

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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)	
In the Matter of)	
)	FILE NO. 962 3041
KENT & SPIEGEL DIRECT, INC.,)	
a corporation, and)	AGREEMENT CONTAINING
)	CONSENT ORDER
MARSHA KENT and PETER SPIEGEL,)	
individually and as officers)	
of the corporation.)	

The Federal Trade Commission has conducted an investigation of certain acts and practices of Kent & Spiegel Direct, Inc., a corporation, and Marsha Kent and Peter Spiegel, individually and as officers of the corporation ("proposed respondents"). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Kent & Spiegel Direct, Inc., by its duly authorized officer, and Marsha Kent and Peter Spiegel, individually and as officers of the corporation, and counsel for the Federal Trade Commission that:

1.a. Proposed respondent Kent & Spiegel Direct, Inc. is a Delaware corporation with its principal office or place of business at 6133 Bristol Parkway #150, Culver City, California 90230.

1.b. Proposed respondent Marsha Kent is an officer of the corporate respondent. Individually or in concert with others, she formulates, directs or controls the policies, acts, or practices of the corporation. Her principal office or place of business is the same as that of Kent & Spiegel Direct, Inc.

1.c. Proposed respondent Peter Spiegel is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs or controls the policies, acts, or practices of the corporation. His principal office or place of business is the same as that of Kent & Spiegel Direct, Inc.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.

3. Proposed respondents waive:

- a. Any further procedural steps;
- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondents by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil

penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "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 has 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.
2. "Weight-loss product" shall mean any product or program designed to produce weight loss, reduction or elimination of fat, or caloric deficit or to suppress the appetite in a user of the product or program.
3. Unless otherwise specified, "respondents" shall mean Kent & Spiegel Direct, Inc., a corporation, its successors and assigns and its officers; Marsha Kent and Peter Spiegel, individually and as officers of the corporation; and each of the above's agents, representatives and employees.
4. "In or affecting commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the "Abflex," any other exercise equipment, or any other weight-loss product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

- A. About the number of pounds users can lose;
- B. About the rate or speed at which users lose weight;
- C. About the length of time users must use such product to achieve weight loss;

- D. That such product causes fast and significant weight loss;
- E. That such product causes a reduction in the size or shape of specific, desired areas of the body;
- F. That such product causes a reduction in users' body size or shape, or body measurements; or
- G. About the benefits, efficacy, or performance of such product in promoting weight loss,

unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the "Abflex," any other exercise equipment, or any other weight-loss product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

- A. At the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or
- B. Respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:
 - 1. what the generally expected results would be for users of the product, or
 - 2. the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

III.

IT IS FURTHER ORDERED that respondent Kent & Spiegel Direct, Inc., and its successors and assigns, and respondents Marsha Kent and Peter Spiegel shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

IV.

IT IS FURTHER ORDERED that respondent Kent & Spiegel Direct, Inc., and its successors and assigns, and respondents Marsha Kent and Peter Spiegel shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, provided, however, that the duty to deliver a copy of this order to future personnel as required by this Part shall terminate three (3) years after the date upon which this order becomes final. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that respondent Kent & Spiegel Direct, Inc. and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or

address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VI.

IT IS FURTHER ORDERED that respondents Marsha Kent and Peter Spiegel, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of her or his current business or employment, or of her or his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and her or his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondent Kent & Spiegel Direct, Inc., and its successors and assigns, and respondents Marsha Kent and Peter Spiegel shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VIII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) 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 Part in this order that terminates in less than twenty (20) 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 Part.

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 Part as though the complaint had never been 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.

Signed this _____ day of _____, 19____

KENT & SPIEGEL DIRECT, INC.

By: _____
PETER SPIEGEL
President

MARSHA KENT, individually
and as an officer of
Kent & Spiegel Direct, Inc.

PETER SPIEGEL, individually
and as an officer of
Kent & Spiegel Direct, Inc.

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APPROVED:

JEFFREY KLURFELD, Director
San Francisco Regional Office

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
)
KENT & SPIEGEL DIRECT, INC.,)
a corporation, and) DOCKET NO.
)
MARSHA KENT and PETER SPIEGEL,)
individually and as officers)
of the corporation.)

