

## IN THE MATTER OF

## ICON HEALTH AND FITNESS, INC., ET AL.

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

*Docket C-3765. Complaint, Sept. 9, 1997--Decision, Sept. 9, 1997*

This consent order requires, among other things, the Utah-based advertisers and distributors of Cross Walk Treadmills to substantiate future weight-loss, calorie-burning or fat-burning claims or benefits of any exercise equipment. In addition, the consent order requires that the testimonials in the respondents' advertising either represent the typical experience of users, or include disclosures of the generally expected results.

*Appearances*

For the Commission: *Laura Fremont* and *Jeffrey Klurfeld*.

For the respondents: *David Seidl, Miles & Stockbridge*,  
Baltimore, MD. and *Brad Bearson*, in-house counsel, Logan, UT.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Icon Health and Fitness, Inc., IHF Holdings, Inc., and IHF Capital, Inc., corporations ("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 Icon Health and Fitness, Inc. is a Delaware corporation with its principal office or place of business at 1500 S. 1000 W., Logan, Utah.

2. Respondent IHF Holdings, Inc. is a Delaware corporation with its principal office or place of business at 1500 S. 1000 W., Logan, Utah.

3. Respondent IHF Capital, Inc. is a Delaware corporation with its principal office or place of business at 1500 S. 1000 W., Logan, Utah.

4. Respondents have advertised, labeled, offered for sale, sold, and distributed exercise products to the public, including the "Proform Cross Walk Treadmill," the "Proform Cross Walk Plus," and the "Proform Cross Walk Advantage" ("Cross Walk Treadmill[s]"), which are motorized treadmills.

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 Cross Walk Treadmills, including but not necessarily limited to the attached Exhibit A. This advertisement contains the following statements and depictions:

SUPER: "Erin Waite Exercises 4 times per week on her CROSSWALK."

Consumer endorser: "From the time I first started using the Crosswalk I have lost almost 30 pounds."

SUPER: "Barbara Veltrie Exercises 5 times per week on her CROSSWALK."

Consumer endorser: "I've taken off over 60 pounds now."

SUPER: "Tim Rose Michelle Rose Exercise 3 times per week on their CROSSWALK."

Consumer endorser (Michelle Rose): "I went from a size 12 down to a size 8."

SUPER: "Erin Waite Exercises 4 times per week on her CROSSWALK."

Consumer endorser: "About the time I got to a size 4, my secretaries at work started asking me, 'What are you doing?' And I told them and both of my secretaries have bought one also."

Narrator: "Work more muscles, burn calories faster, reach your target heart rate more quickly -- all in a low impact workout that burns up to 1,100 calories an hour."

Narrator: "Burn up to 1100 calories per hour!"

(Exhibit A)

7. Through the means described in paragraph six, respondents have represented, expressly or by implication, that users of the Cross Walk Treadmill will burn calories at a rate of up to 1,100 per hour under conditions of ordinary use.

8. Through the means described in paragraph six, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representation set forth in paragraph seven, at the time the representation was made.

9. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representation set forth in paragraph seven, at the time the representation was made. Respondents obtained the 1,100 calorie figure from a study that measured the rate of calorie burn of persons who had exercised to the point of exhaustion. Such "maximal exertion" tests are not appropriate measures of the number of calories people can burn during ordinary exercise because they measure calorie burn at a level

of exercise intensity that is unsustainable for more than an extremely short period of time. Therefore, the representation set forth in paragraph eight was, and is, false or misleading.

10. Through the means described in paragraph six, respondents have represented, expressly or by implication, that testimonials from consumers appearing in advertisements for the Cross Walk Treadmill reflect the typical or ordinary experience of members of the public who use the product.

11. Through the means described in paragraph six, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representation set forth in paragraph ten, at the time the representation was made.

12. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representation set forth in paragraph ten, at the time the representation was made. Therefore, the representation set forth in paragraph eleven was, and is, false or misleading.

13. 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.

#### EXHIBIT A

Proform Fitness  
"Crosswalk Line"<sup>1</sup>

[FADE IN DISCLAIMER:] This program is a paid advertisement presented by Proform Fitness Products, Inc.

{Interior of exhibit hall}

[Indistinct sounds, the rustle of milling bodies, muted voices, the cacophony of musical instruments warming up.]

KELLY: Hold it, hold it. Okay, everyone, let's go again in five.

[HOUSE LIGHTS UP... revealing the interior of a LARGE EXHIBITION HALL, as we realize we're in rehearsal for a much larger show to come.]

KELLY: Joel, if you wanted a part, all you had to do was ask.

JOEL: Sorry Kelly. I just need to borrow this one machine.

KELLY: Not right now you don't. I am still...

JOEL: No. No. No. I'll have it back in plenty of time for the show--

<sup>1</sup> Stage directions from the original transcripts provided by respondents are indicated by squared brackets ([ ]). Those not crucial to conveying format or presentation of the material have been deleted. Information added by Commission staff, such as superscripts or narrative that are not indicated in respondents' transcripts but do appear on the tape, are indicated by curved brackets ({}). Emphasis is as it appeared in the transcripts supplied to staff.

KELLY: Joel ... In less than 24 hours, this building is going to be filled with people and-- call me crazy-- but it seems like it might be a good idea to get through a rehearsal of the real choreography, with real machines!

JOEL: Okay, okay. It's just that Bill thinks we're gonna need another Crosswalk upstairs.

KELLY: I can relate. Hey, I'm still waiting for the extra one I asked for... That's fine. So--how's it going up there in the daylight?

JOEL: Well, we're *only* spreading the incredible new information about walking and unveiling the hottest new equipment since the Original Crosswalk.... Other than that, it's just another ho-hum Fitness Expo.

KELLY: Well, good luck-- But Joel, I still have to have this machine.

{Switch to different set} {SUPER: Peggy Fleming, Olympic Skating Champion}

PEGGY: Hi, I'm Peggy Fleming, with news that will probably surprise you as much as it did me. Did you know that the latest research shows that walking is the most efficient method for burning fat calories and losing weight? It's true. And to take advantage of that fact... plus all the benefits of total body fitness... nothing works like the Proform Crosswalk. In fact, it's been such a phenomenal success, that now Proform has created two new Crosswalk models, which we'll be introducing in just a minute.

{SUPER: BURN MORE FAT} I've seen all the ways the Crosswalk can help you burn more fat...

{SUPER: SHAPE & TONE} shape and tone your body...

{SUPER: REDUCE STRESS} reduce stress...

{SUPER: CARDIOVASCULAR IMPROVEMENT}

and build your cardiovascular system. Not to mention making the most of what little time we have for exercise these days. I wouldn't be here if I didn't believe you can have the same success.

So stay right where you are to learn how to put the news about walking....and all the versatile benefits of Crosswalking... to work for you.

{Switch to different set}

[The VIP room is a convention suite/hospitality room, where a large gathering (10+) of people are mingling. A TV monitor is positioned in one corner.]

[Three Crosswalk machines are positioned strategically around room, draped as if ready for "unveiling." Also in room are Marty Townes, V.P. Marketing for Proform, Bill Hansen, Proform Chief Engineer, and our "cast of interested information-seekers: Sue, a TV reporter; Tom, a fitness writer; Mike, an equipment buyer; and Carrie, a trainer.]

MARTY: Okay, everybody, I think we're just about ready to get started. On behalf of Proform, we'd like to thank everybody for coming here today.

I'm Marty Townes, Proform's Marketing Director...

MARTY: ... and this is Bill Hansen, our Chief Engineer.

MARTY: Now, I know the Fitness Expo doesn't start until tomorrow, but this is going to be a very big year for us.

And we'd like to give you just a sneak preview of what we humbly consider the future of home fitness.

We'd like to share with you some of the thinking behind this new line of Crosswalks.

BILL: With the original Crosswalk, we knew we had something special. We just didn't know how special.

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Now, most people assume that the more you sweat, the more fat you lose.

MIKE: No pain, no gain.

MARTY: Exactly. But, the latest research shows something very different: That a consistent, moderately intense workout is actually the best method for burning fat calories and losing weight.

MIKE: You mean you don't have to kill yourself to lose weight.

[Bill moves to TV monitor]

BILL: Well, that's right. But even more important to us than scientific findings, is that there's proof right here that real people are getting real results with the Crosswalk. Now, here are some interviews with actual Crosswalk owners.

[CUT to Monitor, where Bill has cued up consumer testimonials.]

[DISSOLVE to full screen consumer testimonials.]

{SUPER: Erin Waite Exercises 4 times per week on her CROSSWALK.}

ERIN WAITE: From the time I first started using the Crosswalk I have lost almost 30 pounds.

SUPER: Pat Herman

Exercises 3 times per week on her CROSSWALK.

PAT HERMAN: This is the first piece of equipment we've ever had that has really motivated me.

SUPER: Barbara Veltrie

Exercises 5 times per week on her CROSSWALK.

BARBARA VELTRIE: I've taken off over 60 pounds now.

SUPER: Elaine Williams

Exercises 10 times per week on her CROSSWALK.

ELAINE WILLIAMS: When you get to 71 like I am and your doctor asks you to exercise or walk mainly. And in the wintertime it's very difficult sometimes on account of the snow and the rain and you don't feel like you want to do that. You get on the CrossWalk for 30 minutes. Oh and you feel like... Well, I probably feel like I am about 40.

SUPER: Tim Rose

Michelle Rose Exercise 3 times per week on their CROSSWALK.

MICHELLE ROSE I went from a size 12 down to a size 8.

SUPER: Erin Waite Exercises 4 times per week on her CROSSWALK.

ERIN WAITE: About the time I got to a size 4, my secretaries at work started asking me, What are you doing? And I told them and both of my secretaries have bought one also.

SUPER: Pat Herman

Exercises 3 times per week on her CROSSWALK.

PAT HERMAN: That's why everyone should have one. I'm serious.

{Switch back to "VIP" room set}

BILL: It's very clear that the Crosswalk phenomenon is growing. Fast. We need to stay one step in front of the momentum. And that's what led to Crosswalk...the Next Generation.

BILL: ...the Proform Crosswalk Plus... additional features and convenience in a sleek, streamlined design ...

MARTY: ...and our top of the line... the Crosswalk Advantage... precision engineering and the latest technology...

BILL: ...two new models to join our best-selling original Crosswalk ...in a complete Crosswalk line.

SUE [TV REPORTER, aside to Mike]: So...they're like a sidewalk that never ends

MIKE: [aside to Sue] Or gets rained on....

SUE: These are all motorized treadmills. Correct?

MARTY: That is such an important question and the answer is yes, because only a motorized treadmill will keep you at a consistent pace, within a comfortable fat burning zone. In fact, the Crosswalk burns over 20% more fat calories than a manual treadmill.

BILL: Unlike regular walking, or regular treadmills, the Crosswalk gives you quicker results, and overall better muscle toning, because the resistance arms involve your upper body, as well.

MARTY: Listen. I'm sure you'll have lots of other questions after you've seen the machines in action. So go ahead and spend some time with them now... Bill and I will be ready with answers.

BILL: Joel. Joel. How we doing on getting another machine up here?

JOEL: I'm... working on it.

BILL: Good, good. We need to get it up here. I've a few more people than I expected ...

JOEL: I'll get right on it. Thanks.

[CUT to Marty approaching Sue, who is watching a model working out on the Crosswalk Advantage.]

MARTY: Hi. We haven't met yet. I'm Marty Townes.

[Sue shakes her hand. CUTAWAYS to close-up, model demonstrating Crosswalk Advantage]

SUE: Hi, Marty. Sue Meyers, Cable Fit Network.

MARTY: Hi, Sue.

SUE: So -- a whole line of Crosswalks, huh? You really think there's going to be that kind of demand?

MARTY: Oh, not going to be. There already is. Do you know that we've sold nearly half a million of the original Crosswalks to date. But what's really very exciting to us is that our customers are telling us it's making a huge impact...not only in their fitness, but in their lives. So it seemed natural to just expand out the line and offer more options.

SUE: So you feel all the recent news about walking and fat burning is just going to fuel the fire?

MARTY: Exactly. In fact, I'd like to show you something ...

[They head toward TV monitor] [CUT to Bill showing Mike the Crosswalk Plus.]

BILL: So what do you think, Mike?

MIKE: It's beautiful. I hope you didn't change everything.

BILL: Actually, the new Crosswalks keep all the important features of the original... like the Pro-Tech key for safety, so no can start or stop the machine accidentally... ..also, the dual action resistance arms for a total body workout and better muscle toning electronic feedback, which tracks your progress... and, of course, our quality construction, with our limited ten-year warranty...

MIKE: It wouldn't be a Crosswalk without that...

BILL: Oh. But, here's a new design feature for this year. You see this? It's a speed control. It's built right into the handle.

MIKE: Hey, that's great--you don't have to stop and adjust it ....

BILL : .... and it gives you safe, smooth acceleration. For those tall athletes or runners with a long stride, we also eliminated the hood on the front of the tread, so

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they can really stretch out. But overall, this machine takes up less space. In fact, we streamlined the whole frame. [Bill adjusts the power incline.] We've also added a power incline, which you can adjust without ever getting off the machine... So you can boost the intensity of your workout, and strengthen those legs.

MIKE: Yeah, I can't believe you could get all those features on a machine at this price point.

MIKE: My customers are going to love this.

[CUT TO Marty and Sue at TV monitor. Dr. Upton is on monitor.]

MARTY: This is Dr. David Upton.

SUE: Oh. Hey, we quoted this guy in one of our stories about walking. Isn't he an expert on wellness?

MARTY: Uh, huh. And an author. Here, listen for yourself ...

[CUT TO MONITOR]

[Dr. Upton testimonial. DISSOLVE to full screen testimonial]

{SUPER: Dr. David Upton Exercise Physiologist/Wellness Consultant}

{If your goal is to lose weight, you have to do more than just diet. While dieting does reduce your caloric intake, it also lowers your metabolism. And it's been proven that a low metabolism won't burn off your excess fat. So to achieve that desired high fat burning metabolism, I recommend regular, brisk exercise at a constant pace, a pace that raises your heart rate, or pulse, up to your target heart rate zone, for optimum fat burning. Recent studies have shown that walking is one of the best ways to accomplish this. However, you must walk a steady rate. One way to do that is to walk on a motorized treadmill. This keeps you walking at a constant pace which gives you the most benefit from your exercise.}

{Switch back to "VIP Room" set}

SUE: Great stuff. Y'know, I also have a few technical questions, if you don't mind...

