

<b>COMPETITION TRIBUNAL</b> <b>TRIBUNAL DE LA CONCURRENCE</b> CT-2002-007 <b>DEC 13 2002</b>	
REGISTRAR - REGISTRAIRE	# 00019

**CONSENT AGREEMENT**

-Between-

**THE COMMISSIONER OF COMPETITION**

**Applicant**

Registry of the Competition Tribunal Greffe du Tribunal de la concurrence <b>REGISTERED / ENREGISTRÉ</b>  <b>DEC 13 2002</b>
FOR REGISTRAR / POUR REGISTRAIRE

-And-

**THANE DIRECT CANADA INC.**

**Respondent**

**CONSENT AGREEMENT**

FURTHER TO an inquiry pursuant to subsection 10(1)(b)(ii) of the *Competition Act* (the "Act") relating to the Canadian marketing practices of Thane Direct Canada Inc. (the "Respondent");

WHEREAS the Respondent made representations (as shown in Appendix A) to the public in the form of an infomercial and on an Internet web site for the promotion of the Abtronic and Abtronic Pro, two electronic muscle stimulation ("EMS") devices;

AND WHEREAS these representations were in the form of a statement of the performance, efficacy or length of life of the Abtronic and Abtronic Pro that gave the general impression that the devices, without the need for physical exercise,

- (a) would cause weight loss; and
- (b) would provide well-defined abdominal muscles.

AND WHEREAS the Commissioner believes that these general impressions are materially false and/or misleading and are not based on adequate and proper tests;

AND WHEREAS the Commissioner has concluded that the Respondent has engaged in reviewable conduct within the meaning of paragraph 74.01(1)(a) ("false or misleading representation") and paragraph 74.01(1)(b) ("adequate and proper test") of the *Act*;

AND IT BEING UNDERSTOOD THAT though the Commissioner has reached certain conclusions and that the Respondent does not necessarily agree with those conclusions, solely for the purposes of this Consent Agreement or any proceeding relating to it, including an application to vary or rescind this order under section 74.13 of the *Act*, the Respondent does not contest the Commissioner's conclusions, and for greater certainty nothing in this consent agreement shall be taken as an admission now or in the future of any facts, submissions or legal arguments for any other purposes, nor shall it derogate from any rights or defences of the Respondent under the *Act* or otherwise;

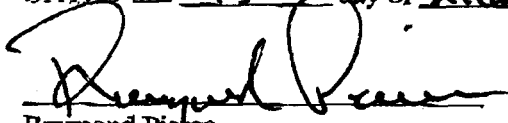
AND WHEREAS the parties are satisfied that this matter can be resolved by way of consent agreement on the following terms:

1. The Respondent shall immediately cease the sale and marketing of the Abtronic and Abtronic Pro, by any means whatsoever, including the Internet;
2. The Respondent shall not make any representation to the public for the promotion of the Abtronic and Abtronic Pro, or similar devices that promote weight loss and muscle toning where physical exercise is not required, in the form of a statement, warranty or guarantee of the performance, efficacy or length of life unless such representation is based on an adequate and proper test;
3. The Respondent shall not make any representation to the public for the promotion of the Abtronic or Abtronic Pro, or similar devices that promote weight loss and muscle toning where physical exercise is not required, that is false or misleading in a material respect;
4. The Respondent shall post, concurrent with the broadcasting of the notices referred to in paragraph 5 of this agreement, a notice (see Appendix B) accessible on its web site (through a link appearing on the home page and fitness page) with hyperlinks to the Competition Tribunal web site to view this consent agreement. This notice shall be posted on the web site for eight weeks following the first television broadcast date as contemplated in paragraph 5 of this agreement;
5. The Respondent shall, in accordance with a broadcast plan outlined by the Respondent and approved on behalf of the Commissioner, submit for broadcast on two stations in each of eight major Canadian television markets, a notice (see Appendix C), to be aired commencing no later than 7 days from execution of this consent agreement;
6. The Respondent will pay an administrative monetary penalty in the amount of CDN\$75,000.00, payable to the Receiver General for Canada.
7. This consent agreement shall be applicable for a period of 10 years from the date of its registering.

