

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 Penn. Ave., N.W., Room S4302
9 Washington, D.C. 20580
10 (202) 326-3237 Office
11 (202) 326-2558 Fax
12

13
14
15 DANIEL G. BOGDEN
16 United States Attorney
17 BLAINE T. WELSH
18 Assistant United States Attorney
19 333 Las Vegas Blvd. South, Suite 5000
20 Las Vegas, NV 89101
21 (702) 388-6336 Office
22 (702) 388-5087 Fax
23 Nevada State Bar No. 4790
24
25
26

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
v.)
)
UNITED FITNESS OF AMERICA, LLC,)
GEORGE SYLVA,)
TRISTAR PRODUCTS, INC., and)
KISHORE MIRCHANDANI, a/k/a)
“KEITH” MIRCHANDANI,)
Defendants.)

Docket No. CV-S-

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
6 or practices in connection with the advertising, marketing, and sale of the Fast Abs
7 “electronic massage fitness belt” (“Fast Abs”), which purportedly causes loss of inches
8 and fat, and well-defined abdominal muscles, in violation of Sections 5(a) and 12 of the
9 FTC Act, 15 U.S.C. §§ 45(a) and 52.

10
11 **JURISDICTION AND VENUE**

12 2. This Court has subject matter jurisdiction over this matter under 15 U.S.C.
13 §§ 45(a), 52, and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

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

15
16 **THE PARTIES**

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

25
26 5. Defendant United Fitness of America, LLC (“United Fitness”), is a Nevada limited

1 commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

2 **DEFENDANTS’ COURSE OF CONDUCT**

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

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

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

5 **h.** UNIDENTIFIED MALE [purported Fast Abs user]: "With Fast Abs, I've
6 been able to zap my love handles." Ex. B at 20; Ex. D at 20.

7 **i.** UNIDENTIFIED MALE [purported Fast Abs user]: "I lost an inch and half
8 in my hips. I lost two and half in my waist."

9 ON SCREEN TEXT: **"Before and After photographs . . . Lost 4 inches total! 14-Day
10 Results!"**

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

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

14 **j.** PERSONAL FITNESS TRAINER: "It really, really helps strengthen the
15 muscle, tone the muscle, get rid of cellulite." Ex. B at 14.

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

18 ON SCREEN IMAGE: An animated image of a male torso with a Fast Abs belt around
19 its abdomen. The unit on the belt emits pulses indicated by green dashes moving outward
20 in an X-shaped pattern. As the belt pulses, the torso's abdomen shrinks in size. Ex. B at
21 10; Ex. D at 11; *see also* Ex. B at 24, 34, 55; Ex. D at 25, 35-36, 58 (repeating images).

22 (2) Well-defined abdominal muscle claims

23 **18.** The Fast Abs Promotional Materials include, but are not limited to, the following
24 statements and depictions about how Fast Abs causes well-defined abdominal muscles:

25 **a.** MALE ANNOUNCER: "Do you want rock-hard abs without sweating in a
26 gym for hours? Do you want to have toned muscles all over your body without lifting
heavy weights? Well, now, you can. Introducing Fast Abs—the no-sweat, full body
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 building,
3 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).

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).

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).

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

28 **19.** The Fast Abs Promotional Materials include, but are not limited to, the following
29 statements and depictions about how using Fast Abs (a) for ten minutes equals 600 sit

1 Fast Abs system uses this principle to help you get the type of muscle workout you want.”
2 Ex. H at 7 (instruction booklet).

3
4 **(4) Safety**

5 **20.** The Fast Abs Promotional Materials include, but are not limited to, the following
6 statements and depictions about how Fast Abs is safe for all users and safe to use over the
7 chest:

8 **a.** DR. FURNIVAL: “I would recommend Fast Abs because . . . [s]econdly,
9 it is the safest possible way that you can develop your musculoskeletal system.” Ex. B at
10 16.

11 **b.** KATHY DERRY: “Fast Abs is perfect for everyone wh dk.sVo9 “ 2 0 TD /F0 ictionsr e597 Tc
12 it is safe andefifecivfe forpeople because ofisVouniquen dsigne

13 saf,u gntpl,t

14 E

15
16
17
18
19
20
21
22
23
24
25
26

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

2 **h. “[M]uscles for women**
3 **Upper Body Target Zones**
4 **Pectorals**

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

10 **i. “[M]uscles for men**
11 **Upper Body Target Zones**
12 **Pectorals**

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

16 **j. “[E]xercise points . . .**
17 **Women . . .** **Men . . .**
18 **B. Breasts** Improves breast contour **B. Chest** Improves breast contour”

19 VISUAL IMAGE: Graphic of muscular system locating ‘**B**’exercise point as across the
20 chest area. Ex. H at 15 (instruction booklet).

