

Complaint

122 F.T.C.

IN THE MATTER OF

TELEBRANDS CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3699. Complaint, Dec. 13, 1996--Decision, Dec. 13, 1996*

This consent order prohibits, among other things, a Virginia-based mail order company and its officer from representing that their antenna improves television and radio reception, provides the best, crispest, clearest or most focused television reception achievable without cable installation, and requires any claim concerning the relative or absolute performance, attributes, or effectiveness of any product intended to improve a television's or radio's reception, sound, or image to be truthful and substantiated by competent and reliable evidence.

Appearances

For the Commission: *Donald D'Amato* and *Michael Bloom*.

For the respondents: *Robert Ullman, Bass & Ullman*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Telebrands Corp., a corporation; and Ajit Khubani, individually and as an officer and director of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Telebrands Corp., also doing business as Uncle Bernie's and U.S. Buyers Network, and previously having been known as Telebrands Direct Response Corp. and Telebrands Wholesale Corp., is a Virginia corporation with its office and principal place of business located at 2428 Patterson Avenue, Roanoke, Virginia.

Respondent Ajit Khubani is an officer and director of the corporate respondent. Individually or in concert with others, he has formulated, directed, or controlled the acts and practices of the corporate respondent, including the various acts and practices alleged

in this complaint. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents have advertised, labelled, offered for sale, sold, and distributed to consumers the Sweda Power Antenna, a device intended to capture television and radio signals; the WhisperXL, a sound amplification device intended to be worn by the user; and other products.

PAR. 3. 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.

SWEDA POWER ANTENNA

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements for the Sweda Power Antenna, including but not necessarily limited to the attached Exhibit A. These advertisements contain the following statements:

A. "Amazing New Product Gives Crisp, Clear TV Reception WITHOUT Cable!";

B. "Until recently, the only convenient way to guarantee great TV reception was to get cable installed. But who wants to pay those irritating monthly cable fees just to get clear reception? Now . . . a new device has been developed . . . [i]t's called the SWEDA Power Antenna and is without a doubt 'the single most important thing you should own if you have a TV!';

C. "Just imagine watching TV and seeing a picture so brilliantly clear that you'd almost swear you were there live! Just plug this tiny 2" x 4" Power Antenna into any ordinary AC outlet, connect your TV and get ready for the best reception you've ever had without cable.";

D. "You'll watch in amazement as YOUR TV set suddenly displays a sharp, focused picture. You literally 'won't believe your eyes!' Even older TV sets suddenly come to life.";

E. ". . . Power Antenna takes that signal and electronically boosts it before it gets to your TV set. The results are amazing!";

F. "WHAT ABOUT MY TV 'DISH' ANTENNA? Return it!.... The truth is that they're no more effective than rabbit-ears, a loop, or rod antenna The incredible SWEDA Power Antenna makes everything else seem obsolete. Just plug it in and watch it work."; and

G. "[Sweda Power Antenna] Works just as good for radio reception too!";

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibit A, respondents have represented, directly or by implication, that:

A. The Sweda Power Antenna provides the best, crispest, clearest, or most focused television reception achievable without cable installation;

B. The Sweda Power Antenna takes a television or radio signal and electronically boosts it before it gets to a television or radio; and

C. The installation of a Sweda Power Antenna will more effectively improve a television's or radio's reception, sound, or image than the installation of a television or radio dish antenna.

PAR. 6. In truth and in fact:

A. The Sweda Power Antenna does not provide the best, crispest, clearest, or most focused television reception achievable without cable installation;

B. The Sweda Power Antenna does not take a television or radio signal and electronically boost it before it gets to a television or radio; and

C. The installation of a Sweda Power Antenna will not more effectively improve a television's or radio's reception, sound, or image than the installation of a television or radio dish antenna.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibit A, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph five, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time they made the representations set forth in paragraph five, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Respondents have disseminated or have caused to be disseminated advertisements for the Sweda Power Antenna, including but not necessarily limited to the attached Exhibit A, that make satisfaction or money-back guarantees for the Sweda Power Antenna. These advertisements make the following statement: "Experience the best reception you've ever had or simply return it [Sweda Power Antenna] within 30 days for a prompt and courteous refund."