MARTY: No I don't mind...But actually...Bill would probably be better to answer those...

SUE: Hi, I'm Sue Meyers.

BILL: How do you do?

SUE: Oh, I just have a few questions about the design of the Crosswalk Advantage.

BILL: Great. Why don't you come over with me and maybe I can answer them for you.

{SUPER: This program is a paid advertisement presented by Proform Fitness Products, Inc.} [SUPER: To be continued ....] {Switches to narrated portion}

{SUPER: LOSE WEIGHT}

FEMALE VOICE [voiceover] Lose weight...

{SUPER: TONE UP} Tone up ...

{SUPER: LOOK GREAT} Look great ...

ANNOUNCER [voiceover]: With the CrossWalk Line of motorized treadmills. Each CrossWalk gives you ...

{SUPER: TOTAL BODY EXERCISE}

FEMALE VOICE: Total body exercise ...

ANNOUNCER: While your lower body works at a steady pace, the resistance arms tone and firm your upper body. Work more muscles, burn calories faster, reach your target heart rate zone more quickly--all in a low impact workout that burns up to 1,100 calories an hour.

{SUPER: MOTIVATIONAL FEEDBACK}

MALE VOICE: Motivational feedback. . .

ANNCR: Stay motivated. The electronic display shows you how many calories you're burning, how far you've gone, how close you are to your goals, and if you're in your target heart rate zone.

{SUPER: MOTORIZED CONTROL}

FEMALE VOICE: Motorized control . . .

ANNCR: . . . The CrossWalk motorized belt puts you in total control. You select your own pace. And the motorized belt keeps you at that smooth consistent pace for maximum fat burn.

{SUPER: SAFETY}

FEMALE VOICE: . . . Safety . . .

ANNCR: Insert the Prot-Tech safety key to start your workout -- remove it when you're done. Your CrossWalk won't run without it.

{SUPER: VERSATILITY}

FEMALE VOICE: . . . Versatility . . .

ANNCR: Count on the support of Proform, the leading manufacturer of home fitness equipment in the world. That means a 10-year limited warranty on every CrossWalk, plus the backing of Proform's nationwide service network, ready whenever you need it!

{SUPER: WALK}

FEMALE VOICE: Walk.

{SUPER: RUN} Run.

{SUPER: TOTAL BODY AEROBIC EXERCISE} Total body aerobic exercise.

Burn fat. Lose weight. Choose your CrossWalk.

ANNCR: {CAPTION: (lists features of Original Crosswalk)}

The original CrossWalk; outstanding value and proven success with over half a million sold. Its quiet, one-and-a-half horsepower motor keeps you at a steady, fat burning pace. Simple controls make operating the CrossWalk as easy as walking.

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}

All for only \$49.95 a month! {CAPTION: (lists features of Crosswalk Plus)}

The CrossWalk Plus. Its expanded hoodless walking deck provides over 20% more walking space than the Original, yet it actually takes up less space! The 2-horsepower motor delivers smooth response and solid acceleration. Finger tip speed control and Power Incline let's you burn more calories by increasing workout intensity without interrupting your workout.

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}

The spacious, convenient CrossWalk Plus... only \$49.95 a month!

{CAPTION: (lists features of Crosswalk Advantage)}

The CrossWalk Advantage: A supersize deck give you one of the largest walking belts of any treadmill on the market. The 2 1/2 horsepower motor provides quiet, durable, smooth operation. The cushioned deck ensures a low impact workout for your ankles, knees, hips and back. Simple but advanced electronics provide four easy to use, pre-programmed workouts. And with speed and incline controls right at your finger tips you can easily vary your workout intensity.

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}

Our most advanced CrossWalk, for only \$49.95 a month!

SUPER: Call Now for FREE Brochure & Video



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For a free brochure and video on the CrossWalk line, call the number on your screen now! {SUPER: PROFORM PROMISE

If within 30 days you don't feel better, look better, and see the results you want, just return it for a full refund. Guaranteed! (Less \$75.00 S&H)}

And remember the Proform promise -- the CrossWalk is the finest piece of fitness equipment you can buy. If within 30 days you don't feel better, look better and see the results you want, just return it for a full refund. Guaranteed!

{SUPER: CALL NOW}

FEMALE VOICE: Call now.

ANNCR: Call now! And discover the benefits of CrossWalk!

{Switch to different set} [SUPER: Peggy Fleming, Olympic Gold Medalist]

PEGGY: I know that no two people have exactly the same fitness needs or goals. That's one of the reasons I've been so impressed with these Crosswalks.

[CUTAWAYS to models demonstrating] {SUPER: BURN MORE FAT}

If you want a moderate intensity workout for fat burning... just set your speed. The electronic console tells you when you've reached your optimum level and achieved your goals. {SUPER: CARDIOVASCULAR IMPROVEMENT}

Or, just increase the speed if you want a great cardiovascular workout.

{SUPER: TOTAL BODY WORKOUT} Add the resistance arms to get your whole body involved and reach your maximum total calories burned.

[CUT back to Peggy]

The possibilities for variations--and results-- are almost endless.

I think you can see why the Proform Crosswalk is the workout equipment I've chosen to be associated with. Its quality is legendary, which is easy to understand when you know it's made by Proform, the leader in home exercise equipment. Proform is the largest manufacturer of treadmills in the world.

Who better to bring the benefits of walking home to all of us? And for more on those benefits, stay right where you are.

{Switch to exhibit hall set}

KELLY: [to an assistant] Okay, thanks..Yes, we can hang that later... Alright people... Eighteen hours and counting until the entire Fitness Expo moves in here to watch you strut your stuff... And Corrigan, I want these Crosswalks to shine.

PROP ASSISTANT: Hey Kelly, here's that extra machine you wanted.

KELLY: Oh, great. Just set it up right there.

[He takes box off truck and pulls out the folded Crosswalk. He looks perplexed.]

PROP ASSISTANT: Okay..... so..... how are we supposed to put it together?

[With an amused look, Kelly walks over to the Crosswalk and in one simple move, turns the handle, and pulls the handlebars up into place. Without saying a word, she smugly looks over at him, and goes back to what she was doing.]

1. PROP ASSISTANT: You're kidding, right?..... That's all there is to it...?

{Switch to "VIP Room" set}

BILL: Really, it's that simple ....

[PULL BACK to reveal he is showing the same easy handling feature on the Crosswalk Plus to TOM (the writer), only Bill is folding it back down, to show easy storage.]

TOM: Wow! You know, this is a great idea, having a preview of the new Crosswalks before the Fitness Expo starts tomorrow, 'cause its going to be crazy.

BILL: We wanted to make sure you guys knew what the real news was this year. And I don't see how the competition can top this.

TOM: Speaking of which, I heard you say something earlier about the Crosswalks being better than manual treadmills, because the Crosswalk is motorized. I'll tell you, there's a lot of people out there pushing manuals.

BILL: "Pushing" is exactly the right word. Because if you've ever tried to use one that's what you're doing. And they're cheaper to build. And if they were effective we'd build one ourselves. But, let me show you something.

[He moves over to TV monitor, finds tape, and puts it in. We see close-up action of manual treadmill. DISSOLVE to full screen manual treadmill demo.]

BILL [voiceover]: Okay, here we go. Most manual treadmills are set at a 12% incline. That's pretty steep. But manuals have to be set that way because they depend on your body weight and on gravity to work. When they're level, you just can't get them to go.

{Depiction of chart showing target heart rate zone during 20 minute workout using a manual treadmill}

That means you have to over-exert... and you get tired and slow down, the manual tread slows down, too.

{Depiction of chart showing target heart rate zone during 20 minute workout using a manual treadmill and using a CrossWalk}

Between pushing too hard... and not hard enough... you're not maintaining that consistency to stay within your fat burning zone.

And remember, the key to successful weight loss is consistent, moderate exercise within your fat burning zone. Now, that's why the Crosswalk's motorized tread is so much more efficient. You can set a pace, and maintain it. In fact, a recent university study showed you can lose over 20% more fat calories on the Crosswalk than working out on a manual treadmill.

[CUT back to Bill and Tom. Sue has joined them.]

SUE: Okay, I understand why motorized treadmills are better than manuals. My question is, why are the Crosswalks so much better than stair steppers and bikes?

BILL: Well, anyone that's used a stationary bike or a stair stepper knows they're fine for the lower extremities... {SUPER: 65% of all muscles are above the waist} But 65% of our muscles are above the waist. Those kinds of machines just don't give you a total body workout. And the same can be said for most manual treadmills.

TOM: How about ski machines?

BILL: We're constantly being told how difficult ski machines are to use, especially by people that are just starting out. And remember, ski machines aren't motorized, so you're not motivated to keep up a pace that you need, to stay within your fat burning zone.

BILL: Here, why don't I let some consumers tell you about their own experiences.

[Consumer testimonials appear on monitor. DISSOLVE to testimonials full screen.]

{SUPER: Michael Ferguson Suzy Ferguson Exercise 2-4 times per week on their CROSSWALK.}

MICHAEL FERGUSON: {When I've used the CrossWalk, its made me feel good about myself. It's made me feel good physically. But more than that it's made me feel good just about life. Even though sometimes its hard work, I'm always come away feeling much better than when I started.}

{SUPER: Nancy DeJardin Exercises 5-6 times per week on her CROSSWALK.}

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NANCY DEJARDIN: {Well, I exercise like a lot of people just to keep in shape and I have a stressful job and I find that the CrossWalk not only helps my energy level, but helps with my stress and helps me to sleep better.}

{SUPER: Annette Nelson Exercises 3 times per week on her CROSSWALK.}

ANNETTE NELSON: {I had a NordicTrack and I much prefer the CrossWalk because I'm able to vary my speeds with the CrossWalk and I have much more consistent workout.}

[Back to VIP Room. Sue continues listening to testimonials. Marty walks up to Bill.]

MARTY: Is it just me, or is this going extremely well?

BILL: Incredible.

MARTY: I just wish we had a few more CrossWalks. You know everyone wants to try them.

BILL: Joel's supposed to be bringing one up from downstairs.

{Switch to exhibit hall set}

[A short dance montage down on stage, dancers going through their routines on the Crosswalks.]

STAGE HAND

Stale popcorn?

KELLY: Why, of course.

{Switch to "VIP room" set}

[back to VIP room, Carrie working out on Crosswalk Advantage. She is really burning up the deck, pushing it. She has the pulse clip attached to her ear.]

MARTY: Isn't that new bigger deck great?

CARRIE: This is fantastic... how long is it anyway?

MARTY: 54 inches. And a full 18 inches wide. There's plenty of room on the Crosswalk Advantage. Another feature we've added is a Soft Stride suspension deck for extra cushioning. It helps protect your ankle, knee and hip joints.

CARRIE: That's a great feature.

MARTY: Well...oh that's right. You're a personal trainer.

CARRIE: Right.

MARTY: Then you should appreciate the two and a half horsepower motor. Solid, steady power at a range of speeds, right up to 10 mph on the Crosswalk Advantage.

CARRIE: You know, my clients need something that can keep challenging them as they improve... so they can really push their workout when they want to.

[Mike walks up]

MIKE: So this is the Advantage?

CARRIE: Would you like to try it? [She gets off. Mike gets on.]

MIKE: Thanks. Wow. That's quite a control pad.

MARTY: And it's so easy. See? You can track your speed..... time .... distance... incline...even heart rate. And, of course, it calculates the calories that you've burned. If you want to concentrate on the lower body only, you don't have to lock the arms in place. Just let go...

MIKE: Oh, that's nice.

MARTY: ...and then pick them back up anytime.

MIKE: How about automatic workouts?

MARTY: The Crosswalk Advantage has 4 pre-set routines, so you can vary your workout according to your goals. It's like having a personal trainer in your home.

MIKE: That'd be nice.

SUE: So this one has all the extras, huh?

{SUPER: This program is a paid advertisement presented by Proform Fitness Products, Inc.}

MARTY: Except for the extra cost. We've managed to price this very affordably.

[SUPER: To be continued....] {Switches to narrated portion} {SUPER: LOSE WEIGHT}

FEMALE VOICE {voiceover}: Lose weight...

{SUPER: TONE UP} Tone up ...

{SUPER: LOOK GREAT} Look great ...

ANNOUNCER: No other fitness machines offer the versatility of every CrossWalk

FEMALE VOICE: {SUPER: TOTAL BODY EXERCISE}

Total body exercise ...

ANNCR: ... Achieve weight control more quickly by working your entire body. Get the benefit of a lower body workout by walking or running while you tone and condition your upper body with the resistance arms. Burn up to 1,100 calories per hour!

FEMALE VOICE: {SUPER: MOTORIZED PACING}

Motorized pacing ...

ANNCR: You control the pace for a full range of workouts. Unlike manual treadmills, you select the perfect speed for your fitness goals. There's no guesswork, no missing your goal because you're not at the right pace. You are in control.

{SUPER: CUSTOMIZED RESULTS}

FEMALE VOICE: Customized results ...

ANNCR: Lose weight, tone muscle, reduce stress, increase energy, or just feel better about yourself -- the CrossWalk can give you the personal results you want!

FEMALE VOICE: Three different crosswalks. Three sets of features... Three proven ways to succeed...

{CAPTION: lists features of Original Crosswalk}

ANNCR: The original CrossWalk: Smooth, quiet tread acceleration up to 8 miles per hour. Choose a moderate fat burning speed or gently increase the speed for a cardiovascular workout. And with the dual-action arms you'll reach your goals more quickly because you're using your entire body. Or just lock the arms in place for a walking-only workout.

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}

Flexibility and value for only \$49.95 a month!

{CAPTION: lists features of Crosswalk Plus}

The new Crosswalk Plus. Advanced tread design gives you a longer stride base in a more compact frame! Vary the pace of your workout with the convenient new fingertip speed control. The exclusive Power Incline lets you increase your workout intensity: reach your target heart rate zone faster, tone and shape hips, thighs, calves and buttocks. You'll see results quicker.

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling} Even more versatility for only \$49.95 a month!

