

1 WILLIAM E. KOVACIC  
General Counsel

2  
3 LAUREEN KAPIN  
4 WALTER GROSS  
5 JOSHUA S. MILLARD  
6 Attorneys for Plaintiff  
7 Federal Trade Commission  
8 600 Pennsylvania Ave, N.W., Room NJ2122  
9 Washington, D.C. 20580  
10 (202) 326-3237 Office  
11 (202) 326-2558 Fax  
12

13  
14 DANIEL G. BOGDEN  
15 United States Attorney  
16 BLAINE T. WELSH  
17 Assistant United States Attorney  
18 333 Las Vegas Blvd. South, Suite 5000  
19 Las Vegas, NV 89101  
20 (702) 388-6336 Office  
21 (702) 388-5087 Fax  
22 Nevada State Bar No. 4790  
23

24  
25 **UNITED STATES DISTRICT COURT**  
26 **DISTRICT OF NEVADA**

27 **FEDERAL TRADE COMMISSION,** )

28 **Plaintiff,** )

29 **v.** )

**CV-S-02-0648-KJD-LRL**

30 **UNITED FITNESS OF AMERICA, LLC,** )  
31 **GEORGE SYLVA,** )  
32 **EBRANDS COMMERCE GROUP, LLC,** )  
33 **JOHN WILLIAM KIRBY, JR.,** )  
34 **TRISTAR PRODUCTS, INC., and** )  
35 **KISHORE MIRCHANDANI, a/k/a** )  
36 **“KEITH” MIRCHANDANI,** )

37 **Defendants.** )  
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101 **AMENDED COMPLAINT FOR PERMANENT**  
102 **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  
4 Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure a permanent injunction, consumer  
5 redress, disgorgement, and other equitable relief against the Defendants for engaging in  
6 deceptive acts or practices in connection with the advertising, marketing, and sale of the Fast  
7 Abs “electronic massage fitness belt” (“Fast Abs”), which purportedly causes loss of inches and  
8 fat, and well-defined abdominal muscles, in violation of Sections 5(a) and 12 of the FTC Act, 15  
9 U.S.C. §§ 45(a) and 52.

#### 10 **JURISDICTION AND VENUE**

11 2. This Court has subject matter jurisdiction over this matter under 15 U.S.C. §§  
12 45(a), 52, and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

13 3. Venue in this district is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)  
14 and (c).

#### 15 **THE PARTIES**

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

24 5. Defendant United Fitness of America, LLC (“UFA”), is a Nevada limited liability  
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1  
2 company located at 3086 Sereno Ave., Ventura, California 93003. At all times relevant to this  
3 amended complaint, acting individually or in concert with others, UFA marketed and sold Fast  
4 Abs to consumers nationwide through print media, television, and the Internet. UFA owns the  
5 trademark for “Fast Abs” and registered the Internet address “[fastabs.com](http://fastabs.com).” UFA transacts or  
6 has transacted business in Nevada.

7 **6.** Defendant George Sylva is the sole manager of UFA. At all times relevant to this  
8  
9 amended complaint, acting individually or in concert with others, he formulated, directed,  
10 controlled, or participated in the acts and practices of UFA, including the various acts and  
11 practices set forth herein. Mr. Sylva transacts or has transacted business in Nevada.

12 **7.** Defendant eBrands commerce group, llc (“eBrands”) is a Nevada limited liability  
13 company located at 10880 Wilshire Blvd., Suite 1850, Los Angeles, California 90024. eBrands  
14 is the parent company of UFA. At all times relevant to this amended complaint, acting  
15 individually or in concert with others, eBrands marketed and sold Fast Abs to consumers  
16 nationwide through print media, television, and the Internet. eBrands transacts or has transacted  
17 business in Nevada.

18 **8.** Defendant John William Kirby, Jr. is the Chief Executive officer of eBrands. At  
19 all times relevant to this amended complaint, acting individually or in concert with others, he  
20 formulated, directed, controlled, or participated in the acts and practices of eBrands, including  
21 the various acts and practices set forth herein. Mr. Kirby transacts or has transacted business in  
22 Nevada.

23 **9.** Defendant Tristar Products, Inc. (“Tristar”) is a Pennsylvania corporation whose  
24 principal place of business is 4 Century Dr., Parsippany, New Jersey 07054. At all times  
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1 relevant to this complaint, acting individually or in concert with others, Tristar marketed and  
2 sold consumer products and exercise equipment, including Fast Abs. Tristar registered the  
3 Internet address "TVinventions.com," which is referenced many times in the Fast Abs  
4 infomercials and which markets and sells Fast Abs. Tristar is registered as a foreign corporation  
5 in Nevada. Tristar transacts or has transacted business in Nevada.

