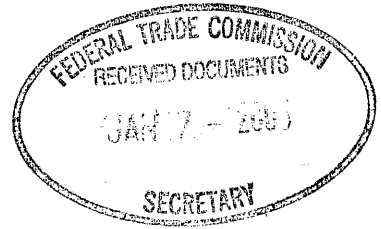


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



Commissioners: Deborah Platt Majoras, Chairman
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

In the Matter of)
)
TELEBRANDS CORP.,)
a corporation,)
)
TV SAVINGS, LLC,)
a limited liability company, and)
)
AJIT KHUBANI,)
individually and as president of)
Telebrands Corp. and sole member)
of TV Savings, LLC.)
)

DOCKET NO. 9313

PUBLIC DOCUMENT

**SUPPLEMENT TO MOTION FOR LEAVE TO SUBSTITUTE AN
AMENDED VERSION OF ANSWERING BRIEF AND
CROSS-APPEAL BRIEF AND ERRATA SHEET**

Complaint Counsel respectfully submits the attached Revised Errata Sheet reflecting all corrections, including corrections of all typographical and citation errors, to the Amended Version of Complaint Counsel's Answering Brief and Cross-Appeal Brief filed on December 17, 2004. The amended brief was submitted with our original motion.

Dated: January 7, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Constance Vecellio".

Constance Vecellio
Walter Gross III
Joshua Millard
Amy Lloyd

COMPLAINT COUNSEL

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

Commissioners: Deborah Platt Majoras, Chairman
Orson Swindle
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In the Matter of)
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TELEBRANDS CORP.,)
a corporation,)
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TV SAVINGS, LLC,)
a limited liability company, and)
)
AJIT KHUBANI,)
individually and as president of)
Telebrands Corp. and sole member)
of TV Savings, LLC.)
_____)

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PUBLIC DOCUMENT

REVISED ERRATA SHEET

Page ii, line 6: Cross-appeal changed to "Cross-Appeal."

Page ii, line 29: "Claim" changed to "Claims."

Page iii, lines 20 and 24: "Pre-existing" changed to "Preexisting"

Page iii, line 37: The heading was capitalized.

Page iii, line 38: "The Commission has authority to impose 'all product' coverage" was changed to "The Commission Has Authority to Impose 'All Product' Coverage"

Page iii, line 39: The capital "A" in "And" was made lowercase.

Page iii, line 40: The capital "T" in "To" was made lowercase.

Page iv, line 1: The heading was capitalized.

Table of Authorities:

Tyus v. Urban Search Management was moved to its correct alphabetical position.

“*Bates v. State Bar of Arizona*, 433 U.S. 350, 383 (1977)” was changed to “*Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).”

“*Betterbox Communications LTD v. BB Technologies, Inc.*” shortened to “*Betterbox Communications LTD v. BB Techs., Inc.*”

“*Board of Trustees v. Fox*, 492 U.S. 492 U.S 469” was changed to “*Board of Trustees v. Fox*, 492 U.S 469 (1989).”

“*Bose v. Consumers Union*, 466 U.S. 485 (1984)” was added.

“*Cinderella Career and Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 587-89 (D.C. Cir. 1970)” was changed to “*Cinderella Career and Finishing Schools, Inc. v. FTC*, 425 F.2d 583 (D.C. Cir. 1970).”

“*Grotrian, Helfferich, Schulz, Th. Steinweg Nachf v. Steinway & Sons*, 365 F. Supp. 707 at 716 SDNY 1993), *modified and aff'd*, 523 F.2d 1331 (2d Cir. 1975)” was changed to “*Grotrian, Helfferich, Schulz, Th. Steinweg Nachf v. Steinway & Sons*, 365 F. Supp. 707 (S.D.N.Y. 1993), *modified and aff'd*, 523 F.2d 1331 (2d Cir. 1975).”

“*Goya Foods, Inc., v. Condal Distributors, Inc.*, 732 F. Supp. 453, 456-57 (S.D.N.Y 1990)” was changed to “*Goya Foods, Inc., v. Condal Distributors, Inc.*, 732 F. Supp. 453 (S.D.N.Y 1990).”

“At *10” was removed from “*Half Price Books, Records, Magazines, Inc. v. Barnesandnoble.com, LLC*, 2004 U.S. Dist. LEXIS 23691 at *10 (N.D. Tex. Nov. 22, 2004).”

In the citation “*Hospital Corp. of America v. FTC*, 807 F.2d 1381 (7th Cir. 1986), *cert. denied*, 481 U.S.1038 (1987)” “*Hospital Corp. of America*” was shortened to “*Hospital Corp.*”

“*Humble Oil & Refining Co. v. American Oil Co.*” was shortened to “*Humble Oil & Ref. Co. v. American Oil Co.*”

“at 279, n.23 ” was removed from “*James Borrough Ltd. v. Sign of the Beefeater, Inc.*, 540 F.2d 266 at 279, n.23 (7th Cir. 1976).”

“*aff'd*” was added to “*Jay Norris, Inc.*, 91 F.T.C. 751 (1978), *aff'd*, 598 F.2d 1244 (2d Cir.), *cert. denied*, 444 U.S. 980 (1979).”

“*Jockey International, Inc. v. Burkard*, 185 U.S.P.Q. (BNA) 201 (S.D. Cal.)” was changed to

“*Jockey International, Inc. v. Burkard*, 185 U.S.P.Q. (BNA) 201 (S.D.N.Y. 1973).”

“*KFC Corporation* (C-4118), 2004 FTC LEXIS 151, *14-15 (2004)” was changed to “*KFC Corp.*, C-4118, 2004 FTC LEXIS 151 (Sept. 9, 2004).”

The full date was added to the *Lancaster v. Lord* citation.

“*Lenox, Inc.*, 73 F.T.C. 578, 604 (1968), *aff’d*, 417 F.2d 126 (2d Cir. 1969))” was changed to “*Lenox, Inc.*, 73 F.T.C. 578 (1968), *aff’d*, 417 F.2d 126 (2d Cir. 1969).”

“*Liggett Group, Inc., v. Brown & Williamson Tobacco Corp.*, 1987 U.S. Dist. LEXIS 14785, *30 (M.D.N.C. 1988)” was changed to “*Liggett Group, Inc., v. Brown & Williamson Tobacco Corp.*, 1987 U.S. Dist. LEXIS 14785 (M.D. N.C. Sept. 30, 1988).”

“*Mutual of Omaha Insurance Co. v. Novak*” was shortened to “*Mutual of Omaha Ins.Co. v. Novak*.”

“367” was removed from “*National Bakers Servs., Inc. v. FTC*, 329 F.2d 365, 367 (7th Cir. 1964).”

“342-43” was removed from “*Niresk Indus., Inc. v. FTC*, 278 F.2d 337, 342-43 (7th Cir. 1969), *cert. denied*, 364 U.S. 883 (1960).”

“1498-99” was removed from “*Removatron Int’l Corp. v. FTC*, 884 F.2d 1489, 1498-99 (1st Cir. 1989).”

Page 41 was no longer listed as citing *Sears Roebuck & Co. v. FTC*.

“350” was removed from “*Skylark Originals, Inc.*, 80 F.T.C. 337, 350 (1972).”

Taleigh Corp. was inserted.

“*Trans Union Corp.* (D-9255), 2000 FTC LEXIS 23, *8-9” was changed to “*Trans Union Corp.*, D-9255, 2000 FTC LEXIS 23 (Feb. 10, 2000).”

“*Tyco Indus., Inc. v. Lego Systems Inc.*” was shortened to “*Tyco Indus., Inc. v. Lego Sys. Inc.*”

“*Wuv’s International, Inc. v. Love’s Enterprises, Inc.*” was shortened to “*Wuv’s Int’l, Inc. v. Love’s Enters., Inc.*”

“652-53” was removed from “*Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 652-53 (1985).”

Page 1, line 7: “Section 5 of the FTC Act” was changed to read “Sections 5 and 12 of the FTC Act.”

Page 3, line 17: “and inches; gain” was changed to read “and inches, gain.”

Page 6, line 6: “test” was changed to “test.”

Page 6, line 12: “Inc.” was dropped from the *Kraft, Inc.* citation.

Page 6, footnote 4 (continued): The date of the decision was added to the citation in *Trans Union*, and the citation “*Trans Union Corp. (D-9255)*, 2000 FTC LEXIS 23” was changed to “*Trans Union Corp., D-9255*, 2000 FTC LEXIS 23.”

Page 8, line 7: A comma was added following “assertions.”

Page 8, line 12: Subheading two “Complaint Counsel’s Cross-appeal” now reads “Complaint Counsel’s Cross-Appeal.”

Page 9, line 2: “Complaint counsel” was changed to “Complaint Counsel.”

Page 10, line 22: The name “Ab Force” was changed to “AbForce.”

Page 10, line 10: “fast -- without” was changed to “fast–without.”

Page 22, line 14: The period following “RX 76” was removed.

Page 22, line 8: “belt --- Slendertone” was changed to “belt–Slendertone.”

Page 25, line 15: “Inc.” was dropped from the *Kraft, Inc.* citation.

Page 25, line 19: The comma following “*Id.*” was removed.

Page 26, line 1: “*Thompson Medical Co.*” was changed to “*Thompson Medical.*”

Page 26, line 10: The citation “*American Home Prods. Corp. v. FTC*, 695 F.2d at 688 (3d Cir. 1982)” was changed to “*American Home Prods. Corp. v. FTC*, 695 F.2d 681, 688 (3d Cir. 1982).”

Page 28, line 12: The period was moved inside the parentheses following “(RAB at 8).”

Page 28, footnote 14: “*Medical*” was added to the citation for the *Thompson Medical* decision.

Page 30, line 6: “Claim” was changed to “Claims.”

Page 31, line 17: The period following “55-59” was moved inside the parentheses.

Pages 35, line 7: ““Inc.” was dropped from the *Kraft, Inc.* citation.

Page 35, footnote 18: “*Thompson Medical Co., Inc.*” was changed to “*Thompson Medical.*”

Page 36, footnote 20: Citation “*Thompson Medical*, 104 F.T.C. 648, 788-89” was changed to “*Thompson Medical*, 104 F.T.C. at 788-89”

Page 36, footnote 21: “*Prods. Corp.*” was added to the citation for *American Home Prods. Corp.*

Page 37, line 1: The comma following “*accord*” was removed.

Page 37, line 17: The word “at” was replaced with “see.”

Page 39, line 12: The comma following “*accord*” was removed. “*Prods. Corp.*” was added to the citation for *American Home Prods. Corp.*

Page 40, line 4: “Of course, in this case” was changed to read “Of course, in the present case.” A comma was added after “case.”

Page 40, line 15: “cases,”” was replaced with “cases”)” and parentheses were placed around “citing *FTC v. Colgate-Palmolive Co.*, 380 U.S. 385 (1965).”

Page 41, line 2: “*In re R.M.J.* at 203. See also *Board of Trustees v. Fox*” now reads “*In re R.M.J.* at 203; see also *Board of Trustees v. Fox*”

Page 41, line 20: Reference to *Sears Roebuck & Co. v. FTC*, 676 F.2d 385 (9th Cir. 1982) was removed.

Page 42, line 1: Reference to *Sears Roebuck & Co. v. FTC*, 676 F.2d 385 (9th Cir. 1982) was inserted.

Page 42, footnote 23: “*Prods. Corp.*” was added to the citation for *American Home Prods. Corp.* “*Litton Indus., Inc.*, 676 F.2d 364, 373-74 (9th Cir. 1982)” was changed to “*Litton Indus., Inc.*, 676 F.2d at 373-74 (9th Cir. 1982).”

Page 44, footnote 26: Citation “*Lego Systems Inc.*” was changed to “*Lego Sys. Inc.*”

Page 45, line 3: A comma was inserted after “(RAB 66).”

Page 45, line 5: “evidence - the” was changed to “evidence—the.”

Page 45, line 14: The citation “*Kraft, Inc.* 114 F.T.C. 40 at 121” was changed to “*Kraft*, 114 F.T.C. at 121.”

Page 46, line 13: The misplaced quotation mark following “testimony.” was removed. The comma following “126” was removed.

Page 46, line 17: Footnote 28 was moved outside the closed parentheses.

Page 46, footnote 28: The spelling of the word “fibre” was corrected to “fiber.”

Page 47, line 6: The word “is” was deleted from the phrase “he is relied on his experience.”

Page 48, line 8: The word “see” was inserted into the phrase “(see 509 U.S. at 590 n.8).”

Page 49, line 2: The comma following “ed.” was deleted.

Page 49, line 4: The citation “*Kumho*, 526 U.S. 137 at 152” was changed to “*Kumho*, 526 U.S. at 152.”

Page 49, line 10: “*Betterbox*” was added to the citation beginning on that line, and “*BB Technologies*” was shortened to “*BB Techs.*”

Page 49, line 15: The citation “*Transclean Corp. v. Bridgewood Services, Inc.*” was shortened to “*Transclean Corp. v. Bridgewood Servs. Inc.*”

Page 50, line 3: The full citation to the *Betterbox Communications* decision was converted to a short form.

Page 50, line 4: A closed parentheses was added after “1989.”

Page 52, line 12: The phrase “(See discussion generally in Part II, *supra*” was changed to “See generally discussion *supra* Part II.”

Page 52, line 15: The lowercase “x” in “(Mazis, Tr. 49, 156-57; Cx 57.)” was capitalized. The reference now reads “(Mazis, Tr. 49, 156-57; CX 57.)”

Page 53, line 4: A comma was inserted after “perceptions.”

Page 53, line 14: The reference phrase “(RAB at 50.) (emphasis in original).” was changed to read “(RAB at 50. (emphasis in original).)”

Page 53, footnote 34: “TV” was added to the cite to A.2.

Page 54, line 3: The word “line” was dropped from the phrase “about his personal bias line.”

Page 54, line 9: The citation “*Tormenia v. First Investors Realty Co., Inc.*” was shortened to “*Tormenia v. First Investors Realty Co.*”

Page 54, line 14: The “h” in the word “He” was capitalized.

Page 54, line 17: The “v” in the word “TV” was capitalized.

Page 56, line 11: The comma following probative was replaced with a period. The phrase “(citing *Stouffer* 118 at 799 (Methodological perfection not required.). (ID at 53)” was changed to “(ID at 53 (citing *Stouffer* 118 at 799 (methodological perfection not required)).)”

Page 57, line 9, line 14: The “h” was deleted from “Exh. D” it now reads “Ex. D.”

Page 57, line 17: “Exhibit D” was shortened to “Ex. D.”

Page 59, line 6: A space was inserted in between “at” and “14.”

Page 60, line 5: A comma following “70” was removed.

Page 60, line 7: “*Wuv’s International v. Love’s Enterprises, Inc.*” was shortened to “*Wuv’s Int’l. Inc. v. Love’s Enters., Inc.*”

Page 60, line 8: The full date was inserted in the citation to the *Wuv’s Int’l, Inc. v. Love’s Enters., Inc.* decision.

Page 60, line 11: Page 36, footnote 21: “*Prods. Corp.*” was added to the citation for *American Home Prods. Corp.*

Page 61, line 14: The hyphen in “Pre-existing” was removed.