PAR. 10. Through the use of the statement contained in the advertisements referred to in paragraph nine, including but not necessarily limited to the attached Exhibit A, respondents have represented, directly or by implication, that the purchaser of a Sweda Power Antenna would readily obtain a prompt refund of the full purchase price upon timely demand and return of the Sweda Power Antenna.

PAR. 11. In truth and in fact, in numerous instances, purchasers could not readily obtain a prompt refund of the full purchase price of the Sweda Power Antenna upon timely demand and return of the Sweda Power Antenna. Respondents provided refunds only after delays of several months or only after requiring the purchaser to satisfy other conditions not previously disclosed. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

WHISPERXL

PAR. 12. Respondents have disseminated or have caused to be disseminated advertisements for the WhisperXL, including but not necessarily limited to the attached Exhibits B and C. These advertisements contain the following statements:

A. "HEAR A WHISPER UP TO 100 FEET AWAY! Incredible WhisperXL Gives You Super Hearing" (Exhibits B and C);

B. "The WhisperXL may look like a simple device designed to hide right behind your ear, but is actually a major breakthrough in sound enhancement technology." (Exhibit B);

C. "The WhisperXL . . . is actually a major breakthrough in sound interception and amplification technology." (Exhibit C);

D. "State-of-the-art electronic engineering actually allows you to hear a whisper up to 100 feet away." (Exhibits B and C);

E. "Incredibly, you'll be able to hear people talking in the next room loudly and clearly, or a pin drop from 50 feet away!" (Exhibit C);

F. "Take a walk outdoors and you'll hear . . . deer coming before they hear you!" (Exhibit C); and

G. "Don't Miss A Word! WhisperXL has dozens of practical uses! Take it to the movies, theater, or lecture hall and you'll never miss a word." (Exhibits B).

PAR. 13. Through the use of the statements contained in the advertisements referred to in paragraph twelve, including but not necessarily limited to the attached Exhibits B and C, respondents have represented, directly or by implication, that:

A. The WhisperXL is a major breakthrough in sound enhancement technology;

B. The WhisperXL is an effective hearing aid;

C. The WhisperXL is designed to produce and produces clear amplification of whispered or normal speech, television, radio, and other mid- to high-frequency sounds at a distance of more than a few feet;

D. The WhisperXL allows the user to hear a whisper from as far as 100 feet away; and

E. The WhisperXL allows the user to hear a pin drop from 50 feet away.

PAR. 14. In truth and in fact:

A. The WhisperXL is not a major breakthrough in sound enhancement technology;

B. The WhisperXL is not an effective hearing aid;

C. The WhisperXL is not designed to produce and does not produce clear amplification of whispered or normal speech, television, radio, and other mid- to high-frequency sounds at a distance of more than a few feet;

D. The WhisperXL does not allow the user to hear a whisper from as far as 100 feet away; and

E. The WhisperXL does not allow the user to hear a pin drop from 50 feet away.

Therefore, the representations set forth in paragraph thirteen were, and are, false and misleading.

PAR. 15. Through the use of the statements contained in the advertisements referred to in paragraph twelve, including but not necessarily limited to the attached Exhibits B and C, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph thirteen, respondents possessed and relied upon a reasonable basis that substantiated such representations.

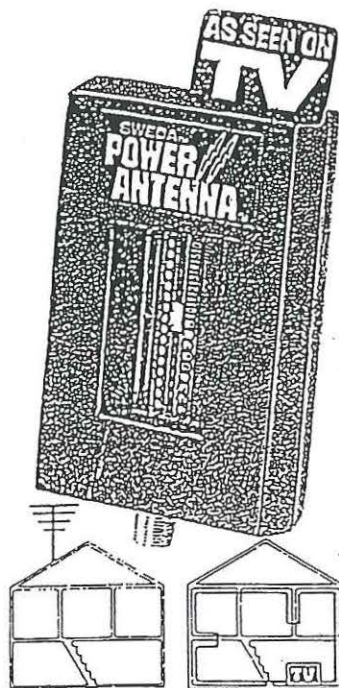
PAR. 16. In truth and in fact, at the time they made the representations set forth in paragraph thirteen, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph fifteen was, and is, false and misleading.

PAR. 17. 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.