{CAPTION: lists features of Crosswalk Advantage}

The CrossWalk Advantage: Versatile speed range up to 10 miles per hour provides a moderate fat burning pace yet can challenge even the most advanced athlete. Enhanced electronics give you easy-to-read feedback to track your progress with four pre-set workouts. It's like having your own personal trainer!

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{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}  
Every option... for only \$49.95 a month! {SUPER: Call Now for FREE Brochure  
& Video} For a free brochure and video on the CrossWalk line, call the number on  
your screen now!

{SUPER: PROFORM PROMISE If within 30 days you don't feel better, look  
better, and see the results you want, just return it for a full refund. Guaranteed!  
(Less \$75.00 S&H)}

{SUPER: CALL NOW}

FEMALE VOICE: Call now...

ANNCR: Call now! And discover the benefits of CrossWalk!

{Switches to different set}

{SUPER: Peggy Fleming, Olympic Skating Champion}

PEGGY: Walking is something that almost everyone can do--I know I enjoy going  
for walks in my neighborhood.

But I also know that I'd never stick with my fitness program if I didn't have my  
Crosswalk at home. For one thing, I don't know about your climate, but where I  
live the weather is never a sure thing. It's also nice to have the security of staying  
at home to exercise. With the Crosswalk, I can walk after dark, or at times when  
I might not feel as comfortable going out. I'm a mother, too. And there are lots of  
times when leaving the house just isn't practical. {SUPER: BURN FAT}

The Crosswalk is also incredibly versatile. You can burn fat.

{SUPER: TONE MUSCLES} You can tone muscles.

{SUPER: CARDIOVASCULAR IMPROVEMENT} You can get cardiovascular  
exercise.

{SUPER: REDUCE STRESS} You can even work off stress. And you can do it  
all, without ever leaving your home. Those are just a few of the Crosswalk's  
advantages. And there's lots more to come. So stay tuned for the next chapter of the  
Crosswalk story. {Switch to exhibit hall set}

KELLY: OK, start stretching out and we'll take it again in 5 with lights.

JOEL: Wow. This is looking really good, Kelly. H-e-e-y.... I see you got that extra  
machine ....

KELLY: 0-o-o-h no you don't. I still have a final rehearsal to go, and I absolutely  
cannot in any way, shape or form, no matter what -- have you got there?

KELLY: Hot egg rolls??... You are shameless, How about a big cup of coffee to  
go with it?

JOEL: Done.

KELLY: Okay. Two hours. But, as soon as you've finished upstairs, you come  
back down here for final rehearsal.

JOEL: It'll be here. Scout's honor.

{Switch to "VIP Room" set}

[CUT to Marty and Bill, over at the original Crosswalk, spotting him, pleased to  
have the extra machine.]

MARTY: Alright, Joel... Look, another treadmill...

BILL: I knew making it easy to move would come in handy.

SUE: Excuse me -- Bill, do you think I could get you to run through that new  
research on walking and fat loss again? Maybe one of those video tapes with Dr.  
Upton?

BILL: Sure. Let's take a look.

[CUT to Sue and Bill at TV monitor. Bill inserts tape.]

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BILL: Well, so what do you have so far?

SUE: [reviewing notes] Well... new studies show that walking is the most effective workout for weight loss.

BILL: That's correct.

SUE: And the Crosswalk is the best way to do that, because it's motorized, so you have total control over the pace and intensity of your workout.... Correct?

[Bill nods.]

BILL: You got it.

{SUPER: 20% more fat burned}

SUE: Which is why research is proving that the Crosswalk can burn over 20% more fat calories than manual treadmills.

BILL: You got it.

{SUPER: 1100 cph, burn 1100 calories per hour}

SUE: Plus you get quicker results than regular walking, since you work your lower and upper body... and, if you want really want to push yourself, you can burn over 1100 calories an hour.

BILL: I can see you've been doing your homework.

SUE: It also offers convenience and safety-- you can workout anytime you want, in any kind of weather, right in your own home ... And, it gives you the incentive you need, with constant, electronic feedback on how you're doing.

BILL: I wouldn't add a thing.

SUE: Great. I just want to hear the tape one more time.

BILL: Sure.

[Bill starts tape. Expert testimonial comes up on monitor.] {SUPER: Dr. David Upton Exercise Physiologist/Wellness Consultant}

DR. DAVID UPTON: {I can't emphasize enough that study after study has demonstrated that to lose weight you have to burn more calories than you take in. And the more muscles you use during your workout the more calories you'll burn in the shortest period of time. Using a motorized treadmill with resistance arms lets you work all the large muscle groups in both your upper and lower body. This gives you the maximum calories burn, plus the added benefits of overall cardiovascular fitness.} [Switch to "VIP Room" set]

MARTY: You know a few years ago when we first introduced the Crosswalk...

[CUTAWAY to Crosswalk Classic]

MARTY: [voiceover] ...it was a real pioneer in home exercise equipment...the first dual-action motorized treadmill of its kind. And, as you know, the response has been tremendous. [PAN TO other Plus and Advantage]

MARTY: [voiceover] And today, with the new Crosswalks, Proform has pushed the standard for home fitness equipment even higher and made total body fitness even more accessible and more exciting.

[CUT back to Marty, gesturing to all 3 machines]

MARTY: Now, what we're doing is spreading the news about just what a powerful change the Crosswalk can make in people's lives.

MARTY: And we're hoping you'll help us with that. So thank you very much for coming. Oh, they're still rehearsing downstairs. So tomorrow when the Expo opens, I hope you'll all go down and catch the Proform Fitness Show on the main level ...

{Switch to exhibit hall set}

KELLY: Okay, this is final, full out!

[Stab in show music. Show springs to action.] {Switch to different set}

{SUPER: Peggy Fleming, Olympic Skating Champion}

PEGGY: So that's our story. But now it's your turn.

No other fitness equipment compares to the Crosswalk, for burning fat calories .... and getting a total body workout right at home. It's an important part of my life. And there have never been more reasons to make it part of yours ... Or a better time. {Switch to testimonials}

{SUPER: Val Herman Exercises 4 times per week on his CROSSWALK.}

VAL HERMAN: {The CrossWalk is the safest machine that I've ever owned ... The size is convenient and the fact that it's always there is probably the most convenient thing. It's a marvelous piece of equipment. I'd recommend it to anybody.}

{SUPER: Tracie McBeth Exercises 2-3 times per week on her CROSSWALK.}

TRACIE MCBETH: {Not only have I lost the weight and lost the inches, but I'm also gaining strength and toning my entire body up at the same time.}

{SUPER: Earl Johnson Exercises 2-3 times per week on her CROSSWALK.}

EARL JOHNSON: {Pretty soon your confidence level comes back to where you feel good about yourself and that alone is worth the price of the unit.}

{Switches to narrated portion} {SUPER: LOSE WEIGHT}

FEMALE VOICE: (voiceover) Lose weight...

{SUPER: MOTIVATION} Motivation

{SUPER: STAY FIT} Stay fit

{SUPER: SUCCESS} Success

ANNCR: Whatever your fitness goal, get there faster with the safety and convenience that only CrossWalk can offer ...

{SUPER: EASY OPERATION}

FEMALE VOICE: Easy operation ...

ANNCR: Simply adjust the arms to the resistance you want... Insert your Pro-Tech key... set your pace... and the CrossWalk gradually ramps up to the speed you set. The bright display panel tracks your progress. When you're done, remove your key... your CrossWalk is ready to store in seconds.

SUPER: SAFETY & PROTECTION

FEMALE VOICE: Safety and protection...

ANNCR: Your personal Pro-Tech key keeps the Crosswalk worry free, even in homes with young children. It won't run without the key in place, so there's no chance of accidental starting.

FEMALE VOICE: A CrossWalk for every budget...

{SUPER: EVERY BUDGET} {SUPER: EVERYBODY} A CrossWalk for every body...

{SUPER: EVERYONE} A CrossWalk for everyone...

{CAPTION: (lists features of Original Crosswalk)}

ANNCR: The original CrossWalk: Proven dependability, with a one-and-a-half horsepower motor specifically designed to never need replacing. It's easy to use, it's fun, and with motivational electronics you'll see progress... and you'll get results.

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}

It's even easy to own, for only \$49.95 a month!

{CAPTION: (lists features of Crosswalk Plus)}

The new CrossWalk Plus: Redesigned with a longer, hoodless tread that gives you over 20% more walking space -- in a machine that's actually smaller than the

Original! New fingertip speed adjustment lets you vary your workout and control your pace while you get a total body workout... And with Power Incline, you can increase the intensity without missing a beat.

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}

Conveniently priced at only \$49.95 month.

{CAPTION: (lists features of Crosswalk Advantage)}

The new CrossWalk Advantage has the added safety of a full cage railing which allows you to pick up or put down the resistance arms at any time and a supersize deck that's one of the largest on the market. The Soft Stride suspension deck cushions joints and muscles. Plus, you get speed control in one hand, power incline adjustment in the other. And four pre-set workouts make the Advantage as convenient as having your own Personal Trainer!

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}

Our most advanced CrossWalk... for only \$49.95 a month!

{SUPER: Call Now for FREE Brochure & Video}

For a free brochure and video on the CrossWalk line, call the number on your screen now!

{SUPER: PROFORM PROMISE If within 30 days you don't feel better, look better, and see the results you want, just return it for a full refund. Guaranteed! (Less \$75.00 S&H)}

And remember the Proform promise -- the CrossWalk is the finest piece of fitness equipment you can buy. If within 30 days you don't feel better, look better and see the results you want, just return it for a full refund. Guaranteed!

SUPER: CALL NOW

FEMALE VOICE: Call now.

ANNCR: Call now! And discover the benefits of CrossWalk!

[FADE IN DISCLAIMER:]

This program is a paid advertisement presented by Proform Fitness Products, Inc.



## 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 San Francisco 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 attorneys, 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:

1a. Respondent Icon Health and Fitness, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its offices and principal place of business located at 1500 S. 1000 W. Street, in the City of Logan, State of Utah.

1b. Respondent IHF Holdings, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its offices and principal place of business located at 1500 S. 1000 W. Street, in the City of Logan, State of Utah.

1c. Respondent IHF Capital, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its offices and principal place of business

located at 1500 S. 1000 W. Street, in the City of Logan, State of Utah.

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

### 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. Unless otherwise specified, "*respondents*" shall mean Icon Health and Fitness, Inc., IHF Holdings, Inc., and IHF Capital, Inc., corporations, their successors and assigns, and their officers, agents, representatives and employees.

3. "*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 "Cross Walk Treadmill" or any other exercise equipment in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

#### A. About the relative, comparative, or absolute

(1) Rate at which users burn calories, or the number of calories users burn, through use of such product, or

(2) Weight loss users achieve through use of such product, or

(3) Amount of fat or fat calories users burn through use of such product; or

B. About the benefits, performance, or efficacy of such product with respect to calorie burning, fat burning, or 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 any 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 CFR 255.0(b).

## III.

*It is further ordered*, That respondents Icon Health and Fitness, Inc., IHF Holdings, Inc., and IHF Capital, Inc., and their successors and assigns 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 materials that were relied upon in disseminating the representation; and

B. 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 respondents Icon Health and Fitness, Inc., IHF Holdings, Inc., and IHF Capital, Inc., and their successors and assigns, shall deliver a copy of this order to all current and future officers and directors, 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 respondents Icon Health and Fitness, Inc., IHF Holdings, Inc., and IHF Capital, Inc., and their 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 respondents learn less than thirty (30) days prior to the date such action is to take place, respondents 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.

## VI.

*It is further ordered*, That respondents Icon Health and Fitness, Inc., IHF Holdings, Inc., and IHF Capital, Inc., and their successors and assigns, 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.

## VII.

This order will terminate on September 9, 2017, 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.

Complaint

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IN THE MATTER OF

LIFE FITNESS

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3766. Complaint, Sept. 9, 1997--Decision, Sept. 9, 1997*

This consent order requires, among other things, the Illinois-based manufacturer and distributor of stationary exercise cycles to substantiate future weight-loss, calorie-burning or fat-burning claims or benefits of any exercise equipment. In addition, the consent order prohibits the respondent from misrepresenting the result of any test, study or research relating to such benefits.

*Appearances*

For the Commission: *Laura Fremont and Jeffrey Klurfeld.*

For the respondent: *William C. Holmes, Freeborn & Peters,*  
Chicago, IL.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Life Fitness, a general partnership ("respondent"), has 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 Life Fitness is a New York general partnership with its principal office or place of business at 10601 West Belmont Avenue, Franklin Park, Illinois.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed exercise products to the public, including "Lifecycles," which are exercise bicycles.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused to be disseminated advertisements for Lifecycles, including but not necessarily limited to the attached Exhibits A through C. These advertisements contain the following statements:

A. "Research has shown that the patented Lifecycle programs allow you to burn over 1,000 calories per hour! . . . ." (Exhibit A)

B. "Remember, the Lifecycle programs have been proven to burn over 1000 calories per hour! . . . ." (Exhibit B)

C. "BURN OVER 1300 CALORIES AN HOUR! . . . ." (Exhibit C)

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that users of the Lifecycle will burn calories at a rate of over 1,000 per hour under conditions of ordinary use.

6. Through the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in paragraph five, at the time the representation was made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in paragraph five, at the time the representation was made. Therefore, the representation set forth in paragraph six was, and is, false or misleading.

8. Through the means described in paragraph four, respondent has represented, expressly or by implication, that research shows that users of the Lifecycle will burn calories at a rate of over 1,000 per hour under conditions of ordinary use.

9. In truth and in fact, research does not show that users of the Lifecycle will burn calories at a rate of over 1,000 per hour under conditions of ordinary use. Therefore, the representation set forth in paragraph eight was, and is, false or misleading.

10. The acts and practices of respondent 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.





EXHIBIT B



10601 West Belmont Avenue • Franklin Park, IL 60131

Dear Fitness Enthusiast:

Congratulations on taking the first step toward losing weight, burning fat, building muscle and feeling better by inquiring about the Lifecycle® 3500 aerobic trainer. For over 20 years, Life Fitness has provided more than 17 million people a superior way to reach their personal fitness goals!

Experience Health Club Results At Home!

It's important you find a motivating fitness program that fits your lifestyle. That's why we introduced the new Lifecycle 3500 aerobic trainer – a streamlined version of the #1 exercise bike in health clubs. The Lifecycle 3500 gives you a superior workout, that utilizes the largest muscles found in your legs, hips and thighs. In addition, our specifically designed electronic programs create a workout with accurate feedback that's fun and challenging.