AND WHEREAS the parties agree that upon the signing of this consent agreement, the parties will apply for an order pursuant to Part VII.1 of the Act and will file the agreement with the court for immediate registration.

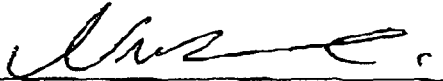
AND WHEREAS the parties understand that upon registration, this agreement shall be enforceable as if it had been made pursuant to s. 74.1 of the Act.

DATED this 13<sup>th</sup> day of December, 2002.

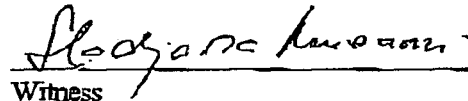


Raymond Pielce  
Deputy Commissioner of Competition

DATED this 12<sup>th</sup> day of December, 2002.



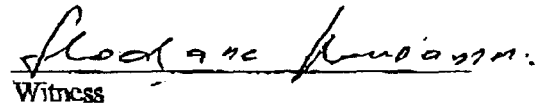
Amir Tukulj for  
Thane Direct Canada Inc.

  
Witness

DATED this 12<sup>th</sup> day of December, 2002.



Patty Booth for  
Thane Direct Canada Inc.

  
Witness

Appendix A

Examples of Representations

a) would cause weight loss:

"...watch...your love handles disappear and your thighs and bums firm up with no sweat."

"...lose inches and weight around the midsection."

"...makes your stomach flatter."

Fat blaster cellulite mode.

"I have lost five inches in my waist and another three inches on my hips."

"...losing some weight, losing those inches..."

"...get rid of that cellulite and flabbiness around your thighs..."

b) would provide well-defined abdominal muscles:

"...gives you the results of 600 sit-ups in just 10 minutes without any effort."

"...shrank half a gym of bulky expensive exercise equipment into a little electronic miracle..."

"...get ready for the greatest set of abs that you're ever going to see..."

"...slims, trims and firms your upper abs, your lower abs and/or your love handles..."

"...six-pack type of washboard abs."

"...get your body in the shape you want it."

"...develop that six-pack you've always wanted..."

"...going to get that muscle tone and maintain that muscles mass..."

"...give them that sleek appearance,..., but a healthy yet toned appearance."

"...no need to buy expensive exercise equipment or drive to the gym every day."

"You can also target your arms, chest, bums or thighs."

"...this little miracle is comparable to a gym full of exercise equipment."

"...you don't have to go to a gymnasium..."

"...exercise combined with electronic muscle stimulation increased the subject's strength by 47 percent."

"Electronic stimulation itself,..., increased abdominal muscle strength by 41 percent. Exercise alone only accounted for a 6 percent increase."

"That proves that you get better results by use of the Abtronic Fitness System whether you use it as a supplement to your normal workout or just by itself."

Appendix BCORRECTIVE NOTICE RE ABTRONIC

The Commissioner of Competition has concluded that certain representations made by Thane Direct Canada Inc. ("Thane Canada") for the promotion of the Abtronic and Abtronic Pro constitute reviewable conduct under paragraph 74.01(1)(a) ("false or misleading representation") and paragraph 74.01(1)(b) ("adequate and proper test") of the deceptive marketing practices provisions of the *Competition Act*.

The Commissioner believes that these representations gave the general impression that the devices, without the need for physical exercise:

- would cause weight loss; and
- would provide well-defined abdominal muscles.

Thane Canada has agreed to discontinue the sale of the Abtronic and Abtronic Pro until such time as the Commissioner agrees that any representations regarding the performance of such product are based on adequate and proper tests. Consent Agreement<sup>1</sup> Any customer who has purchased the device in Canada directly from Thane Canada through its web site or television advertising may obtain a refund of the purchase price by sending back their Abtronic or Abtronic Pro, with original packaging if available, to Thane Direct Canada Inc., 101 Canarctic Drive, North York, Ontario, M3J 3N1. Any customer who has purchased the Thane device in Canada from one of Thane Canada's authorized resellers may obtain a refund of the purchase price by sending back their Abtronic or Abtronic Pro, with original packaging if available, to the same address with proof of purchase.

