Stock Broker”
“Lost 3 inches”**

A “before” photograph depicts a front view of a male torso. The “after” photograph depicts the same torso but flatter in the midsection.

CHARLES MAGRUDER: I concentrated the AbTronic System on my stomach and after about two and a half months, I noticed about a three-inch reduction in my waistline. It was very noticeable. Ex. 2 at 32.

8. **ON SCREEN: “Kathy Horn”
“Tanning Salon Owner”**

A “before” photograph depicts a side view of a female torso. The “after” photograph depicts the same torso but flatter in the midsection.

KATHY HORN: After using the AbTronic System, I've lost three inches on my waist in the matter of two weeks and my abdominals look so much better. I can wear lower pants, which I usually have a problem wearing pants like that after having a child, and it's worked wonders. Ex. 2 at 32-33.

9. **ON SCREEN: “Jay Horn”
“Police Officer”**

JAY HORN: I've had a bad problem with this -- love handles on the side. Everybody has them, I think. And using the AbTronic System has really taken off inches off my sides, and even my wife has seen it and noticed it, and I like that. Ex. 2 at 35.

10. **ON SCREEN: “Carmen”
“New York”**

CARMEN: I got some friends with some beer bellies, they never want to exercise, this is the trick for them. Ex. 2 at 26.

E. Through a testimonial from a medical doctor, Defendants further tout the AbTronic’s supposed ability to eliminate inches and fat:

1
2 **ON SCREEN: “Dr. Julio Garcia”**
3 **“Board Certified Plastic Surgeon”**

4 DR. JULIO GARCIA: Many people can go on a very strict diet
5 regimen and lose a lot of body fat, yet the muscle tone underneath shows
6 no definitions. We've all gone to the beach, seen young women and men
7 with those six-pack type of washboard abs. They're really very sexy and
8 people really want those. Well, you can lose all the weight in the world
9 that you want, but unless you have good muscle tone underneath, you're
10 not going to have a washboard abdomen.

11 **ON SCREEN: Computer animation of electric current leaving the**
12 **AbTronic belt and causing muscles on a torso to contract.**

13 DR. JULIO GARCIA: So, with systems like the AbTronic where
14 we can stimulate these muscles and you do both things, both the system of
15 losing some weight, losing those inches, and then firming and toning the
16 muscles underneath, that muscle definition will, therefore, show through
17 much better and give you a better cosmetic improvement. Ex. 2 at 10-11.

18 F. Defendants reinforce the advertisements' inch and fat loss claims through
19 their claims about the AbTronic Firming and Toning Gel:

- 20
- 21 1. Three times during the infomercial the MALE ANNOUNCER
22 describes the AbTronic gel as “a special AbTronic slim down
23 firming gel to give you maximum results quickly.”
24 Simultaneously, a graphic on the screen states, “Slim Down
25 Firming Gel.” Ex. 2 at 15-16, 29, 40.
 - 26 2. In the two-minute commercial, the MALE ANNOUNCER refers
to “the AbTronic slim down firming gel with extra strength
formula.” An accompanying graphic states, “Extra Strength Slim
Down Gel.” Ex. 4 at 5.

G. Even though the AbTronic Instruction Manual - which consumers see
only after buying the device and opening the box - acknowledges that the
AbTronic will not “eliminate cellulite,” Ex. 8 at 15, the AbTronic
advertisements include but are not limited to the following
representations about how the AbTronic eliminates cellulite:

1. **ON SCREEN: Images of females with well-toned bodies, clad
in bikinis, and wearing the AbTronic device around thigh
area.**

1 JULIE SHIPLEY: And, ladies, listen to this. AbTronic
2 can even get rid of that cellulite and flabbiness around your thighs
. . . . Ex. 2 at 10.

3 2. TODD JENSEN: AbTronic gives you a choice of six different
4 training modes . . . [including] . . . the fat blaster cellulite mode.
Ex. 2 at 33.

5 3. JULIE SHIPLEY: I also use the cellulite buster on the back of my
6 legs. It's a low intensity mode that's continuously on and it works
wonders. Ex. 2 at 34.

7 4. Abtronic.net website: "Remember the AbTronic can also be used
8 on your buns and thighs, and is an EXCELLENT form of cellulite
control!" Ex. 6 at 10.