6 **10.** Defendant Kishore Mirchandani, also known as "Keith" Mirchandani, is Tristar's  
7 President and one of its five stockholders. At all times relevant to this complaint, individually or  
8 in concert with others, he formulated, directed, controlled, or participated in the acts and  
9 practices of Tristar, including the various acts and practices set forth herein. Mr. Mirchandani  
10 transacts or has transacted business in Nevada.

#### 11 COMMERCE

12 **11.** The acts and practices of the Defendants, as alleged herein, have been in or  
13 affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

#### 14 THE DEFENDANTS' COURSE OF CONDUCT

15 **12.** Beginning on or before November 3, 2001, Defendants UFA, George Sylva,  
16 eBrands, John William Kirby, Jr., Tristar, and Kishore Mirchandani (collectively the  
17 "Defendants") arranged for the manufacture, packaging, marketing and sale of Fast Abs.

18 **13.** The Fast Abs device is composed of two elasticized belts (one for the torso and  
19 one for the legs and arms), a pad, and a small unit powered by a three-volt penny-sized battery.  
20 The three components assemble to form a belt with the pad and unit in the middle. According to  
21 the Defendants' directions, the user should apply a water-based gel to the targeted muscle area to  
22 conduct the unit's electrical current to the muscles.

23 **14.** In marketing Fast Abs the Defendants portrayed the device as an effective  
24 "electrical" or "electronic" muscle stimulation ("EMS") device that creates "rock hard abs" and  
25

1 causes users to “slim down and shed inches quickly” without exercise. According to the  
2 Defendants, Fast Abs “uses gentle electric pulses” that “trigger your motor nerves and activate  
3 deep muscle contractions,” allowing users to relax while they “build muscles just the way  
4 crunches and resistance exercises do.”

5 **15.** From on or before November 3, 2001 until at least February 22, 2002, UFA,  
6 George Sylva, eBrands, and John William Kirby, Jr. (collectively the “UFA Defendants”)  
7 advertised and sold Fast Abs directly to consumers nationwide through a variety of media  
8 including, but not necessarily limited to, 30-minute television commercials (“infomercials”), the  
9 Internet websites [TVinventions.com](http://TVinventions.com) and [fastabs.com](http://fastabs.com) (both of which contained a 100-second  
10 video commercial), print advertisements in newspaper magazines with nationwide circulations  
11 such as Parade magazine, mailed circulars such as Clipper Magazine, and product pamphlets.  
12 Transcripts or facsimiles of these materials are annexed hereto as Exhibits A through H.

13 **16.** The UFA Defendants offered the Fast Abs device for \$39.95 plus shipping and  
14 handling costs of \$9.95 directly to consumers through a toll-free telephone number and the  
15 Defendants’ Internet websites.

16 **17.** Tristar and Kishore Mirchandani (together the “Tristar Defendants”) produced  
17 promotional materials, including product packaging and instruction booklets, which adopted the  
18 claims made by the UFA Defendants in their infomercials and other advertisements, and  
19 contained claims similar or identical to the UFA Defendants’ claims.

20 **18.** From on or about January 2002 until at least May 2002, the Tristar Defendants  
21 distributed Fast Abs for sale through retail outlets such as K-Mart, CVS, Modell’s Sporting  
22 Goods, and The Sports Authority.

23 **The Defendants’ Ads and Claims For Fast Abs**

24 **19.** From November 2001 through February 2002, the Fast Abs infomercials were  
25  
26

1 among the most frequently aired infomercials in the nation. As of February 22, 2002, Fast Abs  
2 infomercials had appeared more than 1,200 times. The Defendants spent approximately \$12  
3 million to promote Fast Abs through infomercials from November 2001 through February 22,  
4 2002.

5       **20.** The Fast Abs infomercials featured “fitness pros” and “health professionals” who  
6 repeatedly demonstrated the product and touted its purported benefits. The infomercials also  
7 included: (1) user testimonials; (2) scientific-looking images that purported to illustrate how  
8 Fast Abs functions; (3) visual images of flabby torsos transforming into thin, lean and sculpted  
9 torsos; and (4) a bevy of male and female models with exceptional abdominal definition, usually  
10 dressed in revealing clothes. Exs. A & B (Fast Abs Nov. 3, 2001 infomercial videotape and  
11 transcript); Exs. C & D (Fast Abs Feb. 9, 2002 infomercial videotape and transcript).