For information in French call: 1-800-806-6249. For information in English call: 1-800-978-6329, or write to the Customer Service Department at:

Thane Direct Canada Inc., 101 Canarctic Drive, North York, Ontario, M3J 3N1.

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The text of the notice on Thane Canada's web site will be in 10-point font in unembellished print. The title of the notice, "Corrective Notice Re Abtronic.", will appear in 12-point font, as will the name and address of Thane Direct Canada Inc. at the bottom of the notice.

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<sup>1</sup> Underlined to indicate a hyperlink

Appendix CCORRECTIVE NOTICE RE ABTRONIC

This notice is brought to you by Thane Direct Canada Inc. The Commissioner of Competition has concluded that certain representations made for the Abtronic and Abtronic Pro constitute reviewable conduct under paragraph 74.01(1)(a) ("false or misleading representation") and paragraph 74.01(1)(b) ("adequate and proper test") of the deceptive marketing practices provisions of the *Competition Act*.

The Commissioner believes that these representations gave the general impression that the devices, without the need for physical exercise:

- would cause weight loss; and
- would provide well-defined abdominal muscles.

Thane Canada has agreed to discontinue the sale of the Abtronic and Abtronic Pro until such time as the Commissioner agrees that any representations regarding the performance of such product are based on adequate and proper tests. Any customer who has purchased the device in Canada directly from Thane Canada through its web site or television advertising may obtain a refund of the purchase price by sending back their Abtronic or Abtronic Pro, with original packaging if available, to the address on screen. Any customer who has purchased the Thane device in Canada from one of Thane Canada's authorized resellers may obtain a refund of the purchase price by sending back their Abtronic or Abtronic Pro, with original packaging if available, to the same address with proof of purchase. For information, call the numbers on screen or write to the address on screen.

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[SUPERSCRIPIT: THANE DIRECT CANADA INC.  
101 CANARCTIC DRIVE  
NORTH YORK, ONTARIO, M3J 3N1

CALL: 1-800-978-6329 (English) or 1-800-806-6249 (French)]

This shall be a one-minute long information notice in which there will be a period of 45 seconds to read the text, and a period of 15 seconds to post, in a larger size print, the phone number and address of the corporation.


**CONSENT FORM**

**COMMISSIONER OF COMPETITION AND THANE CANADA DIRECT INC.**


1. This consent form is filed with the Tribunal pursuant to subsection 77.1(1) of the Competition Tribunal Practice Directions in connection with a Consent Agreement entered into between the Commissioner of Competition and Thane Canada Direct Inc. pursuant to section 74.12 of the *Competition Act*.
2. The addresses of the parties are as follows:

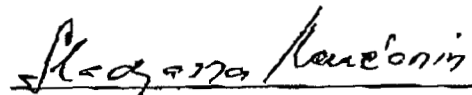
Commissioner of Competition  
 50 Victoria Street  
 Gatineau, Quebec  
 K1A 0C9

Thane Direct Canada Inc.,  
 101 Canarctic Drive,  
 North York, Ontario,  
 M3J 3N1

  
 Raymond Nerce  
 Deputy Commissioner of Competition

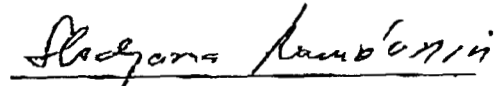
DATED this 13<sup>th</sup> day of December, 2002.

  
 Amir Tukulj for  
 Thane Direct Canada Inc.

  
 Witness

DATED this 12<sup>th</sup> day of December, 2002.

  
 Patty Booth for  
 Thane Direct Canada Inc.

  
 Witness

DATED this 12<sup>th</sup> day of December, 2002