

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)	
)	
ABFLEX, U.S.A., INC.,)	FILE NO. 962 3041
a corporation, and)	
)	AGREEMENT CONTAINING
MARTIN VAN DER HOEVEN,)	CONSENT ORDER
individually and as an officer)	
of the corporation.)	

The Federal Trade Commission has conducted an investigation of certain acts and practices of Abflex, U.S.A., Inc., a corporation, and Martin Van Der Hoeven, individually and as an officer of the corporation ("proposed respondents"). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Abflex, U.S.A., Inc., by its duly authorized officer, and Martin Van Der Hoeven, individually and as an officer of the corporation, and counsel for the Federal Trade Commission that:

- 1.a. Proposed respondent Abflex, U.S.A., Inc. is a California corporation with its principal office or place of business at 5962 La Place Court, Suite 260, Carlsbad, California 92008.
- 1.b. Proposed respondent Martin Van Der Hoeven is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs or controls the policies, acts, or practices of the corporation. His principal office or place of business is the same as that of Abflex, U.S.A., Inc.
2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondents waive:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complalleå a- thosiwi6Öm75 pemis×complge ,pro

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. "Weight-loss product" shall mean any product or program designed to produce weight loss, reduction or elimination of fat, or caloric deficit or to suppress the appetite in a user of the product or program.
3. Unless otherwise specified, "respondents" shall mean Abflex, U.S.A., Inc., a corporation, its successors and assigns and its officers; Martin Van Der Hoeven, individually and as an officer of the corporation; and each of the above's agents, representatives and employees.
4. "In or affecting 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 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the "Abflex," any other exercise equipment, or any other weight-loss product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

- A. About the number of pounds users can lose;
- B. About the rate or speed at which users lose weight;
- C. About the length of time users must use such product to achieve weight loss;
- D. That such product causes fast and significant weight loss;
- E. That such product causes a reduction in the size or shape of specific, desired areas of the body;

- F. That such product causes a reduction in users' body size or shape, or body measurements; or
- G. About the benefits, efficacy, or performance of such product in promoting weight loss,

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.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the "Abflex," any other exercise equipment, or any other weight-loss product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that 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:

- A. At the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or
- B. Respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:
 - 1. what the generally expected results would be for users of the product, or
 - 2. 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).

III.

IT IS FURTHER ORDERED that respondent Abflex, U.S.A., Inc., and its successors and assigns, and respondent Martin Van Der Hoeven shall, for five (5) 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 materials that were relied upon in disseminating the representation; and
- B. 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.

IV.

IT IS FURTHER ORDERED that respondent Abflex, U.S.A., Inc., and its successors and assigns, and respondent Martin Van Der Hoeven shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, provided, however, that the duty to deliver a copy of this order to future personnel as required by this Part shall terminate three (3) years after the date upon which this order becomes final. Respondents shall deliver this order 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.

V.

IT IS FURTHER ORDERED that respondent Abflex, U.S.A., Inc. and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) 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 respondent learns less than thirty (30) days prior to the date such action is to take place, respondent 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, Washington, D.C. 20580.

VI.

IT IS FURTHER ORDERED that respondent Martin Van Der Hoeven, for a period of five (5) 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. 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

appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 19____

ABFLEX, U.S.A., INC.

By: _____
MARTIN VAN DER HOEVEN
President

MARTIN VAN DER HOEVEN, individually
and as an officer of the
corporation.

ALEXANDER F. WILES, ESQ.
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Counsel for the Federal Trade
Commission

APPROVED:

JEFFREY KLURFELD, Director
San Francisco Regional Office

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
)
ABFLEX, U.S.A., INC.,)
a corporation, and) DOCKET NO.
)
MARTIN VAN DER HOEVEN,)
individually and as an officer)
of the corporation.)

COMPLAINT

The Federal Trade Commission, having reason to believe that Abflex, U.S.A., Inc., a corporation, and Martin Van Der Hoeven, individually and as an officer of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Abflex, U.S.A., Inc. is a California corporation with its principal office or place of business at 5962 La Place Court, Suite 260, Carlsbad, California 92008.