COMPLAINT

The Federal Trade Commission, having reason to believe that Kent & Spiegel Direct, Inc., a corporation, and Marsha Kent and Peter Spiegel, individually and as officers of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Kent & Spiegel Direct, Inc. is a Delaware corporation with its principal office or place of business at 6133 Bristol Parkway, Suite 150, Culver City, California 90230.
2. Respondent Marsha Kent is an officer of the corporate respondent. Individually or in concert with others, she formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. Her principal office or place of business is the same as that of Kent & Spiegel Direct, Inc.
3. Respondent Peter Spiegel is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Kent & Spiegel Direct, Inc.
4. Respondents have advertised, labeled, offered for sale, sold, and distributed weight-loss and body-shaping products to the public, including the "Abflex," an abdominal exercise device.

5. 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.

6. Respondents have disseminated or have caused to be disseminated advertisements for the Abflex, including but not necessarily limited to the attached Exhibits A through E. These advertisements contain the following statements:

A. ["The Abflex Home" page (Exhibit A2)]

**"Welcome to ABFLEX
YOU ARE SECONDS AWAY FROM
THE ABS YOU'VE ALWAYS WANTED**

WHAT CAN ABFLEX DO FOR YOU?
SEE WHY ABFLEX IS THE BEST MACHINE FOR ABS
WHO USES ABFLEX?
DON'T BELIEVE US? WATCH THIS!
...."

["What can Abflex do for you?" page (Exhibits A3-A4)]

**"If you spend 3 minutes a day with the ABFLEX, you will
have firm, tight abs.
We guarantee it.**

The ABFLEX Guarantee:

If you don't lose 5 inches and 10 pounds within 30 days, you can return the ABFLEX for a full refund.

HERE'S HOW:

ABFLEX uses four basic exercises to guarantee you the maximum results:"

["See why Abflex is the best machine for abs" page (Exhibits A5-A7)]

"Q&A

How do I know ABFLEX really works? ↓

The ABFLEX Guarantee!!!

If you don't lose 5 inches and 10 pounds within 30 days, you can return the ABFLEX for a full refund.

...."

["Who uses Abflex" page (Exhibit A8)]

"Who uses ABFLEX?

The question is: Who **DOESN'T** use **ABFLEX** to achieve tighter firmer abs?

Join an all-star line-up of celebrities, professional athletes, fitness experts and hundreds of thousands of people across the country and discover the fast, safe way to a firm stomach, a slim waistline and a healthy back.... Besides celebrity users, there are hundreds of thousands of people-- people like you and me -- who simply want the sexiest and flattest abs possible with only 3 minutes a day of exercise. Just look at what people like you are saying about **ABFLEX**:

The ABFLEX Guarantee:

If you don't lose 5 inches and 10 pounds within 30 days, you can return the **ABFLEX** for a full refund"

["Just look at what people like you are saying about Abflex" page (Exhibit A9)]

"ABFLEX WORKS!!

If you don't lose 5 inches and 10 pounds within 30 days, you can return ABFLEX for a full refund."

Consumer endorser: **"I Lost 12 inches"**

Consumer endorser: **"I Lost 6 inches in 30 Day [sic]"**

[The advertisement depicts before-and-after photographs of the two consumers.]

["Don't believe us? Watch this!" page (Exhibit A10)]

"....

The ABFLEX Guarantee:

If you don't lose 5 inches and 10 pounds within 30 days, you can return the **ABFLEX** for a full refund."
(Exhibit A: Internet Advertisement).

- B. **"FLATTEN YOUR STOMACH
IN JUST 3 MINUTES A DAY!***
**ABFLEX...The Fast, Easy Way to a Flat Stomach, Shapely
Waistline, and a Healthy Back.**
*** 4 days a week if you follow the workout program."**

Celebrity endorser: "I look better than I ever have! I workout less, and I eat more, all because of the Abflex."

"Home Exercise Machine That Works The Upper, Lower, & Side Abdominals With 1 SIMPLE EXERCISE!