12       **21.** The advertisements and promotional materials for Fast Abs discussed in  
13 paragraphs 15-20 (“Fast Abs Promotional Materials”) contained four messages about its benefits,  
14 performance, and safety. Specifically, the use of Fast Abs: (1) causes loss of inches and fat, and  
15 guarantees users will “lose four inches in 30 days”; (2) causes well-defined abdominal muscles,  
16 *e.g.*, “rock hard abs” or “washboard abs”; (3) for 10 minutes is equivalent to 600 sit-ups and  
17 more effective and efficient than regular exercise; and (4) is safe for all users and is safe for use  
18 over the chest and/or pectoral area.

19 **(1) Lose inches and fat claims**

20       **22.** The Fast Abs Promotional Materials included, but were not limited to, the  
21 following statements and depictions about how Fast Abs causes loss of inches and fat:

22           **a.** ON SCREEN TEXT: **“Lose 4 inches in 30 days Guaranteed!”** Ex. B at  
23 30, 32, 48, 59, 60; Ex. D at 31, 33, 49, 63, 64.

24           **b.** MALE ANNOUNCER: “You’ll drop four inches in the first 30 days. We  
25 guarantee it.” Ex. B at 31, 59; Ex. D at 32, 63.

1 ON SCREEN IMAGE: Flabby female torso in profile morphing into a lean and fit torso.

2  
3 c. MALE ANNOUNCER: “People everywhere are sitting back and relaxing  
4 while they firm up, slim down, and shed inches quickly.” Ex. B at 4, 23, 54; Ex. D at 4,  
23-24, 45, 57.

5 d. KATHY DERRY [previously introduced as “[o]ne of America’s leading  
6 fitness pros”]: “If for any reason you’re not completely satisfied with your new leaner,  
7 tighter shape, simply return it for a complete refund of the purchase price, no questions  
8 asked.” Ex. B at 21.

9 ON SCREEN IMAGES: Men without shirts and women with bare midriffs, all sporting  
10 lean, well-defined abdominal muscles.

11 e. ON SCREEN IMAGE: “Before” and “After” photographs and images of  
12 male and female torsos transforming from flabby to lean and fit.

13 [A message of “Unique results, your results may vary” fleetingly appears in fine print near the  
14 bottom of the screen. Ex. B at 52. The February version of the infomercial flashes  
15 “Unique Results. Your results will vary.” Ex. D at 54. In both versions, this small light blue text is  
16 poorly contrasted against a medium blue screen and is accompanied by background  
17 sounds and images.]

18 PETER VIRGILE [previously introduced as a “top personal trainer”]: “Just look at these  
19 Fast Abs results achieved by all these people in just two weeks. Fantastic results.” Ex. B  
20 at 53; Ex. D at 54-55.

21 f. KAREN [purported Fast Abs user]: “In the last 14 days, I’ve lost three and  
22 a half pounds and two and a half inches off my waist and an inch off my hips.”

23 ON SCREEN IMAGE: Woman’s torso in profile featuring a flabby belly and buttocks  
24 morphing into a lean and fit profile. Ex. B at 20; Ex. D at 20.

25 ON SCREEN TEXT: “Lost 3½ inches total! 14-day results!”

26 g. HEATHER [purported Fast Abs user]: “In the last 14 days, I’ve lost two  
and half inches off my waist and two inches off my hips.”

ON SCREEN TEXT: “Before and After photographs . . . Lost 4½ inches total! 14-  
Day Results!”

ON SCREEN IMAGE: Woman’s torso in profile featuring a flabby belly and buttocks  
morphing into a lean and fit profile.

[Same messages and display characteristics described in ¶ 18(e) appear at Ex. B at 10;  
Ex. D at 11.]

1           **h.** UNIDENTIFIED MALE [purported Fast Abs user]: “With Fast Abs, I’ve  
2 been able to zap my love handles.” Ex. B at 20; Ex. D at 20.

3           **i.** UNIDENTIFIED MALE [purported Fast Abs user]: “I lost an inch and half  
4 in my hips. I lost two and half in my waist.”

5 ON SCREEN TEXT: “**Before and After photographs . . . Lost 4 inches total! 14-Day  
6 Results!**”

7 ON SCREEN IMAGE: Typical male torso transforms into lean and sculpted torso.

8 [Same messages and display characteristics described in ¶ 18 (e) appear at Ex. B at 20;  
9 Ex. D at 20.]