2. Respondent Martin Van Der Hoeven is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Abflex, U.S.A., Inc.

3. Respondents have advertised, labeled, offered for sale, sold, and distributed weight-loss and body-shaping products to the public, including the "Abflex," an abdominal exercise device.

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

5. Respondents have disseminated or have caused to be disseminated advertisements for the Abflex, including but not necessarily limited to the attached Exhibits A through E. These advertisements contain the following statements:

A. ["The Abflex Home" page (Exhibit A2)]

**"Welcome to ABFLEX
YOU ARE SECONDS AWAY FROM
THE ABS YOU'VE ALWAYS WANTED**

WHAT CAN ABFLEX DO FOR YOU?
SEE WHY ABFLEX IS THE BEST MACHINE FOR ABS
WHO USES ABFLEX?
DON'T BELIEVE US? WATCH THIS!
...."

["What can Abflex do for you?" page (Exhibits A3-A4)]

**"If you spend 3 minutes a day with the ABFLEX, you will
have firm, tight abs.
We guarantee it.**

The ABFLEX Guarantee:

If you don't lose 5 inches and 10 pounds within 30 days, you can return the ABFLEX for a full refund.

HERE'S HOW:

ABFLEX uses four basic exercises to guarantee you the maximum results:"

["See why Abflex is the best machine for abs" page (Exhibits A5-A7)]

"Q&A

How do I know ABFLEX really works? ↓

The ABFLEX Guarantee!!!

If you don't lose 5 inches and 10 pounds within 30 days, you can return the ABFLEX for a full refund.

...."

["Who uses Abflex" page (Exhibit A8)]

"

Join an all-star line-up of celebrities, professional athletes, fitness experts and hundreds of thousands of people across the country and discover the fast, safe way to a firm stomach, a slim waistline and a healthy

is the way to work-out these non-jointed muscles. Abflex's patented direct resistance design zeros right in on those hard to target abdominal muscles. *The result: You can have a firm flat stomach, and a slim*

D. "GET A FLAT, SEXY STOMACH
IN JUST 3 MINUTES A DAY!
While You Sit In A Chair or Even Watch TV!
ABFLEX®

The Fastest, Easiest,
Safest Way Ever

To Achieve:

- ✓ A flat, toned stomach
- ✓ A shapelier waistline
- ✓ A healthier back

HERE'S THE MAGIC OF ABFLEX:

Only the **ABFLEX patented direct resistance design** targets all the abdominal muscles simultaneously in one easy exercise to:

- * Flatten a bulging tummy
- * Eliminate a spare tire
- * Trim the waistline
- * Get rid of those "love handles" at the sides of the waist with its special attachment"

Consumer endorser: "Lost 3 inches and 13 pounds in 30 Days!"

[The advertisement depicts before-and-after photographs of a consumer.]

"DRAMATIC RESULTS IN JUST A FEW
WEEKS... AND NO BACK STRAIN!

....
ALL THIS FOR JUST
3 EASY PAYMENTS OF
\$19⁹⁵

The Revolutionary New ABFLEX System, plus the 1-hour ABFLEX Lifetime Fitness Instructional Video and the 250 page ABFLEX Nutritional guide which lists over 2,000 low-fat foods and gives you over 90 delicious recipes!

....
ABFLEX NO RISK GUARANTEE

If you don't lose 3 to 6 inches and 10 pounds within 30 days, simply return the ABFLEX System for a full refund of your purchase price! You have nothing to lose but your paunch!"

The advertisement contains a statement at the bottom, left-hand corner, in approximately 4-point type: "***The ABFLEX System includes a low-fat diet and aerobic exercise. The results may vary.***" (Exhibit D).

E. "Male Narrator 1: Does your stomach look like this?"

[The advertisement depicts stomachs of three obese individuals. Superscript: "Does Your Stomach Look Like This?]

In just a few minutes a day, it could look like this.

[The advertisement depicts three individuals with flat stomachs and slim waistlines. Superscript:

Van Allen: That sounds great."

Consumer endorser: "You don't even know you are doing, you don't even know you are doing your exercises. And you're doin' it the whole time and pretty soon your stomach is like a brick. And you've lost all that weight.

Consumer endorser: "With the Abflex I have lost 5 to 6 inches within 30 days and I have seen the results and so has everybody else. It works great."