Flatten your abs with the Abflex. Because the abdominals are non-jointed muscles, direct resistance is the way to work-out these non-jointed muscles. Abflex's patented direct resistance design zeros right in on those hard to target abdominal muscles. *The result: You can have a firm flat stomach, and a slim waistline in just 3 minutes a day, 4 days a week!*

....

The Abflex targets the abs much better than sit-ups; it doesn't strain your back like sit-ups, and you don't even have to get on the floor to use it! It's so effective, you can see dramatic results in just a few short weeks....

....

INCLUDED: A 1-hour LIFESTYLE FITNESS VIDEO which is like 3 great videos in 1:

1. It's an instructional tape that demonstrates your "3 minutes flat" Abflex workout. 2. It's a 20-minutes aerobics tape. 3. It's a guide to safe-back exercise.

Plus, you'll receive a 250-page Abflex nutritional guide, which lists over 2000 low-fat foods, and gives you more than 90 delicious, healthy recipes.

And most importantly, you get the Abflex guarantee: **If you don't lose 3 to 6 inches and 10 pounds within 30 days, simply return the Abflex for a full refund.**" (Exhibit B).

C. **"RECOMMENDED BY ORTHOPEDIC DOCTORS TO FIRM STOMACH AND IMPROVE LOWER BACK PERFORMANCE!**

ABFLEX™

The unique **Abflex™ System** will provide you with the most complete abdominal workout available anywhere! With an excellent step-by-step video ..., you'll perform a routine that gradually works up to ab-isolating floor crunches. For cardiovascular fitness, there's exciting low-impact aerobics Plus a sensible eating program that provides *plenty* of eating satisfaction. Best of all, **Abflex™ flattens your stomach in just 3 minutes a day** - no matter what your current fitness level!"

Includes:
* Abflex™

- * Medium and Light Resistance Bands and Accessories
- * 270-Page Abflex™ Lifestyle Eating Program Book
- * Instructional Video" (Exhibit C).

D. **"GET A FLAT, SEXY STOMACH
IN JUST 3 MINUTES A DAY!
While You Sit In A Chair or Even Watch TV!**

ABFLEX®

**The Fastest, Easiest,
Safest Way Ever**

To Achieve:

- ✓ **A flat, toned stomach**
- ✓ **A shapelier waistline**
- ✓ **A healthier back**

HERE'S THE MAGIC OF ABFLEX:

Only the **ABFLEX patented direct resistance design** targets all the abdominal muscles simultaneously in one easy exercise to:

- * Flatten a bulging tummy
- * Eliminate a spare tire
- * Trim the waistline
- * Get rid of those "love handles" at the sides of the waist with its special attachment"

Consumer endorser: **"Lost 3 inches and 13 pounds in 30 Days!"**

[The advertisement depicts before-and-after photographs of a consumer.]

**"DRAMATIC RESULTS IN JUST A FEW
WEEKS... AND NO BACK STRAIN!**

....

**ALL THIS FOR JUST
3 EASY PAYMENTS OF
\$19⁹⁵**

The Revolutionary New ABFLEX System, plus the 1-hour ABFLEX Lifetime Fitness Instructional Video and the 250 page ABFLEX Nutritional guide which lists over 2,000 low-fat foods and gives you over 90 delicious recipes!

....

ABFLEX NO RISK GUARANTEE

If you don't lose 3 to 6 inches and 10 pounds within 30 days, simply return the ABFLEX System for a full refund of your purchase price! You have nothing to lose but your paunch!"

The advertisement contains a statement at the bottom, left-hand corner, in approximately 4-point type: **"The**

ABFLEX System includes a low-fat diet and aerobic exercise. The results may vary." (Exhibit D).

E. "Male Narrator 1: Does your stomach look like this?

[The advertisement depicts stomachs of three obese individuals. Superscript: "Does Your Stomach Look Like This?]

In just a few minutes a day, it could look like this.

[The advertisement depicts three individuals with flat stomachs and slim waistlines. Superscript: "It Could Look Like This."]

[Superscript: "If You Start Using This."]

If you start using this. It's the revolutionary ABFLEX ...