10           **j.** PERSONAL FITNESS TRAINER: “It really, really helps strengthen the  
11 muscle, tone the muscle, get rid of cellulite.” Ex. B at 14.

12           **k.** KATHY DERRY: “People really can see great results quickly and easily  
13 with Fast Abs. The secret is EMS, electronic muscle stimulation.

14 ON SCREEN IMAGE: An animated image of a male torso with a Fast Abs belt around  
15 its abdomen. The unit on the belt emits pulses indicated by green dashes moving  
16 outward in an X-shaped pattern. As the belt pulses, the torso’s abdomen shrinks in size.  
17 Ex. B at 10; Ex. D at 11; *see also* Ex. B at 24, 34, 55; Ex. D at 25, 35-36, 58 (repeating  
18 images).

## 19 (2) Well-defined abdominal muscle claims

20           **23.** The Fast Abs Promotional Materials included, but were not limited to, the  
21 following statements and depictions about how Fast Abs causes well-defined abdominal  
22 muscles:

23           **a.** MALE ANNOUNCER: “Do you want rock-hard abs without sweating in a  
24 gym for hours? Do you want to have toned muscles all over your body without lifting  
25 heavy weights? Well, now, you can. Introducing Fast Abs—the no-sweat, full body  
26 workout.” Ex. B at 3-4, 22; Ex. D at 3-4, 22-23, 56.

ON SCREEN IMAGES: More than a dozen rapid shots of topless men displaying  
muscular torsos with “washboard abs” and bikini-clad women with lean, defined  
abdomens.

**b.** KATHY DERRY: “With Fast Abs, you can help turn that frumpy  
midsection into washboard sexy abs in just minutes a day safely and easily.” Ex. B at 42;  
Ex. D at 43.



1 ON SCREEN IMAGE: Flabby stomach muscles replaced with visibly defined abs.

2 c. KATHY DERRY: “In just minutes a day, with Fast Abs, you’ll be  
3 building, toning, shaping, and defining your entire body.”

4 ON SCREEN IMAGE: Men and women with sculpted torsos. Ex. B at 34; Ex. D at 35.

5 d. PERSONAL FITNESS TRAINER: “A lot of my clients want to get the cuts  
6 and the definition and this is amazing if you want to do that.” Ex. B at 14; Ex. D at 14.

7 e. KATHY DERRY: “The simple, fast, easy, effective tool to help tool and  
8 reshape your body and help get those washboard lean sexy abs is finally here. With Fast  
9 Abs, we’ll guarantee fast results with no sweat.” Ex. B at 52; Ex. D at 54.

10 ON SCREEN IMAGE: Sculpted male and female torsos followed by close-up of Fast  
11 Abs belt on pulsating abdomen.

12 f. KATHY DERRY: “I’ll guarantee you’ll firm that saggy midriff, tone those  
13 flabby love handles and lose that belly that’s been embarrassing you for years. Reshape  
14 all your problem areas or simply return Fast Abs, no questions asked. You deserve to  
15 have the body you’ve always imagined and now you don’t have to spend all day at the  
16 gym to get it.” Ex. B at 53.

17 g. MALE ANNOUNCER: “Do you want rock hard abs, taut, toned muscles  
18 without sweating for hours? Well now you can. Introducing Fast Abs—the complete  
19 no-sweat workout system.” Ex. E (web commercial transcript); Ex. F (same text depicted  
20 on [TVinventions.com](http://TVinventions.com)).

21 ON SCREEN TEXT: “**No Sweat Workout!**”

22 ON SCREEN IMAGE: Male torso displaying “washboard” abs and two bikini-clad  
23 female torsos displaying lean and muscular abs.

24 h. MALE ANNOUNCER: “Now you can get rock hard abs with no sweat.  
25 Tone arms and shoulders, define hips and thighs. All in just minutes a day. Fast Abs  
26 does all the work for you.” Ex. E (web infomercial transcript); Ex. F (same text depicted  
on [TVinventions.com](http://TVinventions.com)).

ON SCREEN TEXT: “**Fast Abs Does All the Work!**”

i. “Use the whole system for the ultimate in body sculpting and body building.  
Abs, back, triceps, biceps. Customize your program for weight loss and muscle  
definition.” Ex. G (print ads).

j. Application for Mode 1, “Lightning Pulse”: “Women: Flattening lower  
abs[,] Men: Chiseling upper and lower abs.” Ex. H at 8 (instruction booklet).