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EXHIBIT A



Just plug your Power Antenna™ into any ordinary outlet and watch in amazement as your entire house turns into a giant TV reception station!



RESPOND BEFORE MAY 30TH FOR THIS SPECIAL OFFER!

YES! Please rush me the following SWEDA™ Power Antenna(s):

☐ One Power Antenna for just \$19.95 plus \$4 P&H.

☐ SAVE \$5! Two for just \$34.95 plus \$5 P&H.

☐ SAVE \$10! Three for just \$49.95 plus \$6 P&H.

____ Qty. (over length of time connection cable just \$2 ea. to \$5.00 value).

Estimated \$____. VA residents add sales tax.

Payment method: (Check one) ☐ Check ☐ Money Order

☐ VISA ☐ Mastercard ☐ Amex ☐ Diners ☐ Discover ☐ Cash/Blanch

Card # _____ Exp. Date _____

Print Name _____

Address _____

Appt. _____ City _____

State _____ Zip _____

Mail: U.S. Buyert Network, Dept. AT5123

To: One American Way, Roanoke, VA 24016

Amazing New Product Gives Crisp, Clear TV Reception WITHOUT Cable!

Until recently, the only convenient way to guarantee great TV reception was to get cable installed. But who wants to pay those irritating monthly cable fees just to get clear reception? Now, thanks to years of micro-electronic research, a new device has been developed that's so advanced it actually makes other antennas a thing of the past. It's called the SWEDA™ Power Antenna and is without a doubt "the single most important thing you should own if you have a TV!"

A PICTURE OF ADVANCED TECHNOLOGY!

Just imagine watching TV and seeing a picture so brilliantly clear that you'd almost swear you were there live! Just plug this tiny 2" x 4" Power Antenna into any ordinary AC outlet, connect your TV and get ready for the best reception you've ever had without cable. You'll watch in amazement as YOUR TV set suddenly displays a sharp, focused picture. You literally "won't believe your eyes!" Even older TV sets suddenly come to life. The Power Antenna is so easy to install, so convenient to use, and so incredibly effective that you'll wonder how you ever got by without it!

A THOUSAND FOOT ANTENNA?

Power Antenna is a highly sophisticated electronic product (like a transistor radio) with a simple function. It takes the electrical wiring in your house or apartment (hundreds or thousands of feet) turns it into a giant TV reception

station! It's almost like having an antenna the size of your entire house! Imagine how effective that would be. But there's more, because Power Antenna takes that signal and electronically boosts it before it gets to your TV set. The results are amazing! You can finally enjoy your favorite prime time shows or sports events the way they were meant to be watched.

WHAT ABOUT MY TV "DISH" ANTENNA?

Return it! Millions of these things have been sold in recent years because people were led to believe they would work like a satellite dish. The truth is that they're no more effective than rabbit-ears, a loop, or rod antenna — and people have been struggling with these things for years! The incredible SWEDA™ Power Antenna makes everything else seem obsolete. Just plug it in and watch it work. There's simply NOTHING ELSE better valued on the market today!

LIMITED TIME OFFER!

Electronic antennas like this one normally sell for \$50 or more! But now, for a limited time (if you respond before May 30, 1993), you can have the amazing SWEDA™ Power Antenna for just \$19.95. Experience the best reception you've ever had or simply return it within 30 days for a prompt and courteous refund. You absolutely must see it to believe it! ORDER TODAY.

P.S. Works just as good for reception too! Limit 3 per order.

© 1993 U.S. Buyert Network
1993 Network 1993, 1992

Exhibit A

EXHIBIT B

HEAR A WHISPER UP TO 100 FEET AWAY!

Incredible WhisperXL™ Gives You Super Hearing For **\$29.95?**

This is the SAME famous WhisperXL™ sound amplification device that has been nationally publicized on TV and in leading publications - similar to those that have been sold in Europe for much, much more! But during this nationwide publicity campaign, TeleBrands is offering them for the unbelievable price of just \$29.95 only to those who respond to this ad before Midnight, October 5, 1994.

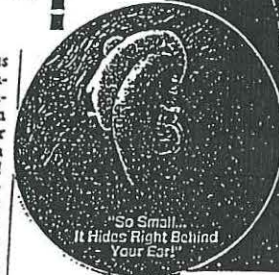
High Technology So Small, It Fits Right Behind Your Ear!