Discover An Easier, More Effective Way To Reach Your Fitness Goals!

You can begin to experience the benefits of cardiovascular fitness by using the Lifecycle 3500 for as little as 12 minutes a day, three times a week. The computerized console provides the same six programs found on our health club model. Programs like:

- Hill
- Heart Rate Zone Training
- Random
- Manual
- 12-Speed Race
- Fit Test

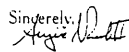
These interactive programs provide variety and motivational feedback for the most effective calorie burning workout you can find. As you exercise, you'll know the speed, the distance, the number of calories burned and more. You will see the results and be motivated to continue working toward your personal fitness goals. Remember, the Lifecycle programs have been proven to burn over 1000 calories per hour! It's just one more reason the Lifecycle 3500 is superior to ordinary fitness machines.

Pay Only \$29.95 Per Month!\*

The only way you can discover what the Lifecycle 3500 can do for you is to ride it. That's easy too! Simply try it in your home for 30 days. If you're not completely satisfied, return it for a full refund! Order now and receive shipping and handling FREE! That's a \$69.00 savings! If you order now you'll pay as little as \$29.95 per month.† Simply fill out the enclosed credit application and order form and return it in the enclosed postage-paid envelope. If for any reason you are not convinced that it's the best in-home exerciser, just return it at our expense. You have nothing to lose – only health and fitness to gain.

Order Today! Call 1-800-877-3867 Now!

Experience health club fitness at home today! Call toll-free now and our knowledgeable fitness consultants will take your order and answer any questions you may have. Don't delay – this special offer expires soon. Call now and take your first step toward better fitness.

Sincerely, 

Augie Nieto  
President, Life Fitness

EXHIBIT B

*P.S. Remember, order today and receive shipping and handling ABSOLUTELY FREE! That's a \$69.00 value!*

*P.P.S. Take advantage of our 30-day in-home trial – it's the first step towards a lifetime of health and fitness.*

**1-800-877-3867**  
CALL FOR A 30-DAY "TEST RIDE!"

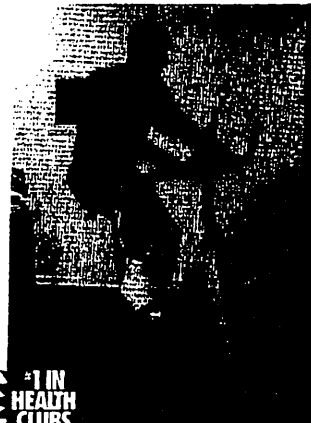
300-160  
LIFE FIT

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EXHIBIT C

**OWN THE #1 HEALTH CLUB EXERCISE BIKE IN AMERICA.**



**LIFECYCLE**  
AEROBIC TRAINER

**THE CALORIE BURNER THAT REVOLUTIONIZED AMERICA'S HEALTH CLUBS.**

**#1 IN HEALTH CLUBS**

**THE ONLY IN-HOME BIKE WITH HEALTH CLUB QUALITY!**

Lifecycle's aerobic trainers revolutionized health clubs with the first computer consoles and motivating workout programs. Now you can own the same exercise bike found in over 90% of health clubs nationwide. Lose weight, tone muscles, reduce stress and improve your cardiovascular conditioning—all on your own schedule with the Lifecycle 5500 in your home.

**BURN OVER 1300 CALORIES AN HOUR!**

Ride just 20 minutes a day, three days a week, on the Lifecycle 5500 and you'll see results. This non-weight-bearing exercise burns maximum calories and gives you top cardiovascular training. Developed by Life Fitness, the leader in health club equipment, the Lifecycle 5500 lets you comfortably watch TV, read or talk on the phone while you reach your fitness goals!

**MOTIVATIONAL PROGRAMS KEEP THE WEIGHT OFF!**

The Lifecycle 5500 features five motivational workout programs, including the popular Hill Profile that simulates outdoor riding by automatically varying the pedal resistance as you conquer hills and valleys. The computer console continuously displays your progress as your fitness level improves, so that you will stay motivated and challenged.



Lifecycle 5500 console.

**THE FIRST 30-DAY NO COST TRIAL OFFER—CALL TODAY!**

Call now to try the Lifecycle 5500 FREE for 30 days. Should you feel it's not the best home workout ever, we'll pick it up free of charge and return your uncashed check or debit your credit card data. After 30 days it

costs only \$29.95 per month. Plus, order today and receive 0% financing and free shipping and handling—a total savings of over \$100! Join over 17 million daily Lifecycle trainer users. Call today!

**0% FINANCING! ONLY \$29.95 PER MONTH**

**CALL BEFORE DECEMBER 31, 1995 FOR 0% FINANCING & FREE SHIPPING & HANDLING**

**1-800-877-3867**

Dept. 3849

YES! I'm ready for a health club workout at home! Please send me the order information for this limited time offer! I'll send you the Lifecycle 5500 to my FREE TRIAL 30 days!

Please send me a FREE booklet.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Debit phone: \_\_\_\_\_

Card number: \_\_\_\_\_

Life Fitness  
The Lifecycle Station, Dept. 3849  
991 W. Shiloh Ave., Itasca, IL 60143

**CALL 1-800-877-3867 FOR MORE INFORMATION OR THE RETAILER NEAREST YOU.**

No down payment, 0% financing, plus state sales tax. Finance offer may not be available in all retail locations. This offer is only valid in the U.S. Offer subject to credit approval. © 1995 Life Fitness. All rights reserved. Life Fitness and Lifecycle are registered trademarks of Life Fitness. 472-214-0165.

Sports Illustrated  
p. 4, 12  
LIFE FITNESS, PED. 2, MEDS and S, MP, 95-3865

EXHIBIT C

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent and its general partner, The Life Fitness Companies L.P., having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its general partner, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent and its general partner 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 respondent or its general partner 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 respondent has 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 Life Fitness is a general partnership organized, existing, and doing business under and by virtue of the laws of the State of New York with its offices and principal place of business located at 10601 West Belmont Avenue, in the City of Franklin Park, State of Illinois.

The Life Fitness Companies L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 10601 West Belmont Avenue, in the City of Franklin Park, State of Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent and respondent's general partner, and the proceeding is in the public interest.

### 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. Unless otherwise specified, "*respondent*" shall mean Life Fitness, a general partnership, and its successors and assigns.

3. Unless otherwise specified, references to respondent's "*general partner*" shall mean The Life Fitness Companies L.P., a limited partnership, and its successors and assigns.

4. Unless otherwise specified, "*the partnerships*" shall mean respondent and its general partner as defined in this order.

5. "*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 respondent and its general partner, and their officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any "Lifecycle," or any other exercise equipment in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

A. About the rate at which users burn calories, or the number of calories users burn, through use of such product;

B. About the weight loss or fat loss users achieve through use of such product; or

C. About the benefits, performance, or efficacy of such product with respect to calorie burning, fat burning, or weight loss,

unless, at the time the representation is made, respondent and its general partner 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 respondent and its general partner, and their officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research relating to calorie burning, fat burning, or weight loss.

## III.

*It is further ordered,* That respondent and its general partner 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 materials that were relied upon in disseminating the representation; and

B. 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 and its general partner shall deliver a copy of this order to all current and future principals, partners, 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 this order to future personnel as required by this Part shall terminate three (3) years after the date upon which this

order becomes final. Respondent and its general partner 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 and its general partner shall notify the Commission at least thirty (30) days prior to any change in the partnership(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, incorporation, or other action that would result in the emergence of a successor entity; 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 partnership name or address. Provided, however, that, with respect to any proposed change in the partnership about which the partnerships learn less than thirty (30) days prior to the date such action is to take place, the partnerships 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.

VI.

*It is further ordered,* That respondent and its general partner 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.

VII.

This order will terminate on September 9, 2017, 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 party 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 or its general partner 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.

Commissioner Azcuenaga concurring in part and dissenting in part.

STATEMENT OF COMMISSIONER AZCUENAGA  
CONCURRING IN PART AND DISSENTING IN PART

I concur in the Commission's final decision and order in this matter except to the extent that The Life Fitness Companies, L.P. (the parent company of Life Fitness), although not named in the complaint or in the caption of the order, is included in the order's substantive provisions. Rather than consenting to be named in the complaint and order, The Life Fitness Companies, L.P., has agreed to be bound by the order as if it were a named respondent. It is fundamental that complaints are the predicate on which Commission orders must be based. *See* 15 U.S.C. 45(b). Either Life Fitness Companies, L.P., as a party responsible in whole or in part for the unlawful conduct alleged, should be included in both the complaint and the order, or the company should be removed from the order.

Only those persons named in Commission complaints as alleged wrongdoers, their successors or assigns, or those who are employed by or otherwise are subject to the direction and control of such parties, should be included in Commission orders. The Life Fitness Companies, L.P., owns 99% of the named respondent and thereby controls, or is capable of controlling, its subsidiary's actions rather than the reverse. Indeed, it may have participated in some way in the actions challenged in the complaint, but I see no basis under Section 5 of the FTC Act for imposing an order to cease and desist on a nonparty.

Modifying Order

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IN THE MATTER OF

## OERLIKON-BUHRLE HOLDING AG

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF  
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT*Docket C-3555. Consent Order, Feb. 1, 1995--Modifying Order, Sept. 9, 1997*

This order reopens a 1995 consent order -- involving Oerlikon-Buhrle's acquisition of Leybold AG -- and modifies the consent order by substituting a prior notice provision for the prior approval provision of the consent order.

## ORDER REOPENING AND MODIFYING ORDER

On May 12, 1997, Oerlikon-Buhrle Holding AG ("Oerlikon"), the respondent named in the consent order issued by the Commission on February 1, 1995, in Docket No. C-3555 ("order"), filed its Petition To Reopen and Modify Consent Order ("Petition") in this matter.

Oerlikon asks that the Commission reopen and modify the order pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and consistent with the Statement of the Federal Trade Commission Concerning Prior Approval and Prior Notice Provisions, issued June 21, 1995 ("Prior Approval Policy Statement"),<sup>1</sup> to eliminate the requirement that Oerlikon obtain the prior approval of the Commission before acquiring certain assets or interests relating to the manufacture and sale of compact disc metallizer machines or turbomolecular pumps. Oerlikon's Petition was on the public record for thirty days until May 14, 1997, and no comments were received. As discussed below, the prior approval requirement of paragraph VII of the order is set aside and a limited prior notice provision is substituted in paragraph VII.

The Commission, in its Prior Approval Policy Statement, concluded that a general policy of requiring prior approval is no longer needed, citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. 18a, to protect the public interest in effective merger law enforcement. Prior approval or prior notice may be appropriate in the public interest in certain limited circumstances. For example, a narrow prior approval provision may be appropriate "where there is

<sup>1</sup> 60 Fed. Reg. 39,745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.



a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger," and "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger." *Id.* at 3. The need for prior approval or prior notice will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors.

When a petition is filed to reopen and modify an order pursuant to the Prior Approval Policy Statement, the rebuttable presumption is that the public interest requires reopening the order and modifying it consistent with the announced policy. Setting aside the prior approval requirement in the order would be consistent with the announced policy. Characteristics of the markets identified in the complaint and order suggest, however, that a limited prior notice provision would be appropriate. The markets identified in the complaint remain concentrated, and an acquisition by Oerlikon of a significant competitor in one of the markets may not be reportable under the Hart-Scott-Rodino Act. A prior notice requirement would ensure the opportunity to review any such transactions. Therefore, consistent with the Prior Approval Policy Statement, paragraph VII of the order should be modified to substitute a prior notification provision for the prior approval provision.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened; and

*It is further ordered*, That paragraph VII of the order be, and it hereby is, modified as of the effective date of this order as follows:

#### VII.

*It is further ordered*, That, for a period of ten (10) years from the date this order becomes final, Oerlikon Buhrlé shall not, without prior notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any of the stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition, the manufacture of turbomolecular pumps;

B. Acquire any assets used for or previously used for (and still suitable for use for) the manufacture, distribution, or sale of turbomolecular pumps;

C. Acquire any of the stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition, the manufacture of compact disc metallizers; or

D. Acquire any assets used for or previously used for (and still suitable for use for) the manufacture, distribution, or sale of compact disc metallizers.

Provided, however, that this paragraph VII shall not apply to the acquisition of products or services in the ordinary course of business, or of any non-exclusive license to any patent or other form of intellectual property (excluding assets of the Leybold Compact Disc Business and Balzers-Pfeiffer).

The prior notifications required by this paragraph VII shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that Part, except that no filing fee shall be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondent shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Notwithstanding, prior notification shall not be required by this paragraph for a transaction for which notification is required to be made and has been made pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

IN THE MATTER OF  
EXXON CORPORATION

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

*Docket 9281. Complaint, Sept. 11, 1996--Decision, Sept. 12, 1997*

This consent order requires, among other things, the respondent to produce a nationwide consumer education campaign informing consumers that regular gasoline, not high octane gasoline, is right for most cars, and also requires the production of a free consumer brochure, concerning gasoline octane, to be distributed, for two years, to Exxon's service stations nationwide. In addition, the consent order prohibits Exxon from making claims concerning the engine cleaning ability of any gasoline or the effect of any gasoline on automobile maintenance or maintenance costs without adequate scientific evidence to substantiate the claims.

*Appearances*

For the Commission: *Theodore H. Hoppock, Joel Winston, Beth Grossman, Sydney Knight and Michael Dershowitz.*

For the respondent: *S. William Livingston, Robert D. Wick and Eugene I. Lambert, Covington & Burling, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Exxon Corporation, a corporation ("respondent"), has 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 is a New Jersey corporation with its principal office or place of business at 225 E. John W. Carpenter Freeway, Irving, Texas.
2. Respondent has advertised, offered for sale, sold, and distributed gasoline and other petroleum products to the public, including Exxon Supreme 93 octane gasoline, Exxon Plus 89 octane gasoline, and Exxon Regular 87 octane gasoline.
3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
4. Respondent has disseminated or caused to be disseminated advertisements for Exxon gasoline, including but not necessarily

limited to the attached Exhibits A through E. These advertisements contain the following statements and depictions:

A. Announcer: There's a new gasoline. . .

Man: What's new about it?

