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13  
14 **UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

15 **FEDERAL TRADE COMMISSION,** )  
 )  
16 **Plaintiff,** )

17 **v.** )

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

18 **UNITED FITNESS OF AMERICA, LLC,** )  
 )  
19 **GEORGE SYLVA,** )  
 )  
20 **EBRANDS COMMERCE GROUP, LLC,** )  
 )  
21 **JOHN WILLIAM KIRBY, JR.,** )  
 )  
22 **TRISTAR PRODUCTS, INC., and** )  
 )  
23 **KISHORE MIRCHANDANI, a/k/a** )  
 )  
24 **“KEITH” MIRCHANDANI,** )

25 **Defendants.** )  
 )  
26

27  
28 **STIPULATED FINAL JUDGMENT**  
29 **AND ORDER FOR PERMANENT INJUNCTION,**  
30 **MONETARY REDRESS, AND OTHER EQUITABLE RELIEF**  
31 **AS TO DEFENDANTS GEORGE SYLVA, UNITED FITNESS OF AMERICA, LLC.,**  
32 **EBRANDS COMMERCE GROUP, LLC, AND JOHN WILLIAM KIRBY, JR.**

1 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), in conjunction with  
2 the filing of this Stipulated Final Judgment, has filed an Amended Complaint for Permanent  
3 Injunction and Other Equitable Relief (the “Amended Complaint”) under Section 13(b) of the  
4 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), against Defendants United  
5 Fitness of America, LLC, George Sylva, eBrands commerce group, LLC, John William Kirby,  
6 Jr., Tristar Products, Inc. and Kishore Mirchandani, also known as “Keith” Mirchandani.

7 The Commission and Defendants United Fitness of America, LLC, George Sylva,  
8 eBrands commerce group, llc., and John William Kirby, Jr. (together the “UFA Defendants”)  
9 have stipulated to the entry of this Stipulated Final Judgment and Order for Permanent  
10 Injunction, Monetary Redress, and Other Equitable Relief (“Final Order”) in settlement of the  
11 Commission’s Amended Complaint against the UFA Defendants. Defendants United Fitness of  
12 America, LLC, and George Sylva, together with Defendants Tristar Products, Inc. and Kishore  
13 Mirchandani, have also withdrawn their motions to dismiss and to transfer. The UFA  
14 Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity  
15 of this Final Order. The UFA Defendants also waive any claim that they may have held under  
16 the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to  
17 the date of this Final Order. The Court, being advised in the premises, finds as follows:

## 18 **FINDINGS**

19 **1.** In its Amended Complaint, the Commission alleged that the UFA Defendants  
20 violated Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52. The Commission  
21 sought permanent injunctive relief for alleged deceptive acts or practices by the UFA Defendants  
22 in connection with the marketing and sale of the Fast Abs electronic muscle stimulation device.

23 **2.** The Commission has the authority under Section 13(b) of the FTC Act, 15  
24 U.S.C. § 53(b), to seek the relief it has requested.



1 which the advertisement is presented. *Provided further*, that in any  
2 advertisement communicated through interactive media that is presented  
3 predominantly through visual or audio means, the disclosure may be made  
4 through the same means in which the advertisement is predominantly  
5 presented. The audio disclosure must be delivered in a volume and  
6 cadence sufficient for an ordinary consumer to hear and comprehend it.  
7 The visual disclosure must be of a size and shade, with a degree of  
8 contrast to the background against which it appears, and must appear on  
9 the screen for a duration and in a location, sufficiently noticeable for an  
10 ordinary consumer to read and comprehend it.

11 2. In a print advertisement, promotional material, or instructional manual, the  
12 disclosure must be in a type size and location sufficiently noticeable for an  
13 ordinary consumer to read and comprehend it, in print that contrasts with  
14 the background against which it appears.

15 3. On a product label, the disclosure must be in a type size and location  
16 sufficiently noticeable for an ordinary consumer to read and comprehend  
17 it and in print that contrasts with the background against which it appears.  
18 *Provided, however*, if a disclosure on a bottle label or package label is  
19 made in a location other than the principal display panel, the bottle label  
20 or package label must (i) include the statement, “**See important safety**  
21 **warning(s) on [insert disclosure location]**,” in a type size and location  
22 on the principal display panel sufficiently noticeable for an ordinary  
23 consumer to read and comprehend it and in print that contrasts with the  
24 background against which it appears; and (ii) place the disclosure within a  
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1 border that is a color or shade that contrasts with the background against  
2 which it appears. *Provided further*, that in a multi-page insert, the  
3 disclosure must appear on the cover page or first page.