Don't be fooled by the small size or appearance of this device. The WhisperXL™ may look like a simple device designed to hide right behind your ear, but is actually a major breakthrough in sound enhancement technology. State-of-the-art electronic engineering actually allows you to hear a whisper up to 100 feet away. It works so incredibly well that you literally won't believe your ears!



A New World Through Super Ears!

Just imagine what it would be like to hear sounds that you couldn't hear before. Studies show that there are thousands of



different sounds that are not normally audible to the average person. Slip on this technologically advanced device and you'll instantly hear like a super hero. Incredibly, you'll be able to hear a pin drop up to 50 feet away! Take a walk outdoors and you'll hear birds sing like you've never heard them sing before, and even hear a deer coming. It's an outdoorsman's dream come true.

Don't Miss A Word!

WhisperXL™ has dozens of practical uses! Take it to the movies, theater, or lecture hall and you'll never miss a word. It's great for watching TV with a spouse - just keep the volume on low and turn on WhisperXL™. She can read while you watch the ball game! Now you can enjoy the crisp, clear sound of a TV or radio playing at low levels, without annoying everyone else in the room. Experience the fascinating world of super hearing - order today!

The WhisperXL™ weighs less than an ounce, has 6 sound levels to accommodate your own sound enhancement desires, an on/off switch right at your fingertips and, best of all, it adjusts

and rotates so you can wear the WhisperXL™ behind your left or right ear! WhisperXL™ comes complete with battery and a one year money back guarantee.

Complete 5 Piece Set!



Warning: It is prohibited by law to spy or listen in the private conversations of others without the permission of at least one party.

MAIL BEFORE OCTOBER 5TH FOR THIS AMAZING OFFER!

YES! Please rush me the following sets of WhisperXL.

☐ One WhisperXL for only \$29.95 plus \$3 S&H.

☐ SAVE! Two for only \$54.95 plus \$6 S&H.

☐ SAVE MORE! Three for \$84.95 plus \$7 S&H.

Qty. Additional batteries just \$2.00 each.

Enclosed \$ _____ VA res. add sales tax.

Payment Method: (Check One)

☐ Check ☐ Money Order ☐ Visa ☐ MC

☐ Amex ☐ Discover ☐ Carte Blanche

Card # _____

Expire Date _____

Name _____

Address _____

City _____

State _____ Zip _____

TeleBrands, Dept. XL3541

One American Way, Roanoke, VA 24016

AS SEEN ON TV

"You'll love your WhisperXL. I guarantee it!"
Steve Allen

"So Small... It Hides Right Behind Your Ear!"

Exhibit B

EXHIBIT C

ADVERTISEMENT

HEAR A WHISPER UP TO 100 FEET AWAY!

Incredible WhisperXL™ Gives You Super Hearing For \$29.95?

This is the SAME famous WhisperXL™ sound amplification device that has been nationally publicized on TV and in leading publications - similar to those that have been sold in Europe for much, much more! But during this nationwide publicity campaign, TeleBrands is offering them for the unbelievable price of just \$29.95 only to those who respond to this ad before Midnight, September 25, 1994.

High Technology So Small, It Fits Right Behind Your Ear!

Don't be fooled by the small size or appearance of this device. The WhisperXL™ may look like a simple device designed to hide right behind your ear, but is actually a major breakthrough in sound interception and amplification technology. State-of-the-art electronic engineering actually allows you to hear a whisper up to 100 feet away. It works so incredibly well that you literally won't believe your ears!



A New World Through Super Ears!

Imagine what it would be like to hear sounds that you could never hear before. Studies show that there are thousands of different sounds that are not normally audible to the average person. Slip on this technologically advanced device and



you'll instantly hear like a super hero. Incredibly, you'll be able to hear people talking in the next room loudly and clearly, or a pin drop from 50 feet away! Take a walk outdoors and you'll hear birds sing like you've never heard them sing before, and hear deer coming before they hear you! It's an outdoorsman's dream, come true.

Never Miss A Word!