9 H. The AbTronic Instruction Manual and packaging for the AbTronic
10 Firming and Toning Gel include but are not limited to the following
11 representations that reinforce the advertisements' claims about how the
12 AbTronic causes the loss of inches, fat, and cellulite:

13 1. In describing the six program modes on the AbTronic device, the
14 manual refers to mode 6 as "Fat Blaster." Ex. 8 at 4 (AbTronic
15 Instruction Manual).

16 2. Under the heading "Exercise Points - Women," the manual states:
17 UPPER OUTER -To work on cellulite and orange peel [sic]
18 BACK THIGH look.
19 Ex. 8 at 7.

20 3. A photograph depicts a female model from the side with the
21 AbTronic device around the side of her thigh. A caption under the
photograph states, "Work on Cellulite. Reduce the appearance of
'orange peel' look." Ex. 8 at 12.

22 4. A photograph depicts a female model from the back with the
23 AbTronic on the back of her thigh. A caption under the
photograph states, "Reduce the appearance of cellulite . . ." Ex.
24 8 at 12.

25 5. Packaging for AbTronic Firming and Toning Gel states:
AbTronic Firming and Toning Gel - Abs and Cellulite Control

26 Specially formulated for the AbTronic System to guarantee you

1 the best results in the fastest time. Its exclusive combination of
2 Caffeine, Retinol, Ground Ivy and Seaweed actively promotes the
3 smoothing and toning of your body, better than any other product
4 of its kind. This new Extra Strength AbTronic gel will help you
lose inches off thighs, hips, abdomen and buttocks. Ex. 7 at 2
(copy of packaging for AbTronic gel).

5 (2) Well-Defined Abdominal Muscles Claims

6 20. The AbTronic advertisements include the following representations, among others,
7 about how the AbTronic causes users to get well-defined abdominal muscles, e.g., “six-pack
8 abs” or “washboard abs”:

- 9 A. Three times during the infomercial, the following representations are
made:

10 **ON SCREEN: Image of male and female models with well-defined**
11 **abdominal muscles and clad in bathing suits. Image of physically fit**
12 **female torso wearing AbTronic belts. Image of well-defined male**
13 **torso wearing an AbTronic belt and with contracting abdominal**
14 **muscles. Ex. 5 at 11-13.**

15 MALE ANNOUNCER: Introducing the amazing AbTronic
16 Fitness System. Get ready to firm, tone and tighten your upper abs, lower
17 abs and love handles with no sweat. AbTronic is the electronic dream
18 machine that will show you immediate improvement without strenuous
19 time-consuming workouts. You'll develop that six-pack you've always
20 wanted in the easiest way imaginable. Ex. 2 at 13, 27, 38

- 21 B. TODD JENSEN: . . . You stay with this for 10 minutes and it's
22 comparable to 600 sit-ups at a time. And you do that enough times, and
23 you're going to have that six-pack of abs sooner than you think. Ex. 2 at
24 19.

- 25 C. MALE ANNOUNCER: Now, with one touch of a button, you can get
26 that six-pack you always wanted, guaranteed. Ex. 4 at 3.

- 27 D. **ON SCREEN: Image of bare male torso without an AbTronic unit**
28 **and with highly developed and defined abdominal muscles,**
29 **accompanied by two bikini-clad female torsos with exposed, flat**
30 **abdominal areas. Ex. 5 at 15.**

31 TODD JENSEN: You are going to have abs that you won't
32 believe. Ex. 2 at 9.

- 33 E. DR. JULIO GARCIA: Well, you can lose all the weight in the world that
34 you want, but unless you have good muscle tone underneath, you're not
35 going to have a washboard abdomen. . . . So, with systems like the
36 AbTronic where we can stimulate these muscles and you do both things,

1 both the system of losing some weight, losing those inches, and then
2 firming and toning the muscles underneath, that muscle definition will,
3 therefore, show through much better and give you a better cosmetic
4 improvement. Ex. 2 at 10-11.

5 **F. ON SCREEN: “Dr. Ann Lewis”**
6 **“Oral Surgeon”**

7 **A “before” photograph depicts a side view of a female torso**
8 **with a relatively flat midsection. The “after” photograph depicts the**
9 **same torso with a concave midsection.**

10 DR. ANN LEWIS: After using the AbTronic System for about
11 two months, I noticed that my abdominals were more cut. They have
12 more definition, which is what I was looking for. Ex. 2 at 32.