21 **k. “[U]pper body positioning . . .**
22 **Women: Program 4**
23 **Men: Program 2”**

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

26 **21.** Although the Fast Abs pre-sale promotional materials state that the device is safe, the
Fast Abs instruction booklet warns “**DO NOT use FAST ABS if you have any of the**
following conditions,” including, *inter alia*:

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

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

Defendants’ Purported 30-Day Money-Back Guarantee

1 22. The Fast Abs Promotional Materials include, but are not limited to, the following
2 statements and depictions about a 30-day money-back guarantee and a one-year product
3 warranty:

4 a. KATHY DERRY: “Plus, Fast Abs will let you try the product for 30 days.
5 Get the results we’re talking about or you don’t pay. That’s because Fast Abs comes
6 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.”

7 ON SCREEN TEXT: “**30-DAY Risk Free Money Back Guarantee.**” Ex. B at 21; *see*
8 *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).

9 b. MALE ANNOUNCER: “Fast Abs, the no-sweat workout comes with a full
10 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.

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

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

15 23. Neither the Fast Abs Promotional Materials nor the instruction booklet or packaging for
16 the Fast Abs device informs consumers how they may return the product. Some
17 consumers received written materials with the product identifying United Fitness and
18 providing a Connecticut address. Other consumers never received these materials and
19 were unable to return Fast Abs within the 30-day return period because they were unable
20 to identify the company responsible for handling returns or customer service. In some
21 cases, consumers dialed the telephone numbers displayed during Fast Abs infomercials
22 and reached telephone representatives who refused to provide return information and/or
23 provided consumers with a so-called “customer service” telephone number, which was
24 either continuously busy or put them on “hold” for extended periods of time.

25 24. Defendants’ infomercials repeatedly have claimed that Fast Abs is backed by a
26

1 “full **one-year** limited warranty.” Ex. B at 32, 47, 60; Ex. D at 32, 49, 64 (emphasis added).

2 When some consumers received the device, however, it was accompanied by a “Fast Abs **Thirty**
3 **(30) Day Limited Warranty**” card that explicitly disclaimed all other “written or express
4 warrant[ies].” Ex. I (emphasis added). This 30-day warranty runs “from the original date of
5 purchase.” *Id.*

6 **Defendants’ Delivery Practices**

7 **25.** The Fast Abs infomercials, print promotions, and website have stated that the product
8 will be delivered in approximately four to six weeks. Ex. B at 33, 48, 61; Ex. D at 43, 50,
9 65; Ex. F at 3-4; Ex. G at 2, 3. Similarly, Defendants have told customers who ordered
10 the product by telephone that the product will arrive within four to six weeks. In
11 numerous instances, Defendants did not ship the product for delivery within four to six
12 weeks. Furthermore, Defendants did not advise these consumers of the delay, offer them
13 an opportunity to cancel the order, and did not provide a prompt refund.

14 15 **DEFENDANTS’ VIOLATIONS OF THE FTC ACT**

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

24 25 **COUNT ONE** 26 **FALSE CLAIMS - LOSS OF INCHES AND FAT**

1
27. Through the means described in Paragraphs 10 and 15-18, Defendants have represented,
2 expressly or by implication, that Fast Abs causes loss of inches and fat.

3
28. In truth and in fact, Fast Abs does not cause loss of inches and fat. Therefore, the
4 making of the representations set forth in Paragraph 28 constitutes a deceptive practice,
5 and the making of false advertisements, in or affecting commerce, in violation of Sections
6 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.
7

8
9 **COUNT TWO**
FALSE CLAIMS - WELL-DEFINED ABDOMINAL MUSCLES

10
29. Through the means described in Paragraphs 10, 15-17, and 19, Defendants have
11 represented, expressly or by implication, that Fast Abs causes well-defined abdominal
12 muscles (*e.g.*, “rock hard abs” or “washboard abs”).