....

"Announcer: ... it's so effective you can see dramatic results in just a few weeks."

[The advertisement depicts a woman demonstrating how many inches she has lost around her waist by wearing jeans, which now are too large for her around the waist. Superscript: "Dramatic Results in a Few Weeks"]

Consumer endorser: "Within, I would say, the third or fourth day that I started using it I started noticing tightening, firmness and my pants had started loosening up a little. I kept continuing using it and before I knew it I was back to a 5/6 from a 9/10. It was very dramatic."

[Superscript: "Your results may vary."]

"Announcer: ... you get the Abflex Guarantee. If you don't lose 3 to 6 inches and 10 pounds within 30 days, simply return the ABFLEX for a full refund of your purchase price. The Abflex, it's the fast way to a flat stomach, a shapely waistline, and a healthy back."

[The advertisement depicts a woman demonstrating how many inches she has lost around her waist by wearing jeans, which now are too large for her around the waist. Superscript: "Abflex GUARANTEE If you don't lose 3 to 6 inches and 10 pounds within 30 days, simply return the ABFLEX for a full refund."]

....

Consumer endorser: "I saw results in the first five to seven days. I could see visual results of the Abflex program. I lost about an inch to an inch-and-a-half in the waist and also lost five pounds...."

[Superscript: "Your results may vary"]

....

"Van Allen: ... The Abflex definitely works.

Jennilee Harrison: And it can work for anyone.

[The advertisement depicts before and after photographs of a consumer. Superscript: "Lost 12 Inches. The Abflex program includes a low-fat diet and aerobic exercise."]

Jennilee Harrison: Think about how great you're going to feel when you start using the Abflex...

[The advertisement depicts before and after photographs of a consumer. Superscript: "Lost 13 lbs in 30 days. The Abflex program includes a low-fat diet and aerobic exercise."]

Jennilee Harrison: ...and you start losing those inches.

[The advertisement depicts before and after photographs of a consumer. Superscript: "Lost 6 inches in 30 days. Best case results. Your results may vary."]

Jennilee Harrison: Think about how great you're going to feel when you look terrific in your jeans again. Anybody can have a great body; the Abflex makes it easy.

Martin Van Der Hoeven: And I guarantee results. If you don't lose three to six inches and 10 pounds within 30 days, you can return the Abflex for a full refund.

Jennilee Harrison: It only takes three minutes a day to flatten your tummy....

Van Allen: We can all spare three minutes to get rid of our spare tires, It can flatten our stomachs, it can slim our waistlines," (Exhibit E).

6. Through the means described in Paragraph 5, respondents have represented, expressly or by implication, that:

- A. The Abflex causes fast and significant weight loss.
- B. Consumers lose at least ten pounds and five inches, or three to six inches, off their waistline within thirty days by using the Abflex for just three minutes a day.
- C. The Abflex causes weight loss and fat reduction in specific, desired areas of the body.
- D. Testimonials from consumers appearing in the advertisements for the Abflex reflect the typical or

ordinary experience of members of the public who use the product.

7. Through the means described in Paragraph 5, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made.

8. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

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

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

By the Commission.

Donald S. Clark
Secretary

SEAL:

[Exhibits A-E attached to paper copies of complaint, but not available in electronic form.]

Analysis of Proposed Consent Orders
to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, agreements to a proposed consent order from Kent & Spiegel Direct, Inc., and its officers, Marsha Kent and Peter Spiegel, and a proposed consent order from Abflex, U.S.A., Inc., and its officer, Martin Van Der Hoeven (collectively

Part II of the proposed orders addresses claims made through endorsements or testimonials. Under Part II, respondents may make such representations if they possess and rely upon competent and reliable scientific evidence that substantiates the representations; or respondents must disclose either what the generally expected results would be for users of the advertised product, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve.

The remaining provisions of the proposed orders relate to respondents' obligations to make available to the Commission materials substantiating claims covered by the order; to notify the Commission of changes in the corporations' structure; to notify the Commission of changes in the individuals' employment or business affiliations; to provide copies of the orders to certain personnel of the corporations; and to file compliance reports with the Commission. The orders also provide that the orders will terminate after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed orders. It is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.