[Superscript: "Abflex"]

... and it's so easy to use....

[The advertisement depicts before and after photographs of a consumer. Superscript: "Your results may vary"]
....

Van Allen: We're talking tummies, gang. How do we firm 'em up and slim 'em down. Sometimes it seems hopeless, right? But today we're going to hear about a new machine called the Abflex. Well, they say it can flatten our stomachs in just a few minutes a day....

....

Jennilee Harrison: And let's look at the results some of these people got after just a few weeks on the Abflex System.

[The advertisement depicts before-and-after photographs of a consumer. Superscript: "Lost 13 lbs in 30 days. The Abflex program includes a low-fat diet and aerobic exercise."]

....

[The advertisement depicts before-and-after photographs of a consumer. Superscript: "Lost 6 inches in 30 days. Your results may vary."]

Van Allen: Hey you guys, look at the difference.

Jennilee Harrison: And it can work for anybody. Just three minutes a day and you can flatten that tummy right up.

Van Allen: That sounds great."

Consumer endorser: "You don't even know you are doing, you don't even know you are doing your exercises. And you're doin' it the whole time and pretty soon your stomach is like a brick. And you've lost all that weight."

[Superscript: "The Abflex program includes a low-fat diet and aerobic exercise. Your results may vary."]

....

Consumer endorser: "After using the Abflex 30 days I lost two inches off my waist and I lost 13 lbs. so I went from a size 36 slacks back to a 34. Perfect."

[Superscript: "The Abflex program includes a low-fat diet and aerobic exercise. Your results may vary."]

....

"Jennilee Harrison: And for us women who are trying to get rid of that pooch down here and for you guys trying to get rid of the love handles, forget it. This exercise [abdominal crunch] is useless. But, now here, this is the answer. This is the Abflex crunch.

....

Jennilee Harrison: Well you can have it. Look at this woman. If you'd like to go down a few sizes, the Abflex System is the fast way to lose those inches."

[The advertisement depicts before-and-after photographs of a consumer. Superscript: "Lost 6 inches in 30 days. Best case results. Your results may vary."]

Consumer endorser: ".... Well I think in about 21 days I've, I've lost about 2 inches."

[Superscript: "The ABFLEX program includes a low fat diet and aerobic exercise."]

Consumer endorser: "After 30 days I lost a full 6 inches...."

[Superscript: "Your results may vary"]

Consumer endorser: "Four and half inches I lost. I was 39 1/2 and went down to 35. Boom, just like that."

Consumer endorser: "With the Abflex I have lost 5 to 6 inches within 30 days and I have seen the results and so has everybody else. It works great."

....

"Announcer: ... it's so effective you can see dramatic results in just a few weeks."

[The advertisement depicts a woman demonstrating how many inches she has lost around her waist by wearing jeans, which now are too large for her around the waist. Superscript: "Dramatic Results in a Few Weeks"]

Consumer endorser: "Within, I would say, the third or fourth day that I started using it I started noticing tightening, firmness and my pants had started loosening up a little. I kept continuing using it and before I knew it I was back to a 5/6 from a 9/10. It was very dramatic."

[Superscript: "Your results may vary."]

"Announcer: ... you get the Abflex Guarantee. If you don't lose 3 to 6 inches and 10 pounds within 30 days, simply return the ABFLEX for a full refund of your purchase price. The Abflex, it's the fast way to a flat stomach, a shapely waistline, and a healthy back."

[The advertisement depicts a woman demonstrating how many inches she has lost around her waist by wearing jeans, which now are too large for her around the waist. Superscript: "Abflex GUARANTEE If you don't lose 3 to 6 inches and 10 pounds within 30 days, simply return the ABFLEX for a full refund."]

....

Consumer endorser: "I saw results in the first five to seven days. I could see visual results of the Abflex program. I lost about an inch to an inch-and-a-half in the waist and also lost five pounds...."

[Superscript: "Your results may vary"]

....

"Van Allen: ... The Abflex definitely works."

Jennilee Harrison: And it can work for anyone.

[The advertisement depicts before and after photographs of a consumer. Superscript: "Lost 12 Inches. The Abflex program includes a low-fat diet and aerobic exercise."]