(3) Equivalent to sit-ups, more efficient than exercise claims

1           **24.**    The Fast Abs Promotional Materials included, but were not limited to, the  
2 following statements and depictions about how using Fast Abs (a) for ten minutes equals 600 sit  
3 ups, and (b) is more effective and efficient than regular exercise:

4           **a.**    KATHY DERRY: “In fact, just 10 minutes of Fast Abs is like doing 600  
5 sit-ups. Imagine that. 600 sit-ups.”

6           ON SCREEN TEXT: “**10 minutes = 600 sit ups.**”

7           ON SCREEN IMAGE: Woman struggling to perform a sit-up. Ex. B at 11; *see also* Ex.  
8 B at 5, 23, 35, 43, 50, 54-55.

9           [The February Infomercial replaces the audio and text references to “sit-ups” with the  
10 phrase “**muscle contractions.**” Ex. D at 5, 12, 24, 36, 45, 52, 57. However, each  
11 reference to “**600 muscle contractions**” is still accompanied by a visual image of a  
12 woman struggling to do a sit-up. *Id.*]

13           **b.**    KATHY DERRY: “Tests have proven that this unique isometric action can  
14 be 30% more effective than anything you can do on your own with normal exercise.”  
15 Ex. B at 11, 24, 34-35; *see id.* at 16 and 24 (similar statements).

16           ON SCREEN TEXT: “**Unique Isometric Action! 30% More Effective Than Normal  
17 Exercise!**” Ex. B at 11, 34-35; *see id.* at 16 and 24 (similar statements).

18           **c.**    DR. DONALD FURNIVAL [introduced as a chiropractor specializing in  
19 “natural healthcare”]: “There are several studies that have been done that show that  
20 electrical muscle stimulation is more effective and more efficient than regular working  
21 out or going to the gym. When you go to the gym, you are exercising everything, and  
22 that brings on fatigue. You don’t get that with Fast Abs.” Ex. B at 15.

23           ON SCREEN IMAGE: Black and white images of men and women performing exercise  
24 with expressions of discomfort.

25           **d.**    Just **10** = **600**  
                  MINUTES           SIT-UPS

26           Ex. G at 2 (print ads).

**e.**    “Just 10 minutes can equal 600 sit-ups!” *Id.*

**f.**    “Just 10 minutes can equal 600 ab contractions!” *Id.* at 3.

**g.**    “Just 10 minutes with Fast Abs is the equivalent of 600 muscle  
          contractions.” Ex. F ([TVinventions.com](http://TVinventions.com)).

1  
2           **h.** “The FAST ABS system uses gentle electric pulses to stimulate nerves that  
3 produce muscle contractions. The pulses can be regulated to tone, or to build muscles  
4 just the way crunches and resistance exercises do.” Ex. H at 3 (instruction booklet).

5           **i.** “The key to a targeted workout is based on the number of repetitions and  
6 length of each muscle contraction through sit-ups, crunches and resistance training. The  
7 Fast Abs system uses this principle to help you get the type of muscle workout you  
8 want.” Ex. H at 7 (instruction booklet).

9 **(4) Safety**

10           **25.** The Fast Abs Promotional Materials included, but were not limited to, the  
11 following statements and depictions about how Fast Abs is safe for all users and safe to use over  
12 the chest:

13           **a.** DR. FURNIVAL: “I would recommend Fast Abs because . . . [s]econdly,  
14 it is the safest possible way that you can develop your musculoskeletal system.” Ex. B at  
15 16.

16           **b.** KATHY DERRY: “Fast Abs is perfect for everyone who wants to have  
17 perfect abs. It was designed to fit the needs of people at all different fitness levels.  
18 Doctors have found that it is safe and effective for people because of its unique design  
19 and breakthrough technology.” Ex. B at 51; Ex. D at 53-54.

20 [A message of “Do not use during pregnancy, if you use a pace maker or if you have a cardiac or other medical  
21 condition that would prevent you from using EMS technology.” fleetingly appears in fine print near the  
22 bottom of the screen. Ex. B at 51; Ex. D at 53 (similar statement). The small white text  
23 is poorly contrasted against a screen that changes background several times and contains  
24 many images.]

25           **c.** KATHY DERRY: “This tiny transformer [referring to the unit] sends out  
26 safe, gentle impulses that trigger your motor nerves and activate deep muscle  
contractions.” Ex. B at 11; Ex. D at 11; *see* Ex. B at 24, 34; Ex. D at 25, 35, 58 (similar  
statements by Kathy Derry or Male Announcer).