Announcer: With the power to drive down maintenance costs.

[Video: Flashing display of consecutive words in large bold type across width of screen: WITH THE POWER TO DRIVE DOWN MAINTENANCE COSTS]

Man #2: Really?

Woman: Are you serious?

Announcer: Yes we are! New Exxon 93 Supreme keeps your engine cleaner.

Woman #2: Clean is good.

Announcer: So it can help drive down maintenance costs.

Man #2: Could gas do that?

Announcer: New Exxon 93 Supreme can, with the power to drive down maintenance costs.

Woman #2: Gas that can save you money.

Announcer: For more reliable performance.

Woman #3: Okay, I'll try it.

[Exhibit A. Television Advertisement]

B. Announcer: There's a new gasoline. . .

Man: What's new about it?

Announcer: With the power to drive down maintenance costs.

[Video: Flashing display of consecutive words in large bold type across width of screen: WITH THE POWER TO DRIVE DOWN MAINTENANCE COSTS]

Man #2: Really?

Woman: Are you serious?

Announcer: Yes we are! New Exxon gasoline keeps your engine cleaner.

Woman #2: Clean is good.

Announcer: So it can help drive down maintenance costs.

Man #2: Could gas do that?

Announcer: New Exxon gasoline can, with the power to drive down maintenance costs.

Woman #2: Gas that can save you money.

Announcer: For more reliable performance.

Woman #3: Okay, I'll try it.

[Exhibit B. Television Advertisement]

C. Announcer: There's a hard-working gasoline. . .

Man: You sure about this?

Announcer: With the power to drive down maintenance costs.

[Video: Flashing display of consecutive words in large bold type across width of screen: WITH THE POWER TO DRIVE DOWN MAINTENANCE COSTS]

Man: Really?

Woman: Are you serious?

Announcer: Yes we are. Exxon gasoline keeps your engine cleaner.

Woman: Clean is good.

Announcer: So it can help drive down maintenance costs.

Man: Can gas do that?

Announcer: Exxon gasoline can, with the power to drive down maintenance costs.

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Woman: Good idea.  
Announcer: And so is this. Cash and credit prices are the same.  
Woman: Okay, I'll try it.  
[Exhibit C. Television Advertisement]  
D. Announcer: There's a hard-working gasoline. . .  
Man: You kiddin' me?  
Announcer: With the power to drive down maintenance costs.  
Man: Really?  
Woman: Are you serious?  
Announcer: Yes, we are. Exxon 93 Supreme gasoline keeps your engine cleaner.  
Woman: Clean is good.  
Announcer: So it can help drive down maintenance costs.  
Man: Could gas do that?  
Announcer: Exxon 93 Supreme can. With the power to drive down maintenance costs.  
Woman: Gas that can save you money.  
Announcer: For more reliable performance.  
Woman: Ok, I'll try it.  
[Exhibit D. Radio Advertisement]  
E. Announcer: There's a hard working gasoline. . .  
Man: You sure about this?  
Announcer: With the power to drive down maintenance costs.  
Man: Really?  
Woman: Are you serious?  
Announcer: Yes, we are. Exxon gasoline keeps your engine cleaner.  
Woman: Clean is good.  
Announcer: So it can help drive down maintenance costs.  
Man: Could gas do that?  
Announcer: Exxon gasoline can. With the power to drive down maintenance costs.  
Woman: Gas that can save you money.  
Announcer: For more reliable performance.  
Woman: Ok, I'll try it.  
[Exhibit E. Radio Advertisement]

5. Through the means described in paragraph four, including but not necessarily limited to Exhibits A and D, respondent has represented, expressly or by implication, that:

A. Switching to Exxon 93 Supreme gasoline from other brands of gasoline will significantly reduce automobile maintenance costs for consumers generally; and

B. Switching to Exxon 93 Supreme gasoline from lower octane grades of Exxon gasoline will significantly reduce automobile maintenance costs for consumers generally.

6. Through the means described in paragraph four, including but not necessarily limited to Exhibits B, C and E, respondent has represented, expressly or by implication, that switching to Exxon gasolines from other brands of gasoline will significantly reduce automobile maintenance costs for consumers generally.

7. Through the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraphs five and six, at the time the representations were made.

8. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraphs five and six, at the time the representations were made. Therefore, the representation set forth in paragraph seven was, and is, false or misleading.

9. The acts and practices of respondent 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.

EXHIBIT A

TV

PRODUCT EXXON PETRO GASOLINE  
TITLE "A NEW GASOLINE"  
PROGRAM NEWS  
STATION WABC

Exhibit A

5/15/95 30  
(NEW YORK) 11 27PM



(MUSIC)  
WOMAN SING: People stopping  
by.



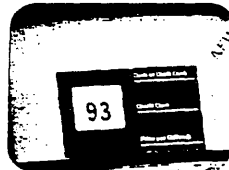
ANNCR: There's new gasolins--  
1st MAN: What's new about it?



ANNCR: --with the power



to drive down maintenance cost.  
1st MAN: Really?



1st WOMAN: Are you serious?  
ANNCR: Yes we are.



New Exxon 93 Supreme keeps  
your engine cleaner.  
2nd WOMAN: Clean is good.



ANNCR: So it can help drive down  
maintenance cost. (MUSIC)



2nd MAN: Could gas do that?  
ANNCR: New Exxon 93 Supreme  
can.



with the power to drive down  
maintenance cost.  
2nd WOMAN: Gas that can save  
you money!



ANNCR: For more reliable  
performance.  
2nd WOMAN: Okay, I'll try it.



WOMAN SING: People stopping by  
to get.



on the Tiger  
MUSIC OUT

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE  
The Exxon 93 Supreme is a new, high quality motor fuel. It's the only motor fuel that's been shown to  
keep your engine cleaner, longer. It's the only motor fuel that's been shown to help you save money on  
gas. It's the only motor fuel that's been shown to help you save money on maintenance. It's the only motor fuel  
that's been shown to help you save money on everything. It's the only motor fuel that's been shown to help you  
save money on everything. It's the only motor fuel that's been shown to help you save money on everything.

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EXHIBIT B

Exhibit B

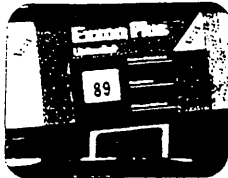
**RTV**  
 317 Madison Avenue, New York, NY 10017 (212) 309-1400

PRODUCT: EXXON PETRO GASOLINE  
 TITLE: "MORE RELIABLE PERFORMANCE"  
 PROGRAM: NEWS  
 STATION: KDKA

7/17/95 :30  
 (PITTSBURGH) 6:21PM



(MUSIC)



ANNCR: There's a new gasoline--



1st MAN: What's new about it?



ANNCR: --with the power to drive down maintenance costs.  
1st MAN: Really?



1st WOMAN: Are you serious?  
ANNCR: Yes, we are. New Exxon gasoline keeps your engine cleaner.



2nd WOMAN: Cleaner is good.



ANNCR: So it can help drive down maintenance costs. 2nd MAN: Could gas do that?



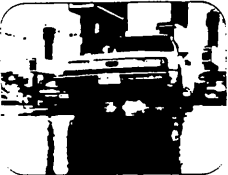
ANNCR: New Exxon gasoline can, with the power to drive down maintenance costs--



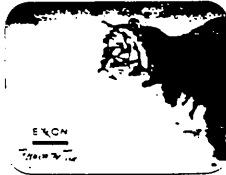
2nd WOMAN: Gas that can save you money, ANNCR: --for more reliable performance.



3rd WOMAN: Okay, I'll try it.



WOMAN SINGS: People stoppin' by



to rely on the tiger. (MUSIC OUT)

**ALSO AVAILABLE ON VIDEO-TAPE CASSETTE**  
 ©1995 Exxon Company, a division of ExxonMobil. All rights reserved. EXXON, EXXON PLUS, and EXXON MOBIL are registered trademarks of Exxon Company, a division of ExxonMobil. All other trademarks are the property of their respective owners.



EXHIBIT C

Exhibit C

**RTV**  
 317 Madison Avenue, New York, NY 10017 (212) 309-1400

PRODUCT: EXXON PETRO GASOLINE  
 TITLE: "A HARD WORKING GASOLINE"  
 PROGRAM: GOOD DAY NEW YORK  
 STATION: WNYW  
 01/22/96  
 (NEW YORK)

30  
 8 10AM



(MUSIC/SFX) (VARIOUS VOICES)



ANNCR: There's a hard working gasoline..



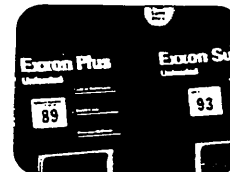
MAN: You sure about this?



ANNCR: --with the power to drive down



maintenance costs. MAN: Really? WOMAN: Are you serious? ANNCR: Yes we are. Exxon Gasoline keeps your engine



cleaner. WOMAN: Clean is good. ANNCR: So it can help drive down maintenance costs. MAN: Can gas do that? ANNCR: Exxon Gasoline



can. with the power to drive down maintenance costs. WOMAN: Good idea.



ANNCR: And so is this. Cash and



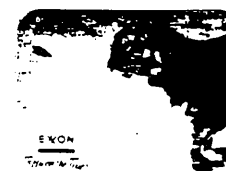
credit prices are the same.



WOMAN: Okay I'll try it.



WOMAN SINGS: People stoppin' by to rely



on the tiger. MUS C DLT

ALSO AVAILABLE ON VIDEO-TAPE CASSETTE  
 New York: 212-309-1400  
 New York: 212-309-1400  
 New York: 212-309-1400

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## EXHIBIT D

Exhibit D

## McCANN-ERICKSON HOUSTON

McCann-Erickson, Inc., 1260 Post Oak Boulevard, Suite 1900, Houston, Texas 77066 TEL 985-0305

C-6EX30-EX18  
 "SOUNDBITES" MAINTENANCE COSTS  
 "NON-NEW" SUPREME VERSION

<i>Client</i>	EXXON CO. U.S.A.
<i>Product</i>	MOTOR GASOLINE
<i>Format</i>	:30 RADIO
<i>Status</i>	AS RECORDED
<i>Job No.</i>	1208-95
<i>Date</i>	12/13/95

MUSIC: "PEOPLE STOPPIN BY" THEME UP AND UNDER

ANNCR: There's a hard-working gasoline...

MAN: You kiddin' me?

ANNCR: With the power to drive down maintenance costs.

MAN: Really?

WOMAN: Are you serious?

ANNCR: Yes, we are. Exxon 93 Supreme keeps your engine cleaner--

WOMAN: Clean is good.

ANNCR: So it can help drive down maintenance costs--

MAN: Could gas do that?

ANNCR: Exxon 93 Supreme can. With the power to drive down maintenance costs.

WOMAN: Gas that can save you money.

ANNCR: For more reliable performance.

WOMAN: OK, I'll try it.

SINGERS: PEOPLE STOPPIN' BY TO RELY ON THE TIGER.

## EXHIBIT E

Exhibit E

## McCANN-ERICKSON HOUSTON

McCann-Erickson, Inc., 1380 Post Oak Boulevard, Suite 1900, Houston, Texas 77066 713-866-0900

<i>Client</i>	EXXON CO. U.S.A.
<i>Product</i>	MOTOR GASOLINE
<i>Format</i>	:30 RADIO
<i>Status</i>	AS RECORDED
<i>Job No.</i>	1600-96
<i>Date</i>	01/11/96

"NON-NEW" SOUNDBITES  
ALL GRADES VERSION

MUSIC: "PEOPLE STOPPIN BY" THEME UP AND UNDER

ANNCR: There's a hard-working gasoline...

MAN: You sure about this?

ANNCR: With the power to drive down maintenance costs.

MAN: Really?

WOMAN: Are you serious?

ANNCR: Yes, we are. Exxon gasoline keeps your engine cleaner--

WOMAN: Clean is good.

ANNCR: So it can help drive down maintenance costs--

MAN: Could gas do that?

ANNCR: Exxon gasoline can. With the power to drive down maintenance costs.

WOMAN: Gas that can save you money.

ANNCR: For more reliable performance.

WOMAN: OK, I'll try it.

SINGERS: PEOPLE STOPPIN' BY TO RELY ON THE TIGER.

## DECISION AND ORDER

The Federal Trade Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a copy of the contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondent 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter by interested persons pursuant to Section 3.25(f) of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Exxon Corporation is a New Jersey corporation, with its offices and principal place of business located at 225 E. John W. Carpenter Freeway, Irving, Texas.

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

## 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. Unless otherwise specified, "*respondent*" shall mean Exxon Corporation, its successors and assigns, and its officers, agents, representatives and employees.

3. "*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 respondent, 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 Exxon Supreme 93 octane gasoline, Exxon Plus 89 octane gasoline, Exxon Regular 87 octane gasoline or any other gasoline of any grade or octane rating in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, concerning the engine cleaning ability of any gasoline (including a constituent ingredient, octane rating or grade thereof); or the effect of any gasoline (including a constituent ingredient, octane rating or grade thereof) on automobile maintenance or automobile maintenance costs, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

For purposes of this Part, any representation, directly or by implication, that any gasoline will keep clean fuel injector deposits to a level that engine performance is not adversely affected by such deposits is deemed to be substantiated if respondent possesses and relies upon competent and reliable testing demonstrating no more than 5 percent flow restriction in each injector over the accumulation of 10,000 miles, in accordance with the test procedures and performance standards for port fuel injector deposit control set forth by the United States Environmental Protection Agency at 40 CFR 80.161-80.173 (1996). If this regulation is formally superseded or amended by the EPA, then compliance with the superseding or amended regulation shall be deemed substantiation for such representation.

For purposes of this Part, any representation, directly or by implication, that any gasoline will clean up fuel injector deposits to

a level that engine performance is not adversely affected by such deposits is deemed to be substantiated if respondent possesses and relies upon competent and reliable testing demonstrating that the flow rate in each injector is restored to no more than 5 percent flow restriction over the accumulation of 10,000 miles.

For purposes of this Part, any representation, directly or by implication, that a gasoline will keep clean intake valve deposits to a level that engine performance is not adversely affected by such deposits is deemed to be substantiated if respondent possesses and relies upon competent and reliable testing demonstrating intake valve deposit weight of less than 100 mg-per-valve on average over the accumulation of 10,000 miles, in accordance with the test procedures and performance standards for intake valve deposit control set forth by the United States Environmental Protection Agency at 40 CFR 80.161-80.173 (1996). If this regulation is formally superseded or amended by the EPA, then compliance with the superseding or amended regulation shall be deemed substantiation for such representation.