WhisperXL™ has dozens of practical uses! Take it to the movies, theater, or lecture hall and you'll never miss a word. It's great for watching TV with a spouse - just keep the volume on low and turn on WhisperXL™. She can read while you watch the ball game! Now you can enjoy the crisp, clear sound of a TV or radio playing at low levels, without annoying everyone else in the room. Experience the fascinating world of super hearing - order today! The WhisperXL™ weighs less than an ounce, has 6 sound levels to accommodate your own sound enhancement desires, an on/off switch right at your fingertips and, best of all, it adjusts and rotates for ultimate comfort so you can wear the WhisperXL™ behind your left or right ear! WhisperXL™ comes complete with battery and a one year money back guarantee.

"You'll love your WhisperXL - I guarantee it!"

Steve Allen

AS SEEN ON TV

Exhibit C

Complete 5 Piece Set!



WARNING: It is prohibited by law to spy or listen to the private conversations of others without the permission of at least one party.

MAIL BEFORE SEPT. 25TH FOR THIS AMAZING OFFER!

YES! Please rush me the following sets of WhisperXL.

- ☐ One WhisperXL for only \$29.95 plus \$5 S&H.
☐ SAVE! Two for only \$54.95 plus \$6 S&H.
☐ SAVE MORE! Three for \$69.95 plus \$7 S&H.

City, Additional batteries just \$2.00 each.
 Enclosed \$ _____, VA res. add sales tax.

Payment Method: (Check One)
☐ Check ☐ Money Order ☐ Visa ☐ MC
☐ Amex ☐ Discover ☐ Carte Blanc

Card # _____

Expire _____

Name _____

Address _____

City _____

State _____

Zip _____

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Telebrands Corp., also doing business as Uncle Bernie's and U.S. Buyers Network, and previously having been known as Telebrands Direct Response Corp. and Telebrands Wholesale Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal place of business located at 2428 Patterson Avenue, Roanoke, Virginia.

Respondent Ajit Khubani is an officer and director of Telebrands Corp. Mr. Khubani, individually or in concert with others, formulates, directs, and controls the policies, acts, and practices of said corporation, and his business address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of the "Sweda Power Antenna" or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, that such product:

A. Provides the best, crispest, clearest, or most focused television reception achievable without cable installation; or

B. Will more effectively improve a television's or radio's reception, sound, or image than the installation of a television or radio satellite or external dish antenna.

For purposes of this paragraph "substantially similar product" shall mean any product or device that relies or purports to rely on house wiring to serve as the antenna to capture television or radio signals.

II.

It is further ordered, That Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of the "Sweda Power Antenna" or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do

forthwith cease and desist from representing in any manner, directly or by implication, that such product takes a television or radio signal and electronically boosts it before it gets to a television or radio unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For purposes of this order, "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 have 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.

For purposes of this paragraph "substantially similar product" shall mean any product or device that relies or purports to rely on house wiring to serve as the antenna to capture television or radio signals.

III.

It is further ordered, That Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any product or device intended to improve a television's or radio's reception, sound, or image in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, the relative or absolute performance, attributes, or effectiveness of such product or device, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For purposes of this order, "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 have 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.

IV.

It is further ordered, That Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, by act or omission, any guarantee of satisfaction or refund offer in connection with the promotion, advertising, offering for sale, sale or distribution of any product. Any such guarantee of satisfaction or refund offer shall be deemed to require the full refund of the purchase price of a product, as well as any shipping, insurance, handling charges, or any other fee or charge paid by the consumer, within seven (7) business days of the respondents' receipt of the consumer's request for a refund pursuant to any guarantee of satisfaction or refund offer made by respondents; provided, however, that respondents may exclude shipping, insurance, handling charges, or any other fee or charge paid by the consumer from the terms of any guarantee of satisfaction or refund offer if such exclusion is clear, conspicuous, and in close proximity to the guarantee of satisfaction or refund offer.

V.

It is further ordered, That Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of the "WhisperXL" or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do

forthwith cease and desist from representing in any manner, directly or by implication, that such product:

- A. Is a major breakthrough in sound enhancement technology;
- B. Is an effective hearing aid;
- C. Is designed to produce or produces clear amplification of whispered or normal speech, television, radio, or other mid- to high-frequency sounds at a distance of more than a few feet;
- D. Allows the user to hear a whisper from as far as 100 feet away;
- or
- E. Allows the user to hear a pin drop from 50 feet away.