**d.** MALE ANNOUNCER: “Simply slip the Fast Abs belt around the desired  
muscle group, and the Fast Abs microprocessor [the unit] sends out safe, gentle,  
massage-like impulses that stimulate muscle contractions to tone and firm muscle.”  
Ex. E (web commercial transcript); Ex. F (same text depicted on [TVinventions.com](http://TVinventions.com)).

**e.** PETER VIRGILE: “And not only does it give your abs a great workout,  
you can use Fast Abs all over your body, toning and shaping your hips and your arms,  
your thighs, your chest and your calves.”

ON SCREEN TEXT: “**Total Body Workout!**” Ex. B at 35; Ex. D at 36.

1 **f.** ON SCREEN IMAGE: Fast Abs belt strapped across chest of a male.  
2 Ex. B at 5, 12, 19, 24, 26-27, 35, 37, 50.

3 **g.** “Adjustable Positioning Lets You Target Your: Upper Abs[,] Lower Abs[,]  
4 Plus All These Trouble Spots: Love Handles & Waist[,] Inner & Outer Thighs & Buns[,] Arms[,] Chest.”

5 VISUAL IMAGE: Fast Abs belt strapped across the chest of a female. Ex. G (print ads).

6 **h.** “[M]uscles for women  
7 **Upper Body Target Zones**  
8 **Pectorals**

9 These are the muscles men like to build for the chiseled chest look. For women, these  
10 muscles are just as important. While breast tissue is not comprised of muscle and can’t  
11 be strengthened or tightened, strengthening the pectoral muscles helps to support the  
12 breasts and give them a firmer[,] more shapely appearance. The secret to maintaining  
13 breast shape is working the pectorals.” Ex. H at 11 (instruction booklet).

14 **i.** “[M]uscles for men  
15 **Upper Body Target Zones**  
16 **Pectorals**

17 “Pecs” are so important to men for a virile look that some actually get implants to  
18 achieve the Tarzan chest. Working the pecs on a program of increasing intensity can  
19 help get the sculpted chest of a body builder.” Ex. H at 13 (instruction booklet).

20 **j.** “[E]xercise points . . .  
21 **Women . . .** **Men . . .**  
22 **B. Breasts** Improves breast contour **B. Chest** Improves breast contour”

23 VISUAL IMAGE: Graphic of muscular system locating “**B**”exercise point as across the  
24 chest area. Ex. H at 15 (instruction booklet).

25 **k.** “[U]pper body positioning . . .  
26 **Women:** Program 4  
**Men:** Program 2”

VISUAL IMAGE: Fast Abs belt positioned across female’s chest area. Ex. H at 17  
(instruction booklet).

27 **26.** Although the Fast Abs pre-sale promotional materials stated that the device was  
28 safe, the Fast Abs instruction booklet warned “**DO NOT use FAST ABS if you have any of the**  
29 **following conditions,**” including, *inter alia*:

- Heart condition (Current or previous)

- Pregnant
- Inflammation of veins (including phlebitis or serious varicose veins.)
- Inflamed tissue from recent injury or disease (including recent scar tissue)

Ex. H at 4. Consumers did not receive this list of contraindications until after they had purchased the device and received the instruction booklet.

**The Defendants’ Purported 30-Day Money-Back Guarantee and One-Year Product Warranty**

27. The Fast Abs Promotional Materials included, but were not limited to, the following statements and depictions about a 30-day money-back guarantee and a one-year product warranty:

a. KATHY DERRY: “Plus, Fast Abs will let you try the product for 30 days. Get the results we’re talking about or you don’t pay. That’s because Fast Abs comes back[ed] with our 30-day fast results money-back guarantee. If, for any reason, you’re not completely satisfied with your new[,] leaner, tighter shape, simply return it for a complete refund of the purchase price, no questions asked.”

ON SCREEN TEXT: “**30-DAY Risk Free Money Back Guarantee.**” Ex. B at 21; *see also* Ex. B at 4, 23, 30-33, 43, 47-49, 53-54, 59-62 (similar graphic or verbal guarantees); Ex. D at 21-22, 32-34, 43, 49-50, 64-65 (same).

b. MALE ANNOUNCER: “Fast Abs, the no-sweat workout comes with a full one-year limited warranty and is backed by a 30-day fast results money back guarantee.” Ex. B at 31-32, 47-48, 60; Ex. D at 32-33, 49, 64.

c. “You must be totally thrilled and amazed with your toned abs without the work, or simply return the System for a full refund of your purchase price, less S&H . . . .” Ex. G (print ads).

d. “Try Fast Abs without risk for 30 full days. If you’re not completely satisfied, send it back for a complete refund of the purchase price (less S&H), guaranteed.” Ex. F ([TVinventions.com](http://TVinventions.com)).