4 **4.** The disclosure must be in understandable language and syntax. Nothing  
5 contrary to, inconsistent with, or in mitigation of the disclosure can be  
6 used in any advertisement or on any label.

7 **5.** In the case of advertisements disseminated by means of an interactive  
8 electronic medium, such as software, the Internet, or online services, “in  
9 close proximity” means on the same Web page, online service page, or  
10 other electronic page, and proximate to the triggering representation, and  
11 does not include disclosures accessed or displayed through hyperlinks,  
12 pop-ups, interstitials or other means.

13 **B.** “Competent and reliable scientific evidence” means tests, analyses, research,  
14 studies, or other evidence based on the expertise of professionals in the relevant  
15 area, that has been conducted and evaluated in an objective manner by persons  
16 qualified to do so, using procedures generally accepted in the profession to yield  
17 accurate and reliable results.

18 **C.** “Corporate Defendants” means Defendants United Fitness of America, LLC and  
19 eBrands commerce group, llc.

20 **D.** “EMS device” means an electrically powered device that repeatedly contracts  
21 muscles by passing electrical currents through electrodes contacting the affected  
22 body area.

23 **E.** “Fast Abs” means the Fast Abs electronic muscle stimulation device challenged in  
24 the Amended Complaint.



1 funds payable to and delivered to the Federal Trade Commission, Division of  
2 Finance, 600 Pennsylvania Ave, NW, Washington, DC 20580, Reference  
3 Information FTC v. United Fitness of America, Matter No. X020056; or by wire  
4 transfer to: Treasury ABA number: 021030004, ALC number 29000001, Federal  
5 Reserve Bank of NY, Appropriation 29X6013, FTC Consumer Redress,  
6 Reference information FTC v. United Fitness of America, Matter No. X020056;  
7 and

8 **D.** All funds paid pursuant to this Part shall be deposited into a fund administered by  
9 the FTC or its agent to be used for equitable relief, including, but not limited to,  
10 consumer redress and to pay any attendant costs for the administration of any  
11 redress fund. If direct redress to consumers is wholly or partially impracticable or  
12 funds remain after redress is completed, the FTC may apply any remaining funds  
13 for such other equitable relief (including consumer information remedies) as it  
14 determines to be reasonably related to the UFA Defendants' practices alleged in  
15 the Amended Complaint. Any funds not used for equitable relief shall be  
16 deposited to the Treasury as disgorgement. The UFA Defendants shall have no  
17 right to challenge the FTC's choice of remedies under this Part. No portion of the  
18 payment pursuant to this Part shall be deemed a payment of any fine, penalty or  
19 punitive assessment.

## 20 **RIGHT TO REOPEN**

### 21 **II.**

22 **IT IS FURTHER ORDERED** that Plaintiff's agreement to this Final Order is expressly  
23 premised upon the UFA Defendants' financial condition, as represented in the sworn financial  
24 statements provided by the UFA Defendants to the FTC and listed in *Appendix A*. The financial  
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1 statements listed in *Appendix A* include material information upon which the Commission relied  
2 in negotiating and consenting to this Final Order. If, upon motion by the Commission, a Court  
3 should find that any of the UFA Defendants made a material misrepresentation or omitted  
4 material information concerning its financial condition, then this Final Order shall be reopened  
5 for the purpose of requiring payment from the UFA Defendant(s) who made the  
6 misrepresentation to the Commission of additional monetary redress in the amount of Sixty-Four  
7 Million, Four Hundred and Forty-Two Thousand dollars (\$64,442,000), which the UFA  
8 Defendants agree is the total net amount paid by consumers to purchase Fast Abs products, less  
9 the sum of any amounts paid to the FTC by the UFA Defendants after the date of this Final  
10 Order. *Provided*, however, that in all other respects this judgment shall remain in full force and  
11 effect, unless otherwise ordered by the Court; and *provided further*, that proceedings instituted  
12 under this Part are in addition to, and not in lieu of, any other civil or criminal remedies as may  
13 be provided by law, including any other proceedings that the FTC may initiate to enforce this  
14 Final Order.

### 15 **PROHIBITED REPRESENTATIONS**

#### 16 **III.**

17 **IT IS FURTHER ORDERED** that the UFA Defendants, their successors and assigns,  
18 and their officers, agents, servants, and employees, and all persons or entities in active concert or  
19 participation with them who receive actual notice of this Final Order by personal service or  
20 otherwise, whether acting directly or through any corporation, subsidiary, division, or other  
21 entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale,  
22 sale, or distribution of Fast Abs, or any substantially similar device, are hereby permanently  
23 enjoined from representing, in any manner, expressly or by implication, that:

24 **A.** Any such device causes or promotes loss of inches or fat;



1 C. Use of any such product for any period of time is equivalent to or superior to  
2 abdominal exercises such as sit-ups, crunches, or any substantially similar  
3 exercises;

4 D. Any EMS device is safe for use over the chest and/or pectoral area; or

5 E. Any such product makes a material contribution to any system, program, or plan  
6 that produces the results referenced in Subparts A-C of this Part.

7 V.

8 **IT IS FURTHER ORDERED** that the UFA Defendants, their successors and assigns,  
9 and their officers, agents, servants, and employees, and all persons or entities in active concert or  
10 participation with them who receive actual notice of this Final Order by personal service or  
11 otherwise, whether acting directly or through any corporation, subsidiary, division, or other  
12 entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale,  
13 sale, or distribution of any dietary supplement, food, drug, cosmetic or device are hereby  
14 permanently enjoined from making any representations about the absolute or comparative health  
15 benefits, performance, efficacy, safety, or side effects of any such product unless, at the time the  
16 representation is made, the UFA Defendants possess and rely upon competent and reliable  
17 scientific evidence that substantiates the representation.

18 VI.

19 **IT IS FURTHER ORDERED** that the UFA Defendants, their successors and assigns,  
20 and their officers, agents, servants, and employees, and all persons or entities in active concert or  
21 participation with them who receive actual notice of this Final Order by personal service or  
22 otherwise, whether acting directly or through any corporation, subsidiary, division, or other  
23 entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale,  
24 sale, or distribution of any product, service, or program, are hereby permanently enjoined from  
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1 misrepresenting, expressly or by implication, the existence, contents, validity, results,  
2 conclusions, or interpretations of any test, study, or research.

### 3 **REQUIRED DISCLOSURES**

#### 4 **VII.**

5 **IT IS FURTHER ORDERED** that the UFA Defendants, their successors and assigns,  
6 and their officers, agents, servants, and employees, and all persons or entities in active concert or  
7 participation with them who receive actual notice of this Final Order by personal service or  
8 otherwise, whether acting directly or through any corporation, subsidiary, division, or other  
9 entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale,  
10 sale, or distribution of any EMS device, must disclose, clearly and prominently:

- 11 **A.** (1) In any external packaging or labeling; and (2) in close proximity to any safety  
12 representation about the EMS device in any advertisement (other than television  
13 or radio advertisements), promotional material, or telephone, or electronic  
14 communication; the following:

15 **WARNING:** This product uses electrical muscle stimulation. Do  
16 not use this device if you have a cardiac pacemaker, implanted  
17 defibrillator, or other implanted metallic or electronic device. This  
18 device could cause lethal rhythm disturbances to the heart in  
19 susceptible individuals. Apply stimulation only to normal, intact,  
20 clean skin. Do not apply stimulation over open wounds or over  
swollen, infected, or inflamed areas or skin eruptions, *e.g.*,  
phlebitis, thrombophlebitis, varicose veins, etc. Do not apply  
stimulation over, or in close proximity to, cancerous lesions. The  
safety of electrical stimulation during pregnancy has not been  
established.

21 unless, at the time the representation is made, the UFA Defendants possess and  
22 rely upon competent and reliable scientific evidence that such device is safe for  
23 all users and produces no adverse side effects. This requirement is in addition to,  
24 and not in lieu of, any disclosures that the Food and Drug Administration may  
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1 require for such devices. *Provided, however,* that, if the UFA Defendants possess  
2 competent and reliable scientific evidence that the EMS device is safe for users  
3 with a particular condition, the UFA Defendants may remove that particular  
4 condition from the disclosure required by this Final Order. *Provided further,* that  
5 if the UFA Defendants believe other uses of the EMS device or health conditions  
6 may pose health risks, those uses or conditions may be added to the warning.  
7 *Provided further,* that if the Food and Drug Administration issues a final rule  
8 requiring a warning on the labeling of the EMS device, the UFA Defendants must  
9 substitute that warning label for the disclosures required in this Part.

10 **B.** In close proximity to any safety representation about the EMS device in any  
11 television or radio advertisement, the following:

12 **WARNING:** This product uses electronic muscle stimulation and  
13 is not safe for all users, particularly those with implanted metallic  
14 or electronic devices. Review the health and safety warnings on  
our website, [domain name of website], or call us toll-free at [toll-  
free telephone number], before buying this product.

15 unless, at the time the representation is made, the UFA Defendants possess and  
16 rely upon competent and reliable scientific evidence that the EMS device is safe  
17 for all users and produces no adverse side effects. *Provided that,* for a period of  
18 time beginning with the date of the first broadcast of any such television or radio  
19 advertisement for any EMS device that contains a safety representation about the  
20 device and ending no sooner than thirty days after the last broadcast, the UFA  
21 Defendants must maintain both a toll-free telephone number consumers can call  
22 to obtain the warning set forth in Subpart A, of this Part, and a website that  
23 clearly and prominently sets forth the full text of such warning on the home page  
24 or teaser page.



1 tentative final or final standard promulgated by the Food and Drug  
2 Administration, or under any new drug application approved by the Food and  
3 Drug Administration;

4 **B.** Any device that is specifically stated in an Indications for Use Statement for that  
5 device under any premarket approval application or premarket notification  
6 approved or cleared by the Food and Drug Administration; or

7 **C.** Any product that is specifically permitted in labeling for such product by  
8 regulations promulgated by the Food and Drug Administration pursuant to the  
9 Nutrition Labeling and Education Act of 1990.

#### 10 **COMPLIANCE REPORTING BY DEFENDANTS**

#### 11 **X.**

12 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this  
13 Final Order may be monitored:

14 **A.** For a period of three (3) years from the date of entry of this Final Order,

15 **1.** Each Individual Defendant shall notify the Commission of the following:

16 (a) any changes in his residences, mailing addresses, and telephone  
17 numbers, within ten (10) days of the date of such change; (b) any changes  
18 in his employment status (including self-employment) within ten (10) days  
19 of the date of such change (such notices shall include the name and  
20 address of each business that the Individual Defendant is affiliated with,  
21 employed by, or performs services for; a statement of the nature of the  
22 business; and a statement of the Individual Defendant's duties and  
23 responsibilities in connection with the business); and (c) any changes in  
24 his name or use of any aliases or fictitious names.



1 Associate Director for Enforcement  
2 Federal Trade Commission  
3 600 Pennsylvania Ave., N.W., Room NJ-2122  
4 Washington, D.C. 20580  
5 Re: FTC v. United Fitness of America, LLC, et.al.;  
6 CV-S-02-0648-KJD-LRL (D. Nev)

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- C. For purposes of the compliance reporting required by this Part, the Commission is authorized to communicate directly with the UFA Defendants.

### COMPLIANCE MONITORING

#### XI.

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Final Order:

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, the UFA Defendants shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation.
- B. In addition, the Commission is authorized to monitor compliance with this Final Order by all other lawful means, including but not limited to the following:
1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
  2. posing as consumers and suppliers to the UFA Defendants, their employees, or any other entity managed or controlled in whole or in part by any of the UFA Defendants, without the necessity of identification or prior notice;

*Provided that* nothing in this Final Order shall limit the Commission's lawful use

1 of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C.  
2 §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or  
3 information relevant to unfair or deceptive acts or practices in or affecting  
4 commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

- 5 **C.** The UFA Defendants shall permit representatives of the Commission to interview  
6 any employer, consultant, independent contractor, representative, agent, or  
7 employee who has agreed to such an interview, relating in any way to any  
8 conduct subject to this Final Order. The person interviewed may have counsel  
9 present.

## 10 **RECORD KEEPING PROVISIONS**

### 11 **XII.**

12 **IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of  
13 this Final Order, the UFA Defendants and any business where the UFA Defendants, individually  
14 or together, are the majority owner or otherwise manage or control the business, are hereby  
15 restrained and enjoined from failing to create and retain the following records in connection with  
16 the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Fast  
17 Abs, any other EMS device, or any dietary supplement, food, drug, cosmetic or device for which  
18 representations regarding the absolute or comparative health benefits, performance, efficacy,  
19 safety, or side effects of any such product are made:

- 20 **A.** Accounting records that reflect the cost of goods or services sold, revenues  
21 generated, and the disbursement of such revenues;
- 22 **B.** Personnel records accurately reflecting: (a) the name, address, and telephone  
23 number of each person employed in any capacity by such business, including as  
24 an independent contractor; (b) that person's job title or position; (c) the date upon  
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1 which the person commenced work; and (d) the date and reason for the person's  
2 termination, if applicable;

3 **C.** Customer files containing the names, addresses, phone numbers, dollar amounts  
4 paid, quantity of items or services purchased, and description of items or services  
5 purchased, to the extent such information is obtained in the ordinary course of  
6 business;

7 **D.** Complaints and refund requests (whether received directly, indirectly, or through  
8 any third party) and any responses to those complaints or requests; and

9 **E.** Copies of all sales scripts, training materials, advertisements, or other marketing  
10 materials.

### 11 **DISTRIBUTION OF ORDER BY DEFENDANTS**

#### 12 **XIII.**

13 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry  
14 of this Final Order:

15 **A.** The Corporate Defendants shall deliver a copy of this Final Order to all  
16 principals, officers, directors, managers, employees, agents, and representatives  
17 having responsibilities with respect to the subject matter of this Final Order, and  
18 shall secure from each such person a signed and dated statement acknowledging  
19 receipt of the Final Order. The Corporate Defendants shall deliver this Final  
20 Order to current personnel within thirty (30) days after the date of service of this  
21 Final Order, and to new personnel within thirty (30) days after the person assumes  
22 such position or responsibilities.

23 **B.** The Individual Defendants shall deliver to the principals, officers, directors,  
24 managers, and employees under their control for any business that: (a) employs or  
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1 contracts for personal services from the Individual Defendants and (b) has  
2 responsibilities with respect to the subject matter of this Final Order. The  
3 Individual Defendants shall secure from each such person a signed and dated  
4 statement acknowledging receipt of the Final Order within thirty (30) days after  
5 the date of service of the Final Order or the commencement of the employment  
6 relationship.

7 **ACKNOWLEDGMENT OF RECEIPT OF FINAL ORDER BY DEFENDANTS**

8 **XIV.**

9 **IT IS FURTHER ORDERED** that each of the UFA Defendants, within five (5) business  
10 days of receipt of this Final Order as entered by the Court, must submit to the Commission a  
11 truthful sworn statement acknowledging receipt of this Final Order.

12 **TAXPAYER IDENTIFICATION NUMBERS**

13 **XV.**

14 **IT IS FURTHER ORDERED** that each of the UFA Defendants must, in accordance  
15 with 31 U.S.C. § 7701, furnish to the FTC his or its respective taxpayer identifying number  
16 (social security number or employer identification number), which shall be used for purposes of  
17 collecting and reporting on any delinquent amount arising out of any of the UFA Defendant's  
18 relationship with the government.



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**Attorneys for Defendants:**

\_\_\_\_\_  
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1201 New York Ave., N.W., Ste.1000  
Washington, D.C. 20005  
(202) 962-4800

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

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

**IT IS SO ORDERED**

\_\_\_\_\_  
KENT J. DAWSON  
UNITED STATES DISTRICT

DATED: \_\_\_\_\_

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*Appendix A*

**Sworn Financial Statements Provided by Defendants to the FTC**

United Fitness of America, dated April 29, 2003  
eBrands commerce group, llc, dated April 30, 2003  
George Sylva, dated May 15, 2002  
John William. Kirby, Jr., dated March 24, 2003