13
30. In truth and in fact, Fast Abs does not cause well-defined abdominal muscles (*e.g.*, “rock
14 hard abs” or “washboard abs”). Therefore, the making of the representations set forth in
15 Paragraph 30 constitutes a deceptive practice, and the making of false advertisements, in
16 or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§
17 45(a) and 52.
18

19
20 **COUNT THREE**
FALSE CLAIMS - EQUIVALENT TO OR MORE EFFECTIVE THAN EXERCISE

21
31. Through the means described in Paragraphs 10, 15-17, and 20, Defendants have
22 represented, expressly or by implication, that use of Fast Abs (a) for ten minutes is
23 equivalent to 600 sit ups and (b) is more efficient and effective than regular exercise.

24
32. In truth and in fact, use of Fast Abs (a) for ten minutes is not equivalent to 600 sit-ups and
25 (b) is not more efficient and effective than regular exercise. Therefore, the making of the
26 representations set forth in Paragraph 32 constitutes a deceptive practice, and the making
of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 disclose adequately the material information about health risks set forth in Paragraph 36
2 was, and is, a deceptive practice, and constitutes false advertising of a device, in or
3 affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§
4 45(a) and 52.

5
6 **COUNT SIX**
7 **FALSE CLAIMS – FAILURE TO MAKE A PROMPT REFUND**

8 **37.** Through the means described in Paragraphs 10, 15-17, and 23, Defendants have
9 represented, expressly or by implication, that Defendants provide timely refunds to
10 consumers who request refunds pursuant to Defendants’ “fast results” money-back
11 guarantee.

12 **38.** In truth and in fact, in many instances, Defendants did not provide timely refunds to
13 consumers who requested refunds pursuant to Defendants’ “fast results” money-back
14 guarantee. Therefore, the making of the representation set forth in Paragraph 38
15 constitutes a deceptive practice in or affecting commerce, in violation of Sections 5(a)
16 and 12 of the FTC Act, 15 U.S.C. § 45(a).

17
18 **COUNT SEVEN**
19 **FALSE CLAIMS – FAILURE TO PROVIDE A ONE-YEAR LIMITED WARRANTY**

20 **39.** Through the means described in Paragraphs 10, 15-17, and 25, Defendants have
21 represented, expressly or by implication, that Fast Abs comes with a “full one-year
22 limited warranty.”

23 **40.** In truth and in fact, Fast Abs does not come with a full one-year limited warranty.
24 Defendants have substituted a 30-day warranty that explicitly disclaims all other “written
25 or express warrant[ies]” for the represented one-year limited warranty. Therefore, the
26 making of the representation set forth in Paragraph 40 constitutes a deceptive practice in

1 or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

2
3 **COUNT EIGHT**
4 **VIOLATION OF THE MAIL ORDER RULE**

5 **41.** The Mail Or Telephone Order Merchandise Rule (“Mail Order Rule”) was promulgated
6 by the FTC on October 22, 1975, under the FTC Act, 15 U.S.C. § 41 *et seq.* On
7 September 21, 1993, the Mail Order Rule was amended under Section 18 of the FTC Act,
8 15 U.S.C. § 57a, and the amendments took effect March 1, 1994. The Mail Order Rule
9 applies to orders placed by mail, telephone, facsimile transmission, or the Internet.

10 **42.** At all times material hereto, Defendants have engaged in the sale of merchandise ordered
11 by mail, telephone, or the Internet, in commerce.

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

17 **a.** Violated Section 435.1(b)(1) of the Mail Order Rule, 16 C.F.R. § 435.1(b)(1),
18 by failing, within the applicable time, to offer to the buyer, clearly and conspicuously and
19 without prior demand, an option either to consent to the delay in shipping or to cancel the
20 order and receive a prompt refund; and

21 **b.**
22
23
24
25
26

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

4
5 **CONSUMER INJURY**

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

11
12 **THIS COURT'S POWER TO GRANT RELIEF**

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

18
19 **PRAYER FOR RELIEF**

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

22 1. Permanently enjoin Defendants from violating Sections 5(a) and 12 of the FTC Act
23 and the Mail Order Rule, as alleged herein, including committing such violations in connection
24 with the advertising or sale of food, drugs, dietary supplements, devices, cosmetics, or other
25 products, services or programs;

26 2. Award Plaintiff all temporary and preliminary injunctive and ancillary relief that may

1 Dated: May , 2002.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26