28. Neither the Fast Abs Promotional Materials nor the instruction booklet or packaging for the Fast Abs device informed consumers how they could return the product. Some consumers received written materials with the product identifying UFA and providing a Connecticut address. Other consumers never received these materials and were unable to return Fast Abs within the 30-day return period because they were unable to identify the company

1 responsible for handling returns or customer service. In some cases, consumers dialed the  
2 telephone numbers displayed during Fast Abs infomercials and reached telephone  
3 representatives who refused to provide return information and/or provided consumers with a so-  
4 called “customer service” telephone number, which was either continuously busy or put them on  
5 “hold” for extended periods of time.

6 **29.** The Fast Abs infomercials repeatedly claimed that Fast Abs is backed by a “full  
7 **one-year** limited warranty.” Ex. B at 32, 47, 60; Ex. D at 32, 49, 64 (emphasis added).  
8 However, when some consumers received the device from the UFA Defendants, it was  
9 accompanied by a “Fast Abs **Thirty (30) Day** Limited Warranty” card that explicitly disclaimed  
10 all other “written or express warrant[ies].” Ex. I (emphasis added). This 30-day warranty ran  
11 “from the original date of purchase.” *Id.*

12 **THE DEFENDANTS’ VIOLATIONS OF THE FTC ACT**

13 **30.** Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts  
14 or practices in or affecting commerce. Section 12 of the FTC Act, 15 U.S.C. § 52(a), prohibits  
15 the dissemination of any false advertisement in or affecting commerce for the purpose of  
16 inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or  
17 cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, Fast Abs is a  
18 “device” pursuant to Section 15(d) of the FTC Act, 15 U.S.C. § 55(d). As set forth below, the  
19 Defendants engaged in such unlawful practices in connection with the marketing and sale of Fast  
20 Abs.

21 **COUNT ONE**  
22 **FALSE CLAIMS - LOSS OF INCHES AND FAT**  
23 **(All Defendants)**

24 **31.** Through the means described in Paragraphs 14-22, the Defendants represented,  
25 expressly or by implication, that Fast Abs causes loss of inches and fat.  
26

1           **32.**     In truth and in fact, Fast Abs does not cause loss of inches and fat. Therefore,  
2 the making of the representations set forth in Paragraph 31 constitutes a deceptive practice, and  
3 the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and  
4 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

5                               **COUNT TWO**  
6                               **FALSE CLAIMS - WELL-DEFINED ABDOMINAL MUSCLES**  
7                               **(All Defendants)**

8           **33.**     Through the means described in Paragraphs 14-21 and 23, the Defendants  
9 represented, expressly or by implication, that Fast Abs causes well-defined abdominal muscles  
10 (*e.g.*, "rock hard abs" or "washboard abs").

11           **34.**     In truth and in fact, Fast Abs does not cause well-defined abdominal muscles  
12 (*e.g.*, "rock hard abs" or "washboard abs"). Therefore, the making of the representations set  
13 forth in Paragraph 33 constitutes a deceptive practice, and the making of false advertisements, in  
14 or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a)  
15 and 52.

16                               **COUNT THREE**  
17                               **FALSE CLAIMS - EQUIVALENT TO OR MORE EFFECTIVE THAN EXERCISE**  
18                               **(All Defendants)**

19           **35.**     Through the means described in Paragraphs 14-21 and 24, the Defendants  
20 represented, expressly or by implication, that use of Fast Abs (a) for ten minutes is equivalent to  
21 600 sit ups and (b) is more efficient and effective than regular exercise.

22           **36.**     In truth and in fact, use of Fast Abs (a) for ten minutes is not equivalent to 600  
23 sit-  
24 ups and (b) is not more efficient and effective than regular exercise. Therefore, the making of  
25 the representations set forth in Paragraph 35 constitutes a deceptive practice, and the making of  
26 false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC  
Act, 15 U.S.C. §§ 45(a) and 52.

1  
2 **COUNT FOUR**  
3 **FALSE CLAIMS - SAFE FOR USE OVER CHEST AREA**  
4 **(All Defendants)**

5 **37.** Through the means described in Paragraphs 14-21 and 25, the Defendants  
6 represented, expressly or by implication, that Fast Abs is safe for use over the chest and/or  
7 pectoral area.

8 **38.** In truth and in fact, Fast Abs is not safe for use over the chest and/or pectoral  
9 area.

10 Therefore, the making of the representations set forth in Paragraph 37 constitutes a deceptive  
11 practice, and the making of false advertisements, in or affecting commerce, in violation of  
12 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

13 **COUNT FIVE**  
14 **FAILURE TO DISCLOSE SAFETY RISKS**  
15 **(All Defendants)**

16 **39.** Through the means described in Paragraphs 14-21, and 25, the Defendants  
17 represented, expressly or by implication, that Fast Abs is safe for all users. In connection with  
18 repeated references to safety, the Defendants failed to disclose or to disclose adequately in their  
19 pre-sale promotional materials that Fast Abs is not safe for all users. In fact, Fast Abs should not  
20 be used by people with implanted cardiac pacemakers; it poses health risks for use over or near  
21 cancerous lesions, and swollen, infected or inflamed areas or skin eruptions, *e.g.*, phlebitis,  
22 thrombophlebitis, varicose veins; and Fast Abs' safety has not been established for pregnant  
23 women. These facts would be material to consumers in their purchase of Fast Abs.

24 **40.** In light of the representations made in Paragraph 25, the Defendants' failure to  
25 disclose or to disclose adequately the material information about health risks set forth in  
26 Paragraph 39 was, and is, a deceptive practice, and constitutes false advertising of a device, in or



1 affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and  
2 52.

3 **COUNT SIX**  
4 **FALSE CLAIMS – FAILURE TO PROVIDE A ONE-YEAR LIMITED WARRANTY**  
5 **(UFA Defendants)**

6 **41.** Through the means described in Paragraphs 14-20 and 27-29, the UFA  
7 Defendants represented, expressly or by implication, that Fast Abs came with a “full one-year  
8 limited warranty.”

9 **42.** In truth and in fact, the Fast Abs devices sold by the UFA Defendants did not  
10 come with a full one-year limited warranty. The UFA Defendants substituted a 30-day warranty  
11 that explicitly disclaimed all other “written or express warrant[ies]” for the represented one-year  
12 limited warranty. Therefore, the making of the representation set forth in Paragraph 41  
13 constitutes a deceptive practice in or affecting commerce, in violation of Section 5(a) of the FTC  
14 Act, 15 U.S.C. § 45(a).

15 **COUNT SEVEN**  
16 **FALSE CLAIMS – FAILURE TO PROVIDE EFFECTIVE MEANS TO CLAIM**  
17 **REFUND**  
18 **(UFA Defendants)**

19 **43.** Through the means described in Paragraphs 14-20 and 27-28, the UFA  
20 Defendants represented, expressly or by implication, that customers dissatisfied with the Fast  
21 Abs product could easily return the product within 30 days for a full refund of the purchase  
22 price, less shipping and handling.

23 **44.** In truth and in fact, in numerous instances, customers dissatisfied with the Fast  
24 Abs product were not able to easily return the product within 30 days for a full refund of the  
25 purchase price, less shipping and handling. Therefore, the making of the representation set forth  
26 in Paragraph 43 constitutes a deceptive practice in or affecting commerce, in violation of Section  
5(a) of the FTC Act, 15 U.S.C. § 45(a).

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**CONSUMER INJURY**

45. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss and may suffer physical injury as a result of the Defendants’ unlawful acts or practices. In addition, the Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, the Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

**THIS COURT’S POWER TO GRANT RELIEF**

46. 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 the 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 the Defendants from violating Sections 5(a) and 12 of the FTC Act as alleged herein, including committing such violations in connection with the advertising or sale 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, including, but not limited to, temporary and

1 preliminary injunctions and an accounting;

2 3. Award such equitable relief as the Court finds necessary to redress injury to  
3 consumers resulting from the Defendants' violations of Sections 5(a) and 12 of the FTC Act,  
4 including, but not limited to, rescission of contracts and restitution, other forms of redress, and  
5 the disgorgement of ill-gotten gains; and

6 4. Award Plaintiff the costs of bringing this action and such other equitable relief as the  
7 Court may determine to be just and proper.

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Respectfully submitted,

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WILLIAM E. KOVACIC  
General Counsel

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LAUREEN KAPIN  
WALTER GROSS  
JOSHUA S. MILLARD  
Attorneys  
Division of Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Ave, NW NJ2122  
Washington, D.C. 20580  
(202) 326-3237 Office  
(202) 326-2558 Fax

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Dated: \_\_\_\_\_, 2003

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