13 **(3) Superior or Equivalent to Sit-Ups and Other Exercises Claims**

14 21. The AbTronic advertisements include the following representations, among others,
15 about how use of the AbTronic (a) for ten minutes on the abdominal area is the equivalent of
16 performing 600 sit-ups, (b) on the abdominal area is superior or equivalent to abdominal
17 exercises, such as sit-ups and crunches, and (c) on the legs is superior to thigh exercises, such as
18 squats and leg lifts:

19 **A. ON SCREEN: Images of female torso with well-defined abdominal**
20 **muscles and of a male torso with well-defined, bulky abdominal**
21 **muscles.**

22 MALE ANNOUNCER: You'll see how the AbTronic System
23 gives you the results of 600 sit-ups in just 10 minutes without any effort.
24 Ex. 2 at 3-4.

25 **B. The following representations occur three times in the infomercial:**

26 **ON SCREEN: Computer-generated image of a male torso with a**
protruding abdomen wearing the AbTronic device. The abdomen
recedes and reveals defined abdominal muscles. Ex. 5 at 1-7.

MALE ANNOUNCER: . . . [W]atch as your ab muscles contract
as if you're doing a sit-up. . . . Ten minutes on the AbTronic is the
equivalent of 600 sit-ups. That's why we guarantee you'll lose two inches
off your midsection in less than a month or your money back. Ex. 2 at 14,
27, 39.

The MALE ANNOUNCER repeats this claim in the commercial. Ex.
4 at 3.

1 C. JULIE SHIPLEY: It's like doing the equivalent of 600 sit-ups in 10
2 minutes. Ex. 2 at 4.

3 D. **ON SCREEN: "10 minutes = 600 situps"**
4 Ex. 5 at 16.

5 JULIE SHIPLEY: You only need to use the AbTronic Fitness
6 System for 10 minutes two to three times a day to put yourself in bathing
7 suit shape. Remember, 10 minutes with the AbTronic and you're doing
8 600 sit-ups. Ex. 2 at 11.

9 E. TODD JENSEN: I like the short, quick contraction that duplicates a sit-
10 up. You stay with this for 10 minutes and it's comparable to doing 600
11 sit-ups at a time. And you do that enough times, and you're going to have
12 that six-pack of abs sooner than you think. Ex. 2 at 19.

13 F. TODD JENSEN: AbTronic gives you a choice of six different training
14 modes. . . . The karate chop and woodpecker modes are the best for ab
15 work because of the steady contractions, comparable to doing 600 sit-ups
16 in 10 minutes. But remember, the AbTronic is doing all the work for you.
17 Ex. 2 at 33.

18 G. TODD JENSEN: "AbTronic gives you a choice of six different training
19 modes . . . [including] . . . the crunch craze program. . . ." Ex. 2 at 33.

20 H. **ON SCREEN: Computer animation of electric current leaving the
21 AbTronic belt and causing muscles on a torso to contract.**

22 TODD JENSEN: AbTronic works by little electronic impulses
23 that send a signal through the skin to the motor point of the muscle,
24 triggering the muscle to contract. So, there's no more guessing at how to
25 do a proper crunch. AbTronic does it for you the correct way every time.
26 Ex. 2 at 9.

I. **ON SCREEN: "Alice Melesio-Incle"
"Certified Fitness Trainer"**

ALICE MELESIO-INCLE: As a personal trainer, I teach my
clients to be able to contract their muscles -- the abdominal muscles and
do crunches properly, but when they go home, they don't remember how
to be able to do the proper contraction to make the exercise work for
them. What I found with the AbTronic System is that it's a no-brainer.
Ex. 2 at 9.

**ON SCREEN: "It does the work for you"
[Same message and display characteristics described in
¶ 19.D.3 appear at Ex. 2 at 9.]**

J. TODD JENSEN: . . . [W]e asked champion bodybuilder, Idrise Ward-El,
to test the AbTronic Fitness System in preparation for competition.

ON SCREEN: "Idrise Ward-El"

1 **“Professional Bodybuilder”**

2 IDRISE WARD-EL: When I first used the AbTronic System, it
3 looked small and I didn't have any idea what it would feel like. When I
4 did use it, I had a very strong contraction, a lot stronger than doing sit-
5 ups. Even after 100 sit-ups, you don't get the kind of contraction you get
6 here, because normally, when doing sit-ups you get tired first. Then it
7 starts to work. Doing the first AbTronic Systems, the first contraction
8 feels like you've done already 100, 150 sit-ups. Ex. 2 at 20.