Page 62, line 4: The hyphen in “pre-existing” was removed.

Page 62, line 7: The reference “(ID at 54.) (emphasis added)” was changed to “(ID at 54 (emphasis added)).”

Page 62, line 14: A quotation mark was added after “ab belts].”

Page 62, footnote 38: The hyphen in “pre-existing” was removed.

Page 63, line 2: The references “(ID at 56.) (emphasis added)” was changed to “(ID at 56 (emphasis added)).”

Page 63, line 8: The hyphen in “Pre-existing” was removed.

Page 63, line 15: The “h” in “Exh. A-H” was deleted. The phrase now reads “Ex. A-H.”

Page 64, line 1: The “h” in “Exh. A-D” was deleted. The phrase now reads “Ex. A-D.”

Page 64, line 8: The parentheses around “*id*” were removed, and a comma following “*id*” was inserted.

Page 65, line 14: The citation “(Id. at 57)” was changed to (ID at 57).”

Page 67, line 5: “IV” was deleted.

Page 67, line 6: The heading was capitalized.

Page 68, line 4: The words in the heading were capitalized.

Page 68, line 11: The citation “*Hospital Corp. of America v. FTC*” was shortened to “*Hospital Corp. v. FTC.*”

Page 69, line 12: The capital “A” in “And” was put into lowercase.

Page 70, line 4: The citation “*KFC Corporation (C-4118)*” was shortened to “*KFC Corp., C-4118.*” The full date was also added to the citation.

Page 70, line 12: In the references “F.” was replaced with “IDF.”

Page 71, lines 3 and 17: In the references “F.” was replaced with “IDF.”

Page 72, lines 2, 4, 6 and 8: In the references “F.” was replaced with “IDF.”

Page 72, line 12: In the heading the capital “T” in “To” was made lowercase.

Page 74, footnote 49: “CC’s brief” was changed to “Complaint Counsel’s brief.” “June 19” was inserted before “1991” in the citation to the decision in *Lancaster v. Lord*.

Page 75, line 2: The hyphen was removed in between the words “all-products.”

Page 75, footnote 50: “*Thompson Medical Co.*” was changed to “*Thompson Medical.*”

Page 76, footnote 52: The abbreviation for denied was replaced with “denied.”

Page 77, line 11: The words in the heading were capitalized.

Page 78, line 3: The citation "*KFC Corporation* (C-4118), 2004 FTC LEXIS 151, *19 (2004)" was changed to "*KFC Corp.*, 2004 FTC LEXIS 151, *19 (Sept. 9, 2004)"

Page 78, line 11: "bond in part III matters" was changed to read "bond in part II matters."

Page 79, line 9: "Section 5 of the FTC Act" was changed to read "Sections 5 and 12 of the FTC Act."

Page 79, line 10: The date was changed from "December 14, 2004" to "December 16, 2004."

Certificate of Service, line 2: "14th day of December" was changed to "16th day of December."

Certificate of Service, line 3: "Amended version of" inserted before "Complaint Counsel's Answering Brief And Cross-Appeal Brief."

Dated: January 7, 2005

Respectfully submitted,



Constance Vecellio

Walter Gross III

Joshua Millard

Amy Lloyd

COMPLAINT COUNSEL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of January, 2005, I have caused to be filed with the Secretary of the Commission a paper original and twelve copies as well as an electronic version of a Revised Errata Sheet, and a Supplement to Motion for Leave to Substitute an Amended Version of Answering Brief and Cross-Appeal Brief and Errata Sheet. Said documents to be served by hand with:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

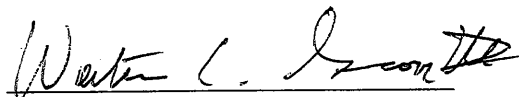
and one copy served by hand upon:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
Washington, D.C. 20580

and one copy served by United States mail and email upon:

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