For purposes of this Part, any representation, directly or by implication, that a gasoline will clean up intake valve deposits to a level that engine performance is not adversely affected by such deposits is deemed to be substantiated if respondent possesses and relies upon competent and reliable testing demonstrating that the intake valve deposit weight is restored to less than 100 mg-per-valve on average over the accumulation of 10,000 miles.

Provided, however, that nothing in this order shall prohibit respondent from truthfully representing the numerical octane rating of any gasoline.

## II.

*It is further ordered,* That respondent shall produce and disseminate an educational television message as set forth below:

A. The message shall be fifteen (15) seconds in length and shall contain the audio and video elements set forth in Appendix A to this order. The message shall not contain any audio or visual element or technique that materially alters, obscures or detracts from the communication of the statements contained therein. Respondent shall submit a videotape of the message to Commission staff at least twenty (20) days prior to the first scheduled broadcast of the message.

B. The message shall be broadcast in the eighteen markets in the United States set forth in Appendix B to this order.

C. The message shall be broadcast during two different periods of time: (1) the last three weeks of September 1997 and (2) beginning no less than thirty (30) days after the termination of the first period, but completed no later than November 21, 1997. For each period of time, the message shall be broadcast over the course of not less than two weeks.

D. For the September 1997 period in which the message is broadcast, 178 "Target Rating Points (TRPs)" shall be purchased by respondent to achieve a "percentage reach" of the "target audience" of sixty-five percent (65%) plus or minus five tenths of one percent ( $\pm .5\%$ ) and an "average frequency of exposure" of 2.70 plus or minus five one hundredths ( $\pm .05$ ) for each market in which the message is broadcast. For the October/November 1997 period in which the message is broadcast, 104 "Target Rating Points (TRPs)" shall be purchased by respondent to achieve a "percentage reach" of the "target audience" of fifty-one percent (51%) plus or minus five tenths of one percent ( $\pm .5\%$ ) and an "average frequency of exposure" of 2.00 plus or minus five one hundredths ( $\pm .05$ ) for each market in which the message is broadcast. For purposes of this part, "percentage reach" shall mean the percentage of different persons of the target audience that view the message at least once in each period of time the message is broadcast as determined by an established audience rating service; "target audience" shall mean the 18-49 year old component of the viewing audience; "average frequency of exposure" shall mean the average number of different times the members of the target audience view the message as determined by an established audience rating service; and "Target Rating Points (TRPs)" shall mean the mathematical product of the percentage reach and the average frequency of exposure.

E. Respondent shall monitor the purchase of each dissemination schedule and shall provide to Commission staff a written report indicating the purchase of the required Target Rating Points in each market for each time period in which the message is to be broadcast. Respondent shall submit this purchase report at least fifteen (15) days prior to the start of the first broadcast of the message in September 1997 and at least fifteen (15) days prior to the start of the first broadcast of the message in October/November 1997.

F. For each of the two time periods during which the message is broadcast, as set forth above, respondent shall submit to Commission

staff a written report detailing the TRPs achieved by the message in each of the markets in which it was broadcast. The report shall be based on ratings provided by an established audience ratings service. Each report shall be submitted within one hundred twenty (120) days after the last day of the calendar quarter in which the message was broadcast, but in any event no later than thirty (30) days after respondent's receipt of said ratings. In any market where the message fails to achieve ninety percent (90%) of the total TRPs purchased for each dissemination period, as set forth above, respondent shall use its best efforts to obtain compensatory (or additional) time to rebroadcast the message to achieve the TRPs purchased in each market within sixty (60) days following the presentation to Commission staff of each written report. Respondent shall monitor any compensatory broadcasts of the message and provide to Commission staff a final written report detailing the TRPs achieved by the message in each of the markets in which it was rebroadcast.

### III.

*It is further ordered,* That respondent shall produce, print and distribute to Exxon service stations a color brochure entitled "Answering Your Questions About Octane," as set forth below:

A. The brochure shall be in the form and content set forth in Appendix C to this order. Respondent shall submit a production-ready copy of the brochure to Commission staff at least twenty (20) days prior to the first scheduled distribution of the brochure to Exxon service stations.

B. Respondent shall distribute the brochure, in quantities sufficient to meet reasonably anticipated demand, to every Exxon service station in the United States, within sixty (60) days after the date of service of this order. With respect to Exxon-operated service stations, respondent shall instruct the stations to make the brochures available in a prominent and readily accessible location at the station, such as at the gasoline pump islands. With respect to independently-operated Exxon service stations, respondent shall use its best efforts to encourage the stations to make the brochures available in a prominent and readily accessible location.

C. Respondent shall distribute the brochures to Exxon service stations at no cost to the stations or the public.

D. Respondent shall monitor the demand for and supply of brochures at Exxon service stations, and shall continue to produce



and distribute the brochures as necessary to meet reasonably anticipated demand for a period of at least two (2) years after the date of service of this order.

E. Respondent shall provide to Commission staff written reports detailing the total number of brochures printed and distributed to Exxon service stations, including any additional distributions of brochures to stations subsequent to the initial distribution. Respondent shall submit such reports every six (6) months, beginning six (6) months after the initial distribution of brochures to Exxon service stations, and continuing for two (2) years thereafter.

#### IV.

*It is further ordered,* That respondent Exxon Corporation, and its successors and assigns, shall, for three (3) 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.

#### V.

*It is further ordered,* That respondent Exxon Corporation, and its successors and assigns, shall within thirty (30) days after the date of service of this order distribute a copy of this order to all operating divisions, subsidiaries, and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements or promotional sales materials covered by this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order.

## VI.

*It is further ordered,* That respondent Exxon Corporation, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation 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.

## VII.

*It is further ordered,* That respondent Exxon Corporation shall, within sixty (60) days after service of this order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

## VIII.

This order will terminate on September 12, 2017, 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.

Commissioner Azcuenaga concurring in part and dissenting in part, and Commissioner Starek recused.

"Octane Story - Scenario" TV116

APPENDIX A

Hi, I'm Sherri Stawer. I run Exxon's Baytown Refinery.

We offer three octane grades. Which is right for you?

Most cars will run properly on regular octane, so check your owner's manual...

and stop by Exxon for this helpful pamphlet.

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## APPENDIX B

1997 EXXON GASOLINE  
Stand-alone :15's for September, November flights

---:15 in 18 Markets---

	Target Impr (000)	TRPs	Gross Impr (000)	GRPS
Baltimore	3,666	282	4,651	470
Baton Rouge	1,010	282	1,270	470
Dallas	7,104	282	8,688	470
Houston	6,373	282	7,498	470
New York	25,544	282	31,544	470
Norfolk	2,374	282	2,969	470
Philadelphia	9,526	282	12,474	470
Richmond	1,760	282	2,166	470
San Antonio	2,391	282	3,016	470
Washington, DC	7,591	282	8,970	470
	67,339	282	83,246	470
Austin	1,605	282	2,050	470
Boston	7,992	282	10,106	470
Charleston --				
Huntington	1,610	282	2,269	470
Corpus Christi	592	282	847	470
Nashville	2,685	282	3,680	470
Orlando	3,243	282	4,803	470
Pittsburgh	3,658	282	5,400	470
Tampa	3,830	282	6,634	470
	25,214	282	35,788	470
18 Mkt Total	92,552	282	119,034	470

---Adults 18-49---

Schedule	% Rch	Avg	
Analysis:	<u>1+</u>	Freq	TRPS
September	65	2.7	178
November	51	2.0	104
Combined	75	3.7	282

## APPENDIX C

## Answering Your Questions About Octane

Q. What are Octane Ratings?

A. Octane ratings are a measure of a gasoline's ability to resist engine knock or pinging. The higher the octane rating, the greater the

gasoline's resistance to knock. Knock is a sharp, metallic-sounding, or pinging noise that results from uncontrolled combustion.

Q. What octane levels are available at Exxon stations?

A. Exxon offers three grades of unleaded gasoline at our service stations: 87 octane (Exxon Regular), 89 octane (Exxon Plus), and 93 octane (Exxon Supreme). In high altitude areas, such as the Rocky Mountains, the equivalent octane levels typically available are 85, 86 and 91. All three grades contain the same amount of our engine cleaning additive.

Q. What octane level is right for my car?

A. To find out what octane your engine needs, first check your owner's manual. The recommended level is often unleaded regular (87 octane). Some models have high compression engines which are designed to utilize the octane level in Exxon Plus or Supreme.

Ordinarily, your car will not benefit from using a higher octane than is recommended in the owner's manual. But if your engine knocks or pings at the recommended octane level, you may need a higher octane gasoline to prevent the knock. Knocking may occur under certain conditions. A small percentage of cars may knock because of variations in engines of the same model due to manufacturing tolerances, or because of an unusual build-up of engine deposits during the first 15,000 miles of driving. Other factors such as extremely hot weather, changes in altitude or hard driving conditions (like towing a heavy load) may also cause knocking.

Many modern cars are equipped with an electronic device that detects and eliminates light knocking before you hear it. The devices suppress knock by retarding the spark. Exxon believes that some of these cars may experience some deterioration of acceleration performance, without knocking, when operating under high engine demand conditions.

Q. Is knocking serious? What should I do if my car is knocking or pinging?

A. Occasional light knocking is not harmful to the engine, but heavy knocking or continuous operation with audible knock can cause loss of power and even engine damage. If your engine is knocking, switching to a higher octane gasoline may solve the problem. If the knocking or pinging continues after one or two fill-ups, have your engine checked by a qualified mechanic to make sure it is calibrated correctly and has no mechanical or electrical problems. You may need a tune-up or some repair work.

STATEMENT OF COMMISSIONER MARY L. AZCUENAGA  
CONCURRING IN PART AND DISSENTING IN PART

Last year, the Commission issued a complaint against Exxon Corporation and, in accordance with its practice, a Notice of Contemplated Relief, the title of which is self-explanatory. The complaint alleged that Exxon had made certain deceptive claims concerning the need for its premium gasoline. Today the Commission approves a settlement and issues a final decision and order that provides less relief than the Commission contemplated when it issued the complaint and less relief than it ordered against other companies that previously have settled similar charges.<sup>1</sup> I agree that the core provision of the order barring the allegedly deceptive claims is appropriate,<sup>2</sup> but I cannot agree to the omission of a broader provision barring Exxon from making unsubstantiated claims concerning "the relative or absolute attributes of any gasoline with respect to engine performance, power [or] . . . acceleration."

An injunctive provision covering not just the specific claims challenged in the complaint, but also, future deceptive claims of a similar nature is a common feature in Commission advertising orders. It provides an important deterrent, because any future advertising claims that do not comport with it are punishable by substantial civil penalties. The Commission previously has challenged similar advertising claims by three other gasoline companies, all of which, unlike Exxon, agreed to settlements without litigation, and all of which consented to inclusion of the broader injunctive relief omitted from this order.

Exxon's advertisements seem likely to have contributed to consumer misperceptions about the attributes of and the need for premium gasoline as much as gasoline advertisements run by the other companies. The more lenient injunctive coverage in Exxon's order will be less effective in deterring future deception and may create perverse incentives. In the future, companies may believe it is in their interest to decline negotiated settlement until after litigation has commenced if they think that the Commission will reward greater intransigence.

Narrowing the injunction might be worthwhile if some other effective remedy were added, and the order adds a provision that

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<sup>1</sup> See Sun Company, Inc., Docket C-3381 (consent order, May 6, 1992); Unocal Corporation, Inc., Docket C-3493 (consent order, April 24, 1994); Amoco Oil Company, Docket C-3655 (consent order, May 7, 1996).

<sup>2</sup> Order ¶ I.

requires Exxon to produce and disseminate a 15-second television commercial and distribute a certain number of copies of a brochure.<sup>3</sup> Given the apparently entrenched consumer misperceptions allegedly created by Exxon's challenged claims about the need for and attributes of premium gasoline, a consumer education remedy is justified. The goal of the consumer education campaign, to correct apparently widespread and assuredly costly consumer misperceptions about the benefits of high octane gasoline, is laudable. Unfortunately, I do not believe that this particular campaign is likely to be effective. The Commission has extensive experience with advertising techniques, and that experience should tell us that there is a good deal more to creating a successful advertisement than first meets the eye.<sup>4</sup> The commercial is uninspired at best, and we have no basis for concluding that it will be effective in conveying the desired message to consumers or in changing their misperceptions. The order does not provide a performance standard or other means of assuring that this goal will be met.<sup>5</sup>

Although it may be argued that we similarly have no assurance of the effectiveness of the broader injunction that was included in the Notice of Contemplated Relief, we have, at least, the assurance that further deceptive claims covered by the order may result in substantial civil penalties and, therefore, that the company may think twice before running advertisements that might mislead reasonable consumers about the attributes of particular gasoline products. In addition, the injunctive relief would remain in place for 20 years, far longer than the likely effects of the single short-lived advertising campaign provided in the order. On balance, I believe that the notice order is stronger. Perhaps the fact that Exxon was willing to agree to this order rather than the notice order should tell us something.

To the extent that the order is more narrow than the notice order, I respectfully dissent.

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<sup>3</sup> The text of the negotiated advertisement is:  
Hi, I'm Sherri Stuewer. I run Exxon's Baytown Refinery. We offer three octane grades. Which is right for you? Most cars will run properly on regular octane, so check your owner's manual...and stop by Exxon for this helpful pamphlet.

<sup>4</sup> The advertisement required by the order has not been copytested.

<sup>5</sup> The order could have specified survey methodology and required that the advertisement be revised as needed until the survey results showed that a minimum number or percentage of consumers actually took the intended educational message from the advertising spot. The Commission has taken this approach in the past. *RJR Foods, Inc.*, 83 FTC 7, 16-21 (consent order, July 13, 1973).



IN THE MATTER OF

ROGERIO MONTEIRO, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3767. Complaint, Sept. 12, 1997--Decision, Sept. 12, 1997*

This consent order requires, among other things, the California Spanish-language advertisers to have scientific evidence to substantiate any claims they make concerning the benefits, efficacy or performance of any food, drug, cosmetic or dietary supplement. The consent order also prohibits the respondents from using certain names that represent that a product prevents or retards hair loss, unless they can substantiate that it does. In addition, the consent order prohibits the respondents from misrepresenting the existence or conclusions of any test, study or research.

*Appearances*

For the Commission: *Thomas Carter and Susan Arthur.*

For the respondents: *Thomas Code, Reichard & Escalera, San Juan, Puerto Rico.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that Rogerio Monteiro and Eliana Crema ("respondents"), owners of the business known as Leeka Products, 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 Rogerio Monteiro is owner of Leeka Products, a sole proprietorship with its principal place of business at 1614 South Central Avenue, Glendale, California. Individually or in concert with others, Rogerio Monteiro formulates, directs, or controls the policies, acts, or practices of Leeka Products, including the acts or practices alleged in this complaint. His principal place of business is the same as that of Leeka Products.

2. Respondent Eliana Crema is married to Rogerio Monteiro and is also an owner of Leeka Products. Individually or in concert with others, she formulates, directs, or controls the policies, acts or practices of Leeka Products, including the acts or practices alleged in this complaint. Her principal place of business is the same as that of Leeka Products.

3. Respondents have advertised, offered for sale, sold and distributed Super Formula Reductora, Crema Sudadora Perfect Shape, and Tratamiento para Combatir la Caida del Cabello. Super Formula Reductora is a "food" and/or a "drug" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Crema Sudadora Perfect Shape is a "cosmetic" and/or a "drug" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Tratamiento para Combatir la Caida del Cabello is a "cosmetic" and/or a "drug" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

4. 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.

5. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Super Formula Reductora, including but not necessarily limited to the attached Exhibits A-1 and B-1. Translations of these advertisements and promotional materials have been provided by the respondents and are attached as Exhibits A-2 and B-2. The translations of the advertisements and promotional materials contain the following statements:

A. Naturally Leeka

"Super Formula Reductora"

Was created to help you lose weight successfully by controlling the metabolism, reducing appetite and burning fat.

3 daily tablets contain:

Chromium Picolinate (200 mcg): Regulate metabolism and burn fat.

Cider Vinegar (240 mg): Dissolve fat.

Phenylalamine [sic] (100 mg): Reduce appetite.

Kelp (100 mg): Iodine Creator. Maintain optimum metabolism function.

Herbal Complex (600 mg): Reduce excess fluids.

Soya Lecithin (600 mg): Disperse fat globules in the body and maintain a low cholesterol level.

Vitamin B-6 (50 mg): Responsible for the metabolism of fat, carbohydrates and proteins.

(Exhibit A-2)

B. Super Formula Reductora

"Super Formula Reductora" was created to help you lose weight successfully by: Controlling the metabolism, reducing appetite and burninmg [sic] fat. S.F.R. is formulated with 7 super ingredients in a natural base, including the patented Chromium Picolinate, which has demonstrated in clinical studies to be very effective in weight loss.

3 daily tablets contain:

Chromium Picolinate (200 mcg): Regulate metabolism, burn fat.

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Cider Vinegar (240 mg): Dissolve fat.

Phenylalamine (100 mg); [sic] Reduce appetite.

Kelp (100 mg): Iodine Creator - Maintain optimum metabolism function.

Herbal Complex (600 mg): Reduce excess fluids.

Soya Lecithin (600 mg): Disperse fat globules in the body and maintain a low cholesterol level.

Vitamin B-6 (50 mg): Responsible for the metabolism of fat, carbohydrates and proteins.

(Exhibit B-2)

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

- A. Super Formula Reductora will control and regulate metabolism.
- B. Super Formula Reductora will reduce appetite.
- C. Super Formula Reductora will burn or dissolve fat.
- D. Super Formula Reductora will cause weight loss.

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

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

9. Through the means described in paragraph five, respondents have represented, expressly or by implication, that scientific studies of Chromium Picolinate demonstrate that Super Formula Reductora causes weight loss.

10. In truth and in fact, scientific studies of Chromium Picolinate do not demonstrate that Super Formula Reductora causes weight loss. Therefore, the representation set forth in paragraph nine was, and is, false or misleading.

11. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Crema Sudadora Perfect Shape, including but not necessarily limited to the attached Exhibits B-1 and C-1. A translation of Exhibit B-1 has been provided by the respondents and is attached as Exhibit B-2. A translation of the relevant portion of Exhibit C-1 is attached as

Exhibit C-2. The translations of the advertisements and promotional materials contain the following statements:

A. Crema Sudadora - Perfect Shape

To have a beautiful body and be in good physical shape is the desire of all people. Perfect Shape can help you obtain better results from your workout because Perfect Shape activates circulation producing a "better sweat" in the areas that need it the most.

Sweating burns calories which is essential to lose inches.

(Exhibit B-2)

B. Crema Sudadora

Perfect Shape

To have a beautiful body and be in good physical shape is the desire of all people. Perfect Shape can help you obtain better results from your workout because Perfect Shape activates circulation producing a "better sweat" in the areas that need it the most.

Burn more calories by sweating more.

(Exhibit C-2)

12. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Crema Sudadora Perfect Shape, including but not necessarily limited to the attached Exhibit D. This English language advertisement contains the following statements:

SWEAT IT OUT & GET IN SHAPE!

Designed to improve the sweating process during your dynamic workout. Right where you need it the most.

Burn more calories by sweating more.

Get lean faster.

Get the most from your workout.

(Exhibit D)

13. Through the means described in paragraphs eleven and twelve, respondents have represented, expressly or by implication, that:

- A. Crema Sudadora Perfect Shape will cause better results from exercise.
- B. Crema Sudadora Perfect Shape will increase the number of calories burned during exercise.
- C. Crema Sudadora Perfect Shape will cause the user to get lean faster.

14. Through the means described in paragraphs eleven and twelve, respondents have represented, expressly or by implication,

that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph thirteen, at the time the representations were made.

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

16. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Tratamiento para Combatir la Caida del Cabello ["Treatment to Fight Hair Loss"], including but not necessarily limited to the attached Exhibit B-1. A translation of this advertisement has been provided by the respondents and is attached as Exhibit B-2. A translation of the name of the product has also been provided by the respondents and is attached as Exhibit B-3. The translation of the advertisement contains the following statements:

Tratamiento para Combatir la Caida del Cabello [Treatment to Fight Hair Loss]  
For Men and Women.

The most advanced treatment that combines 3 super products that help fight hair loss.

First Step (pre-shampoo): Contains Aloe and Biotin to leave hair clean, with body and texture.

Second Step: To deep clean scalp and pores.

Third Step: Increases blood flow to the scalp and nourishes the roots in a base of proteins, Biotin, Aloe and herbal extracts.

(Exhibits B-2 and B-3)

17. Through use of the trade name Tratamiento para Combatir la Caida del Cabello ["Treatment to Fight Hair Loss"] and through the means described in paragraph sixteen, respondents have represented, expressly or by implication, that Tratamiento para Combatir la Caida del Cabello will prevent or retard hair loss.

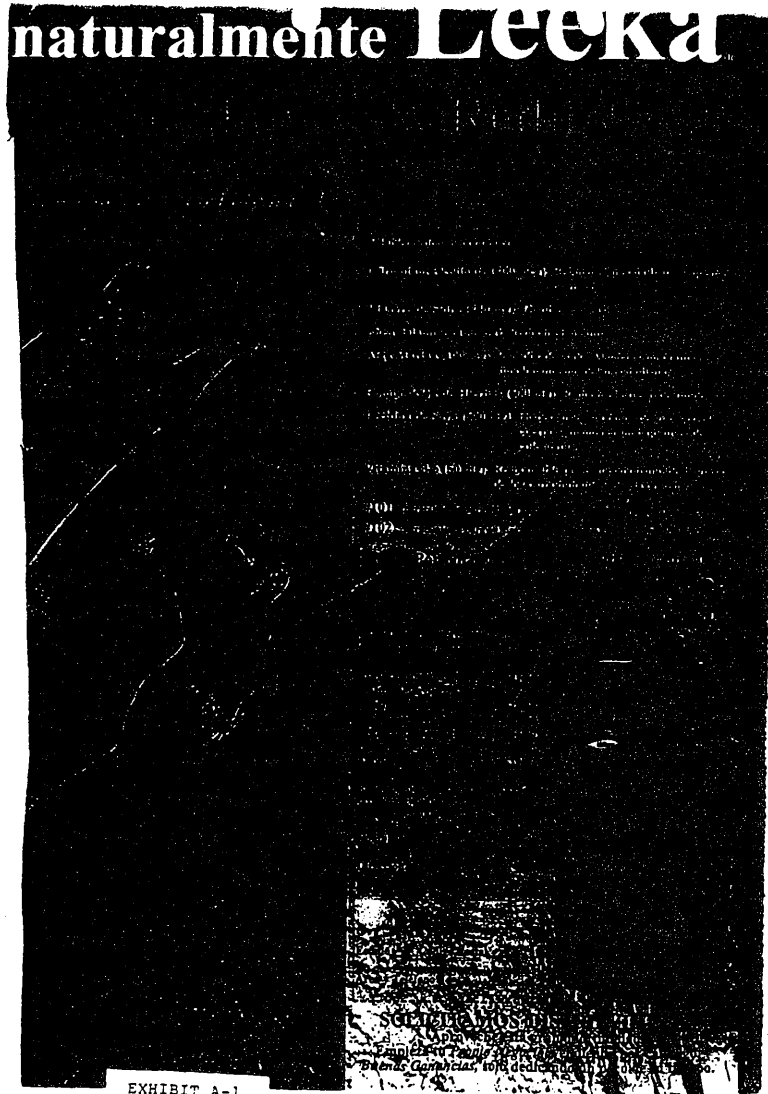
18. Through the means described in paragraph sixteen, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representation set forth in paragraph seventeen, at the time the representation was made.

19. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representation set forth in paragraph seventeen, at the time the representation was made.

Therefore, the representation set forth in paragraph eighteen was, and is, false or misleading.

20. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

EXHIBIT A-1



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## EXHIBIT A-2

## TRANSLATION

Naturally Leeka

"Super Formula Reductora"

Was created to help you lose weight successfully by controlling the metabolism, reducing appetite and burning fat.

3 daily tablets contain:

Chromium Picolinate (200 mcg): Regulate metabolism and burn fat.

Cider Vinegar (240 mg): Dissolve fat.

Phenylalamine (100 mg): Reduce appetite.

Kelp (100mg): Iodine Creator. Maintain optimum metabolism function.

Herbal Complex (600mg): Reduce excess fluids.

Soya Lecithin (600mg): Disperse fat globules in the body and maintain a low cholesterol level.

Vitamin B-6 (50mg): Responsible for the metabolism of fat, carbohydrates and proteins.

#101 30-day treatment \$19.50 + shipping charges.

#102 60-day treatment \$34.50 + shipping charges.

Toll free 1-800-505-3352 or 1-800-982-1090

Visa, Mastercard and C.O.D.

C.O.D.: Shipping charges paid upon delivery = \$9.50

By mail: Send this coupon and a check/money order to:

Leeka Products

644 West Broadway, Suite 102

Glendale, CA 91204

#101 One-month treatment	\$19.50
shipping charges	\$ 5.00
Total	\$24.50

#102 Two-month treatment	\$34.50
shipping charges	\$ 5.00
Total	\$39.50

California residents add 8.25% tax:

product #101 add \$1.61

product #102 add \$2.85

Name, Address, City, State and Zip Code

Area Code and Telephone Number

We request distributors.

Take this great opportunity.

Start your own business, selling by catalogue.

Good profits, only dedicating some of your time.

f:/B/C/233-001.2DO



EXHIBIT B-1

**Leeka**

**Sublime Belleza**

**Super Formula Reductora**

**PARA ORDENAR**

Envíe un CHEQUE o MONEDA ORDEN por el valor total de su pedido  
+ \$5.00 por gastos de envío a:

**Leeka Products Inc.**  
644 West Broadway, Suite 102  
Glendale, CA 91204  
(Si Ud. vive en California, agregue \$ 2.50 de más).

POR FAVOR INCLUYA SU NOMBRE, DIRECCIÓN Y NÚMERO DE TELÉFONO.

Visa/MasterCard  
**1-800-505-3352**

**SOLICITAMOS DISTRIBUIDORES**  
DISTRIBUIDORES LLAMEN AL: 1-800-505-3352

*Para los Hombres que prefieren tener una Vida Activa!*

Complaint

124 F.T.C.

## EXHIBIT B-2

## TRANSLATION

Sublime Belleza

Now available to you a treatment for specific skin problems: Acne, black heads, pimples, and clogged pores.

This treatment is effective in the correction and restoration of the skin. Gently removes dead cells, impurities and bacteria from the surface of the skin.

Spectacular results ... The beauty treatment that your skin deserves. #682 \$37.60

Super Formula Reductora

"Super Formula Reductora" was created to help you lose weight successfully by: Controlling the metabolism, reducing appetite and burning fat. S.F.R. is formulated with 7 super ingredients in a natural base, including the patented Chromium Picolinate, which has demonstrated in clinical studies to be very effective in weight loss.

3 daily tablets contain:

Chromium Picolinate (200 mcg): Regulate metabolism, burn fat.

Cider Vinegar (240 mg): Dissolve fat.

Phenylalamine (100 mg); Reduce appetite.

Kelp (100mg): Iodine Creator - Maintain optimum metabolism function.

Herbal Complex (600 mg): Reduce excess fluids

Soya Lecithin (600 mg): Disperse fat globules in the body and maintain a low cholesterol level.

Vitamin B6 (50mg): Responsible for the metabolism of fat, carbohydrates and proteins.

#101 \$19.50

#102 2 for only \$34.50

Tratamiento para Manchas de la Piel

Use this product to decolorate spots on your skin. Will also help to retard wrinkle formation and will maintain your skin young and luxuriant. This treatment can be used in the face, hands and other parts of the body.

Crema Sudadora - Perfect Shape

To have a beautiful body and be in good physical shape is the desire of all people. Perfect Shape can help you obtain better results from your workout because Perfect Shape activates circulation producing a "better sweat" in the areas that need it the most.

Sweating burns calories which is essential to lose inches.

#204 \$12.50

#208 2 for only \$20.50

#212 3 for only \$29.50

Tratamiento para Combatir la Caida del Cabello

For Men and Women

The most advanced treatment that combines 3 super products that help fight hair loss.