9 K. **ON SCREEN: “Marilyn Jones”**
10 **“Stuntwoman”**

11 MARILYN JONES: Besides using it on my abs, I've also put it on
12 my thighs and the AbTronic System is fantastic for the thighs. It really
13 gives you a fantastic workout, better than anything. In fact, it's better than
14 squats and leg lifts. Ex. 2 at 34.

15 22. The AbTronic Instructional Manual reinforces the claims from the advertisements
16 set forth in Paragraph 21, above:

- 17 A. A photograph depicts a female torso with the AbTronic device around her
18 stomach area. The caption below the photograph states, “Tightens and
19 flattens the abs similar to sit ups. Attacking spread and giving
20 definition.” Ex. 8 at 10.
- 21 B. A photograph depicts a female torso with the AbTronic device around her
22 lower abdominal area, near her pelvis. The caption below the photograph
23 states, “Similar as laying [sic] down, lifting legs slowly and than [sic]
24 lowering them. Exercises lower abs.” Ex. 8 at 10.
- 25 C. A photograph depicts a female torso with the AbTronic device around her
26 lower back. The caption below the photograph states, “Helps with
posture. Similar effect as Horizontal lifts.” Ex. 8 at 11.
- D. In describing the six program modes on the AbTronic device, the manual
refers to mode 4 as “Crunch Craze.” Ex. 8 at 4.

(4) Claim of Scientific Support for Superiority of AbTronic to Exercise

21 23. Through the following representations, the AbTronic infomercial claims that a
22 scientific study proves that use of the AbTronic increases abdominal strength better than
23 exercise alone:

24 **ON SCREEN: Image of the title page of a manuscript with the following**
25 **identifying information:**

26 **“Comparison of the Effects of Electrical Stimulation &**

1 **Exercise on Abdominal Musculature”**
2 **“(Univ. of Maryland)”**
3 **“Reprint of Journal Ortho. Sports Phys. Ther.”**
4 **(one line illegible)**

5 **“Confidential”**

6 JULIE SHIPLEY: Seven doctors from the University of Maryland did a
7 four-week study on abdominal strength of 31 healthy volunteers.

8 TODD JENSEN: That study shows that exercise combined with
9 electronic muscle stimulation increased the subject's strength by 47 percent.
10 Electronic stimulation, by itself, with no additional exercise, increased abdominal
11 muscle strength by 41 percent. Exercise alone only accounted for a 6 percent
12 increase.

13 JULIE SHIPLEY: Their conclusion was that electronic stimulation was
14 much better than exercise alone.

15 TODD JENSEN: That proves that you get better results by use of the
16 AbTronic Fitness System whether you use it as a supplement to your normal
17 workout or just by itself. Ex. 2 at 21-22.

18 **(5) Safety Claims**

19 24. The AbTronic advertisements include the following representations, among others,
20 about how the Abtronic is safe to use, and is safe to use over the chest:

- 21 A. JULIE SHIPLEY: AbTronic is really safe and easy to use. You apply a
22 little AbTronic gel on the back, wrap the belt around your stomach and
23 turn it on. Ex. 2 at 7.
- 24 B. JULIE SHIPLEY: And, ladies, listen to this. AbTronic can even get rid
25 of that cellulite and flabbiness around your thighs and you can also use it
26 on your chest. Ex. 2 at 10.
- 27 C. Image from AbTronic infomercial and commercial of AbTronic device
28 being used over the chest. Ex. 5 at 17.
- 29 D. On three separate occasions, the MALE ANNOUNCER states during the
30 infomercial, “AbTronic is very safe and simple to use.” Ex. 2 at 13, 27,
31 38.

32 25. At two points in the thirty-minute infomercial a disclaimer states, “Do not use
33 during pregnancy or with a pacemaker, cardiac condition, epilepsy, multiple sclerosis.” Ex. 2 at
34 13, 37. When the disclaimer appears, it appears briefly in small lettering at the bottom of the
35 screen, is not clear or prominent, and is not in close proximity to the claims about the
36

1 AbTronic’s purported safety.

2 26. The AbTronic Instruction Manual reinforces the claims from the advertisements set
3 forth in Paragraph 24, above, that use of the AbTronic is safe and the AbTronic is safe to use
4 over the chest:

- 5 A. ... [A] half hour daily is usually all it takes to help improve figure
6 problems, especially . . . bust-lines Ex. 8 at 2.
- 7 B. Under the section entitled “Belt Placement,” a photograph depicts a
8 female torso with the AbTronic device on her chest. Below the
9 photograph is the word, “Chest”. Ex. 8 at 10.
- 10 C. Under the section entitled “Exercise Points - Women,” the manual reads:
11 BREASTS - For improved breast contours. Ex. 8 at 7.
- 12 D. Under the section entitled “Exercise Points - Men,” the manual reads:
13 CHEST - A similar action as pushing the fist into the palm of
14 another, exercises the pectorals.
- 15 E. A separate paper insert that accompanies the manual states, “With your
16 new original AbTronic you can rest assured that you own the best and
17 safest system for your body and health.” Ex. 9 at 1 (emphasis in original;
18 insert entitled “IMPORTANT! NEWS MUST READ !!!”).

19 27. Although the AbTronic pre-sale promotions tout the AbTronic’s safety when used
20 over the chest, the AbTronic Instruction Manual – which consumers are able to read only after
21 purchase – warns users against using the device over the chest, stating, “DO NOT apply current
22 through the chest (transthoracic) as introduction of electrical current through the heart may cause
23 arrhythmias.” Ex. 8 at 20. The Manual further warns against use of the device by people with
24 certain medical conditions, stating, *inter alia*, “**AbTronic** is contraindicated for persons with
25 cardiac demand pacemakers”; “**AbTronic** should not be used on persons with cancer”; “Safety
26 not determined for use during pregnancy”; and “**AbTronic** must not be used over swollen,
infected or inflamed areas or skin eruptions, e.g. Phlebitis, Thrombophlebitis, Phlebothrombosis,
Varicose Veins etc. [because e]mboli in the calf or elsewhere can dislodge and cause pulmonary
embolism or stroke.” *Id.*

1 **Defendants’ Purported 30-Day Money-Back Guarantee**

2 28. The AbTronic advertisements include, but are not limited to, the following
3 statements and depictions about a 30-day unconditional money-back guarantee:

4 A. The following representations occur three times in the infomercial:

5 **ON SCREEN: 30 day money back GUARANTEE**

6 * * * *

7 MALE ANNOUNCER: And you also get an unconditional money back
8 guarantee. If you’re not satisfied, just return it for a refund of the purchase
9 price....Ex. 2 at 17, 30, and 42.

10 B. The two-minute commercial similarly represents:

11 **ON SCREEN: 30 day Money back GUARANTEE**

12 * * * *

13 MALE ANNOUNCER: You also get ... an unconditional money back
14 guarantee Ex. 4 at 7.

15 29. Defendants have provided a non-toll-free, customer service telephone number in
16 the packaging materials for consumers who wish to return the product and receive a refund. The
17 so-called “customer service” telephone number often has been continuously busy or customers
18 have been placed on hold for extended periods of time. After waiting on hold, customers have
19 been disconnected, or in other instances, have had to place numerous long distance toll calls in
20 connection with their attempts to obtain refunds.

21 **Defendants’ Delivery Practices**

22 30. Telephone operators who have taken orders for the AbTronic have stated that the
23 product will be delivered in seven days, seven to ten business days, thirty days, or six to eight
24 weeks. Some consumers have paid an additional fee of up to fifteen dollars or have agreed to
25 pay for the AbTronic in full (as opposed to in installment payments) in order to receive
26 expedited delivery within seven to ten days. On numerous occasions, however, Defendants have

1 failed to ship the product for delivery within the promised time periods. In some instances,
2 consumers never received the product. Furthermore, Defendants have not advised these
3 consumers of the delay or offered them an opportunity to cancel the order or receive a refund,
4 nor, having failed to do the foregoing, deemed the orders canceled and provided a prompt
5 refund.

6
7 **DEFENDANTS' VIOLATIONS OF SECTIONS 5(a) AND 12 OF THE FTC ACT**

8 31. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or
9 practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits
10 the dissemination of any false advertisement in or affecting commerce for the purpose of
11 inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or
12 cosmetics. The AbTronic EMS device is a “device,” and the AbTronic Firming and Toning Gel
13 is a “drug” or “cosmetic,” for purposes of Sections 12 and 15 of the FTC Act, 15 U.S.C.
14 §§ 52(d) and 55. As set forth below, Defendants have engaged and are continuing to engage in
15 unlawful practices in connection with the marketing and sale of the AbTronic EMS device and
16 gel (collectively, the AbTronic).

17
18 **COUNT ONE
FALSE CLAIMS - LOSS OF INCHES, FAT, AND CELLULITE**

19 32. Through the means described in Paragraphs 18 and 19, above, Defendants have
20 represented, expressly or by implication, that use of the AbTronic causes inch and fat loss and
21 eliminates cellulite.

22 33. In truth and in fact, use of the AbTronic device does not cause inch or fat loss or
23 eliminate cellulite. Therefore, Defendants’ representations set forth in Paragraph 32, above,
24 constitute a deceptive practice, and the making of false advertisements, in or affecting
25 commerce, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C.
26 §§ 45(a) and 52.

1 **COUNT TWO**
2 **FALSE CLAIMS - WELL-DEFINED ABDOMINAL MUSCLES**

3 34. Through the means described in Paragraph 18 and 20, above, Defendants have
4 represented, expressly or by implication, that the AbTronic causes users to get well-defined
5 abdominal muscles, e.g., “six-pack abs” or “washboard abs.”

6 35. In truth and in fact, the AbTronic does not cause users to get well-defined abdominal
7 muscles, e.g., “six-pack abs” or “washboard abs.” Therefore, Defendants’ representations set
8 forth in Paragraph 34, above, constitute a deceptive practice, and the making of false
9 advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal
10 Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

11 **COUNT THREE**
12 **FALSE CLAIMS - SUPERIORITY OR EQUIVALENCE TO EXERCISE**

13 36. Through the means described in Paragraphs 18, 21, and 22, above, Defendants have
14 represented, expressly or implication, that use of the AbTronic (a) for ten minutes on the
15 abdominal area is the equivalent of performing 600 sit-ups, (b) on the abdominal area is superior
16 or equivalent to abdominal exercises, such as sit-ups and crunches, and (c) on the legs is
17 superior to thigh exercises, such as squats and leg lifts.

18 37. In truth and in fact, use of the AbTronic (a) for ten minutes on the abdominal area is
19 not the equivalent of performing 600 sit-ups, (b) on the abdominal area is not superior or
20 equivalent to abdominal exercises, such as sit-ups and crunches, and (c) on the legs is not
21 superior to thigh exercises, such as squats and leg lifts. Therefore, Defendants’ representations
22 set forth in Paragraph 36, above, constitute a deceptive practice, and the making of false
23 advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal
24 Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

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**COUNT FOUR
FALSE CLAIMS - SCIENTIFIC EVIDENCE**

38. Through the means described in Paragraphs 18 and 23, above, Defendants have represented, expressly or by implication, that a scientific study proves that use of the AbTronic device increases abdominal strength better than exercise alone.

39. In truth and in fact, a scientific study does not prove that use of the AbTronic device increases abdominal strength better than exercise alone. Therefore, Defendants' representations set forth in Paragraph 38, above, constitute a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

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**COUNT FIVE
FALSE CLAIMS - SAFE FOR USE OVER CHEST AREA**

40. Through the means described in Paragraphs 18, 24, and 26, above, Defendants have represented, expressly or by implication, that the AbTronic device is safe to use over the chest.

41. In truth and in fact, it is not safe to use the AbTronic over the chest. Therefore, Defendants' representations set forth in Paragraph 40, above, constitute a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

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**COUNT SIX
FAILURE TO DISCLOSE SAFETY RISKS**

42. Through the means described in Paragraphs 18, 24, and 26, above, Defendants have represented, expressly or by implication, that use of the AbTronic is safe.

43. Defendants have failed to disclose or to disclose adequately in their pre-sale promotional materials that the AbTronic is not safe for all users. In fact, the AbTronic should not be used by people with implanted cardiac pacemakers; it poses health risks for use over or near cancerous lesions, and swollen, infected or inflamed areas or skin eruptions, e.g., phlebitis,

1 thrombophlebitis, and varicose veins; and the AbTronic's safety has not been established for
2 pregnant women. These facts would be material to consumers in their purchase of the
3 AbTronic.

4 44. In light of the representation made in Paragraph 42, Defendants' failure to disclose
5 or to disclose adequately the material information about the health risks stated in Paragraph 43
6 was, and is, a deceptive practice, and constitutes false advertising of a device, in or affecting
7 commerce in violation of Sections 5(a) and 12 of the FTC Act. 15 U.S.C. §§ 45(a) and 52.

8
9 **COUNT SEVEN**
FALSE CLAIMS – FAILURE TO MAKE A PROMPT REFUND

10 45. Through the means described in Paragraph 28, above, Defendants have
11 represented, expressly or by implication, that Defendants provide timely refunds to consumers
12 who request refunds pursuant to Defendants' unconditional money back guarantee.

13 46. In truth and in fact, in many instances, Defendants have not provided timely refunds
14 to consumers who have requested refunds pursuant to Defendants' unconditional money back
15 guarantee. Therefore, the making of the representation set forth in Paragraph 45 constitutes a
16 deceptive practice in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act,
17 15 U.S.C. § 45(a).

18
19 **COUNT EIGHT**
VIOLATION OF THE MAIL ORDER RULE

20 47. The Mail Or Telephone Order Merchandise Rule ("Mail Order Rule") was
21 promulgated by the FTC on October 22, 1975, under the FTC Act, 15 U.S.C. § 41 *et seq.* On
22 September 21, 1993, the Mail Order Rule was amended under Section 18 of the FTC Act, 15
23 U.S.C. § 57a, and the amendments took effect March 1, 1994. The Mail Order Rule applies to
24 orders placed by mail, telephone, facsimile transmission, or the Internet.

25 48. At all times material hereto, Defendants have engaged in the sale of merchandise
26 ordered by mail, telephone, or the Internet, in commerce.

1 49. In numerous instances, after having solicited orders for the merchandise and
2 received “properly completed orders,” as that term is defined in Section 435.2(d) of the Mail
3 Order Rule, 16 C.F.R. § 435.2(d), and having been unable to ship the merchandise to the buyer
4 within the Mail Order Rule’s applicable time, as set forth in Section 435.1(a)(1) of the Mail
5 Order Rule (“applicable time”), 16 C.F.R. § 435.1(a)(1), Defendants:

- 6 A. Violated Section 435.1(b)(1) of the Mail Order Rule, 16 C.F.R. § 435.1(b)(1), by
7 failing, within the applicable time, to offer to the buyer, clearly and
8 conspicuously and without prior demand, an option either to consent to the delay
9 in shipping or to cancel the order and receive a prompt refund; and
- 10 B. Having failed within the applicable time to ship the merchandise or to offer the
11 buyer the option to either consent to a delay or to cancel the buyer’s order and
12 receive a prompt refund, violated Section 435.1(c)(5) of the Mail Order Rule, 16
13 C.F.R § 435.1(c)(5), by failing to deem the order canceled and to make a prompt
14 refund to the buyer, as “prompt refund” is defined in Section 435.2(f) of the Mail
15 Order Rule, 16 C.F.R. § 435.2(f).

16 50. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the
17 Mail Order Rule constitute unfair or deceptive acts or practices in or affecting commerce, in
18 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

19 **CONSUMER INJURY**

20 51. As a result of Defendants’ unlawful acts and practices, consumers throughout the
21 United States have suffered and continue to suffer substantial monetary loss and possible injury
22 to their health. Defendants also have been unjustly enriched as a result of their unlawful
23 practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure
24 consumers, reap unjust enrichment, and harm the public interest.
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THIS COURT’S POWER TO GRANT RELIEF

52. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy injury caused by Defendants’ law violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court’s own equitable powers, requests that this Court:

- 1. Permanently enjoin Defendants from violating Sections 5(a) and 12 of the FTC Act and the Mail Order Rule, as alleged herein, including committing violations in connection with the advertising, offering for sale, or other promotion of food, drugs, dietary supplements, devices, cosmetics, or other products, services or programs;
- 2. Award Plaintiff all temporary and preliminary injunctive and ancillary relief that may be necessary to avert the likelihood of consumer injury during the pendency of this action, and to preserve the possibility of effective and final relief;
- 3. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants’ violations of Sections 5(a) and 12 of the FTC Act and the Mail Order Rule, including, but not limited to, rescission of contracts and restitution, other forms of redress, and the disgorgement of ill-gotten gains; and
- 4. Award Plaintiff the costs of bringing this action, as well as such additional equitable

1 relief as the Court may determine just and proper.

2
3 Dated: _____

Respectfully submitted,

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