Jennilee Harrison: Think about how great you're going to feel when you start using the Abflex...

[The advertisement depicts before and after photographs of a consumer. Superscript: "Lost 13 lbs in 30 days. The Abflex program includes a low-fat diet and aerobic exercise."]

Jennilee Harrison: ...and you start losing those inches.

[The advertisement depicts before and after photographs of a consumer. Superscript: "Lost 6 inches in 30 days. Best case results. Your results may vary."]

Jennilee Harrison: Think about how great you're going to feel when you look terrific in your jeans again. Anybody can have a great body; the Abflex makes it easy.

Martin Van Der Hoeven: And I guarantee results. If you don't lose three to six inches and 10 pounds within 30 days, you can return the Abflex for a full refund.

Jennilee Harrison: It only takes three minutes a day to flatten your tummy....

Van Allen: We can all spare three minutes to get rid of our spare tires, It can flatten our stomachs, it can slim our waistlines," (Exhibit E).

7. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that:

- A. The Abflex causes fast and significant weight loss.
- B. Consumers lose at least ten pounds and five inches, or three to six inches, off their waistline within thirty days by using the Abflex for just three minutes a day.
- C. The Abflex causes weight loss and fat reduction in specific, desired areas of the body.

D. Testimonials from consumers appearing in the advertisements for the Abflex reflect the typical or ordinary experience of members of the public who use the product.

8. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 7, at the time the representations were made.

9. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 7, at the time the representations were made. Therefore, the representation set forth in Paragraph 8 was, and is, false or misleading.

10. 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.

THEREFORE, the Federal Trade Commission this day of
, , has issued this complaint against respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL:

[Exhibits A-E attached to paper copies of complaint, but not available in electronic form.]

Analysis of Proposed Consent Orders
to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, agreements to a proposed consent order from Kent & Spiegel Direct, Inc., and its officers, Marsha Kent and Peter Spiegel, and a proposed consent order from Abflex, U.S.A., Inc., and its officer, Martin Van Der Hoeven (collectively "respondents").

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements and take other appropriate action or make final the agreements' proposed orders.

The Commission's complaints against respondents allege that they deceptively advertised the "Abflex," an abdominal exercise device, primarily through an infomercial, over the internet, and through print advertisements. The Commission's complaints charge that respondents' advertising contained unsubstantiated weight loss success, rate of weight loss, and spot reduction representations. Specifically, the complaints allege that the respondents did not possess adequate substantiation for claims that: (1) The Abflex causes fast and significant weight loss; (2) Consumers lose at least ten pounds and five inches, or three to six inches, off their waistline within thirty days by using the Abflex for just three minutes a day; (3) The Abflex causes weight loss and fat reduction in specific, desired areas of the body; and 4) Testimonials from consumers appearing in the advertisements for the Abflex reflect the typical or ordinary experience of members of the public who use the product.

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Part I of the proposed orders would prohibit respondents from making any claim for the "Abflex," for any exercise equipment, or for any weight-loss product: (1) About the number of pounds users can lose; (2) About the rate or speed at which users lose weight; (3) About the length of time users must use such product to achieve weight loss; (4) That such product causes fast and significant weight loss; (5) That such product causes a reduction in the size or shape of specific, desired areas of the body; (6) That such product causes a reduction in users' body size or shape, or body measurements; or (7) About the benefits, efficacy, or performance of such product in promoting weight loss, unless at the time of making them, they possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence.

Part II of the proposed orders addresses claims made through endorsements or testimonials. Under Part II, respondents may make such representations if they possess and rely upon competent and reliable scientific evidence that substantiates the representations; or respondents must disclose either what the generally expected results would be for users of the advertised product, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve.

The remaining provisions of the proposed orders relate to respondents' obligations to make available to the Commission materials substantiating claims covered by the order; to notify the Commission of changes in the corporations' structure; to notify the Commission of changes in the individuals' employment or business affiliations; to provide copies of the orders to certain personnel of the corporations; and to file compliance reports with the Commission. The orders also provide that the orders will terminate after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed orders. It is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.