First Step (pre-shampoo): Contains Aloe and Biotin to leave hair clean, with body and texture.

Second Step: To deep clean scalp and pores.

Third Step: Increases blood flow to the scalp and nourishes the roots in a base of proteins, Biotin, Aloe and herbal extracts. #403 \$39.50

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Complaint

Aceite Rosa Mosqueta

This is unique oil is produced by a wild rose that grows in the fresh air of the mountains of Chile. Aceite Rosa Mosqueta has been studied by universities in Chile and laboratories in the United States and Germany. The studies identified the presence of trans-RETINIC acid which contains the properties of reducing scars and eliminating certain blemishes and wrinkles from the skin.

Recommended use: scars, premature aging, smoothing of fine wrinkles, stretch marks, minor burns.

100% Natural

#707 1 ounce for only \$24.50

Super Potencia para Hombres

It is specifically formulated with vitamins, minerals, herbs and glandulars essential to the vitality of men.

For men who prefer having an active life!

1 daily tablet contains:

L-Cartinine	10mg
L-Histidine	10mg
Raw testicular	50mg
Damiana Leaf	100mg
Siberian Ginseng	100mg
Sarsaparilla Root	100mg
Saw Palmeto Berries	100mg
Niacin	20mg
Pantothenic Acid	10mg
Vitamin B6	2mg
Vitamin B12	6mg
Vitamin E	30IU
Manganese	7mg
Zinc	15mg

To order: Send a check or money order for the total amount of your order + \$5.00 for shipping charges to:

Leeka Products

644 West Broadway, Suite 102

Glendale, CA 91204

(If you live in California, add \$8.25 tax)

Please include your name, address and telephone number.

Visa/Mastercard 1-800-505-3352

We request distributors. Distributors call 1-800-505-3352

## EXHIBIT B-3

#101 - Super Formula Reductora: *Super Reducing Formula*

#173 - Super Cellulite Control: *Super Cellulite Control*

#204 - Crema Sudadora Perfect Shape: *Perfect Shape sweating cream*

#403 - Tratamiento para Combatir la Caida del Cabello: *Treatment to Fight Hair Loss*

#423 - Super Potencia para hombres: *Super Potency for men*

#616 - Tratamiento para Manchas de la Piel: *Treatment for Skin Blemishes*

#682 - Sublime Belleza: *Sublime Beauty*

#707 - Aceite Rosa Mosqueta: *Rose Hips Oil*

EXHIBIT C-1

**Crema Sudadora  
Perfect Shape**

*Tener un cuerpo bello y estar en buena forma física es el deseo de todos. Perfect Shape puede ayudarle a usted a obtener mejores resultados del ejercicio que usted hace, porque Perfect Shape activa la circulación proporcionando un "Mejor Sudor" en las áreas que mas lo necesitan.*

Producto	Precio
#204.....	\$12.50
#208..... 2 por sólo	\$20.00
#212..... 3 por sólo	\$25.00

**Llame Gratis al  
1-800-505-3333**  
o al 1-800-982-0000  
Visa/MasterCard

Gastos de envío: Tarjetas de crédito y pedidos por teléfono \$3.00 + \$7.00

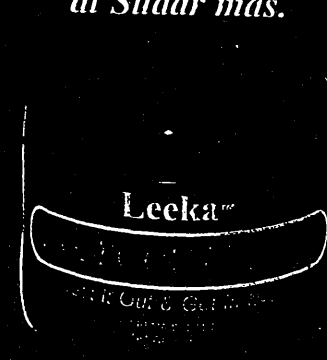
Envíe su Cheque/Money Order de su pedido + \$5.00 por envío

Leeka Inc.  
644 West Broadway  
Glendale, CA 91201

Residentes de California:  
Producto 204: \$12.50  
208: \$12.50  
212: \$25.00

**Solicitamos Distribuidores**  
Aproveche esta Gran Oportunidad  
Empiece tu propio Negocio  
Buenas Ganancias, sólo dedícate a vender Leeka

**Queme mas Calorías  
al Sudar mas.**



**Leeka® Leeka® Leeka® Leeka® Leeka® Leeka® Leeka® Leeka®**

EXHIBIT C-1

EXHIBIT C-2

Crema Sudadora

Perfect Shape

To have a beautiful body and be in good physical shape is the desire of all people. Perfect Shape can help you obtain better results from your workout because Perfect Shape activates circulation producing a "better sweat" in the areas that need it the most.

Burn more calories by sweating more.

[order form]

271

Complaint

EXHIBIT D

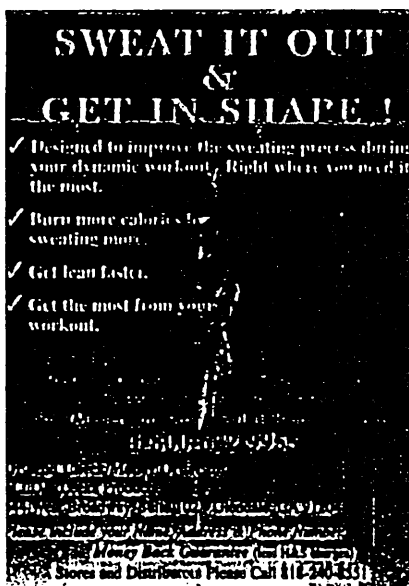


EXHIBIT D

## 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 Dallas 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 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:

1a. Respondent Rogerio Monteiro is owner of Leeka Products, a sole proprietorship with its principal office or place of business at 1614 South Central Avenue, Glendale, California.

1b. Respondent Eliana Crema is owner of Leeka Products, a sole proprietorship with its principal office or place of business at 1614 South Central Avenue, Glendale, California.

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

## DEFINITIONS

For the 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. Unless otherwise specified, "*respondents*" shall mean Rogerio Monteiro and Eliana Crema, individually and doing business as Leeka Products, and each of the above's agents, representatives, and employees.

3. "*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, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Super Formula Reductora, Crema Sudadora Perfect Shape, Tratamiento para Combatir la Caida del Cabello or any food, dietary supplement, cosmetic or drug, as "food," "cosmetic" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that:

- A. Such product controls and regulates metabolism;
- B. Such product reduces appetite;
- C. Such product burns or dissolves fat;
- D. Such product causes better results from exercise;
- E. Such product increases calories burned during exercise;
- F. Such product provides any weight loss, fat loss, weight regulation, weight control, or weight maintenance benefits; or
- G. Such product will prevent or retard hair loss

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

## II.

*It is further ordered,* That respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any hair care product or drug, as "drug" is defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not represent that any product prevents hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*, provided that, this requirement shall not limit the requirements of Order Part I herein.

## III.

*It is further ordered,* That respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Super Formula Reductora, Crema Sudadora Perfect Shape, Tratamiento para Combatir la Caida del Cabello or any other food, dietary supplement, cosmetic or drug, as "food," "cosmetic" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, or efficacy of such product, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

## IV.

*It is further ordered,* That respondents directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Tratamiento para Combatir la Caida del Cabello or any substantially similar product in or affecting commerce, shall not use the name "Tratamiento para Combatir la Caida del Cabello" or any other name that represents, expressly or by implication, that the product will prevent or retard hair loss, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.



## V.

*It is further ordered,* That respondents directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

## VI.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

## VII.

Nothing in this order shall prohibit respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

## VIII.

*It is further ordered,* That respondents, and their successors and assigns, 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.

IX.

*It is further ordered,* That respondents shall deliver a copy of this order to all current and future principals, partners, 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, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. 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.

X.

*It is further ordered,* That respondents, and their successors and assigns, shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Leeka Products 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 company; 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 company name or address. Provided, however, that with respect to any proposed change in the company about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents 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.

XI.

*It is further ordered,* That respondent Rogerio Monteiro, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment or of his affiliation with any new business or employment which involves the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, dietary

supplement, cosmetic or drug, as "food," "cosmetic" and "drug" are defined in Section 15 of the Federal Trade Commission Act. The notice shall include respondent's new business address and telephone number, and a description of the nature of the business or employment and 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.

## XII.

*It is further ordered*, That respondent Eliana Crema, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of her current business or employment or of her affiliation with any new business or employment which involves the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, dietary supplement, cosmetic or drug, as "food," "cosmetic" and "drug" are defined in Section 15 of the Federal Trade Commission Act. 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 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.

## XIII.

*It is further ordered*, That respondents 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.

## XIV.

This order will terminate on September 12, 2017, 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.

IN THE MATTER OF  
EFFICIENT LABS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3768. Complaint, Sept. 12, 1997--Decision, Sept. 12, 1997*

This consent order requires, among other things, the Puerto Rico-based Spanish-language advertiser of dietary supplements and its officer to have scientific evidence to substantiate any claims they make concerning the health benefits, performance, safety or efficacy of any food, drug, cosmetic or dietary supplement promoted or used to treat conditions or illnesses related to the circulatory system.

*Appearances*

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

For the respondents: *Jose Acosta-Grubb, Fiddler, Gonzalez & Rodriquez, San Juan, Puerto Rico.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Efficient Labs, Inc., a corporation, and Blas Reyes-Reyes, individually and as an officer 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 Efficient Labs, Inc. is a corporation organized under the laws of the Commonwealth of Puerto Rico, with its principal office or place of business at 413 San Jorge Street, San Juan, Puerto Rico.

2. Respondent Blas Reyes-Reyes is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, participates in, 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 Efficient Labs, Inc.

3. Respondents have advertised, offered for sale, sold, and distributed products to the public, including "Venoflash," a nutritional supplement with ingredients that include Niacin U.S.P.; Vitamins

B-1, B-6, B-12, C, and E; and various plant derivatives. Venoflash purportedly, among other things, treats the symptoms of varicose veins and hemorrhoids. "Venoflash" is a "food" and/or "drug" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52,55.

4. 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.

5. Respondents have disseminated or have caused to be disseminated print and television advertisements for Venoflash that have appeared in Miami's El Nuevo Herald, and have been broadcast and cablecast on Telemundo de Puerto Rico, Univision 41(WXTV-New York), Telemundo (T47/WNJU New York), Univision 23 (WLTW-Miami), and Telemundo de Florida. These print and television advertisements, including but not necessarily limited to the attached Exhibit A (transcript of a television advertisement), contain the following statements:

"Clogged, Clogged, Clogged!

When your blood circulation feels like it's clogging, look for the Venoflash aid.

If you suffer from varicose veins, Venoflash can help you!

If you suffer from hemorrhoids, Venoflash can help you!

To order, 1-800-272-8964.

Venoflash can help if your extremities become numb as a result of problems in your veins and capillaries.

Defend yourself from those dangerous clogs in your circulatory system and recover your lost agility taking Venoflash.

Venoflash can help you!"

(Exhibit A)

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

- A. Venoflash removes dangerous clogs in the circulatory system;
- B. Venoflash treats the symptoms of varicose veins; and
- C. Venoflash treats the symptoms of hemorrhoids.

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

8. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph six at the time the representations were made. Therefore,

the representation set forth in paragraph seven was, and is, false or misleading.

9. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Complaint

124 F.T.C.

## EXHIBIT A

## VENOFLASH TV COMMERCIAL SCRIPT

TAPON, TAPON, TAPON!  
Clogged, Clogged, Clogged!

CUANDO SE PRODUCEN TAPONES EN LA CIRCULACION DE LA SANGRE,  
BUSQUE LA AYUDA DE VENOFLASH.

When your blood circulation feels like it's clogging, look for the Venoflash aid.

SI SUFRE DE VARICES, VENOFLASH PUEDE AYUDARLE!  
If you suffer from varicose veins. Venoflash can help you!

SI PADECE DE HEMORROIDES, VENOFLASH PUEDE AYUDARLE!  
If you suffer from hemorrhoids. Venoflash can help you!

PARA ORDENAR, 1-800-272-8964.  
To Order, 1-800-272-8964.

VENOFLASH PUEDE AYUDARLE SI SE LE ADORMECEN LAS EXTREMIDADES  
POR PROBLEMAS EN SUS VENAS Y CAPILARES.

Venoflash can help if your extremities become numb as a result of  
problems in your veins and capillaries.

DEFIENDASE DE ESOS PELIGROSOS TAPONES EN SUS SISTEMA CIRCULATORIO  
Y RECUPERE SU AGILIDAD PERDIDA TOMANDO VENOFLASH.

Defend yourself from those dangerous clogs in your circulatory system  
and recover your lost agility taking Venoflash.

VENOFLASH PUEDE AYUDARLE!  
Venoflash can help you!



## 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 Efficient Labs, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with its office and principal place of business located at 413 San Jorge Street, San Juan, Puerto Rico.

Respondent Blas Reyes-Reyes is an officer and director of the corporate respondent. Mr. Reyes-Reyes, 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 the said corporate respondent.

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

## 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. Unless otherwise specified, "*respondents*" shall mean Efficient Labs, Inc., a corporation, its successors and assigns and its officer; Blas Reyes-Reyes, individually and as an officer of the corporation; and each of the above's agents, representatives and employees.

3. "*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, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of "Venoflash" or any other product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product:

- A. Removes dangerous clogs in the circulatory system;
- B. Treats the symptoms of varicose veins; or
- C. Treats the symptoms of hemorrhoids.

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

## II.

*It is further ordered*, That respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Venoflash or any food, dietary supplement, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, promoted or used

to treat conditions or illnesses related to the circulatory system, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the health benefits, performance, safety, or efficacy of such product, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

### III.

Nothing in this order shall prohibit respondents from making any representation for any product that is specifically permitted in the labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

### IV.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in the labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

### V.

*It is further ordered*, That respondent Efficient Labs, Inc., and its successors and assigns, and respondent Blas Reyes-Reyes 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.

## VI.

*It is further ordered,* That respondent Efficient Labs, Inc. and its successors and assigns, and respondent Blas Reyes-Reyes, 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, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. 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.

## VII.

*It is further ordered,* That respondent Efficient Labs, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation 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.

## VIII.

*It is further ordered,* That respondent Blas Reyes-Reyes, for a period of seven (7) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of 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 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.

### IX.

*It is further ordered*, That respondent Efficient Labs, Inc., and its successors and assigns, and respondent Blas Reyes-Reyes 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.

### X.

This order will terminate on September 12, 2017, 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.