For purposes of this paragraph "substantially similar product" shall not include any hearing aid that has received pre-market approval and/or pre-market clearance from the United States Food & Drug Administration, which approval and/or clearance remains in effect at the time of the making of any of the representations set forth as A through E above.

VI.

It is further ordered, That Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any hearing aid or other sound amplification device intended to be worn or carried by the user, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, the relative or absolute performance, attributes, or effectiveness of any such aid or device, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For purposes of this order, "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 have 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.

For purposes of this paragraph "other sound amplification device intended to be worn or carried by the user" shall not include any television, radio, tape player, compact disc player, or similar device, marketed solely for listening to broadcast, cablecast, or pre-recorded material.

VII.

It is further ordered, That respondents, their successors and assigns, and their officers, for three (3) years after the last date of dissemination of any representation covered by this order, shall maintain and, within ten (10) business days of their receipt of a written request, make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VIII.

It is further ordered, That respondents, their successors and assigns, and their officers, for three (3) years after service of this order, shall maintain and, within ten (10) business days of their receipt of a written request, make available to the Federal Trade Commission for inspection and copying records demonstrating compliance with the terms and provisions of this order.

IX.

It is further ordered, That respondents, their successors and assigns, and their officers, within thirty (30) days after service of this order, shall provide a copy of this order to each of respondents' current principals, officers, and directors, and to all supervising employees, agents, and representatives having any sales, advertising,

recordkeeping, fulfillment, customer service, or policy responsibility with respect to the subject matter of this order.

X.

It is further ordered, That respondents, their successors and assigns, and their officers, for a period of three (3) years from the date of service of this order, shall provide a copy of this order to each of respondents' principals, officers, and directors, and to each of respondents' supervising employees, agents, and representatives having any sales, advertising, recordkeeping, fulfillment, customer service, or policy responsibility, within three (3) days after such person assumes his or her position; provided, however, that a person who previously has been provided a copy of the order pursuant to paragraph IX need not be provided with another copy pursuant to this paragraph.

XI.

It is further ordered, That the corporate respondent, its successors and assigns, and its officers, shall notify the Federal Trade Commission at least thirty (30) days prior to any change in the corporate respondent's structure, including but not limited to, change of corporate name or address, place(s) of business, merger, incorporation, dissolution, assignment, or sale which results in the emergence of a successor corporation, the creation or dissolution of a subsidiary or parent, or any other change which may affect respondents' obligations arising out of this order.

XII.

It is further ordered, That the individual respondent, for a period of seven (7) years from the date of issuance of this order, shall notify the Federal Trade Commission within thirty (30) days of any change in his affiliation with, or change in his active participation in the management or direction of, any business which is engaged in the sale or distribution of any merchandise covered by the terms and conditions of this order.

XIII.

It is further ordered, That this order will terminate on December 13, 2016, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later, provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XIV.

It is further ordered, That respondents shall, within sixty (60) days after the service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission reports, in writing, setting forth in detail the manner and form in which respondents have complied with this order, including but not limited to the name and title of each person to whom a copy of the order has been provided pursuant to the requirements of paragraphs IX and X.

IN THE MATTER OF

CLASS RINGS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3701. Complaint, Dec. 20, 1996--Decision, Dec. 20, 1996

This consent order permits Class Rings, Inc. to acquire L.G. Balfour Company and prohibits, among other things, Class Rings, Inc. and Castle Harlan from acquiring or agreeing to acquire from Town & Country any stock, share capital, equity, or other interest in or assets of Gold Lance.

Appearances

For the Commission: *Joseph Krauss and William Baer.*

For the respondents: *Joseph Kattan, Morgan, Lewis & Bockius,* Washington, D.C. and *Keith Shugarman, Goodwin, Proctor & Hoar,* Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Class Rings, Inc., a corporation controlled by Castle Harlan Partners II L.P. ("Castle Harlan"), has entered into an Asset Purchase Agreement with Town & Country Corporation ("Town & Country") and CJC Holdings, Inc. ("CJC"), whereby Class Rings, Inc. has agreed to acquire the class ring assets of Town & Country and has agreed to acquire the class ring assets of CJC, and Town & Country has agreed to acquire stock of Class Rings, Inc., in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such acquisitions, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows: