

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)	
)	
LIFE FITNESS,)	FILE NO. 962 3042
a general partnership.)	
)	AGREEMENT CONTAINING
)	CONSENT ORDER
)	
)	

The Federal Trade Commission has conducted an investigation of certain acts and practices of Life Fitness, a general partnership ("proposed respondent"). Proposed respondent and its general partner, The Life Fitness Companies L.P., having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Life Fitness and The Life Fitness Companies L.P. ("general partner"), by their duly authorized representatives, and counsel for the Federal Trade Commission that:

- 1.a. Proposed 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, 60131.
- 1.b. The Life Fitness Companies L.P. is a Delaware limited partnership with its principal office or place of business at 10601 West Belmont Avenue, Franklin Park, Illinois, 60131. The Life Fitness Companies L.P. is a general partner of Life Fitness.
2. Proposed respondent and its general partner admit all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent and its general partner waive:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

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

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

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

7. Proposed respondent and its general partner have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

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

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
2. 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. 20580.

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 twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that

the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any 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.

Signed this _____ day of _____, 19__.

LIFE FITNESS, a general partnership

By: _____
AUGUSTINE NIETO
President

THE LIFE FITNESS COMPANIES L.P., a limited partnership

By: _____
AUGUSTINE NIETO
President and Chief Executive Officer

WILLIAM C. HOLMES, Esq.
Freeborn & Peters
Attorney for respondent Life Fitness and
for The Life Fitness Companies L.P.

LAURA FREMONT
Counsel for the Federal Trade Commission

APPROVED:

JEFFREY KLURFELD
Director
San Francisco Regional Office

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
LIFE FITNESS,)
a general partnership.)
DOCKET NO.)

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 60131.
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 4, 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 4, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 5, 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 5, at the time the representation was made. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

8. Through the means described in Paragraph 4, 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 8 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.

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

By the Commission.

Donald S. Clark
Secretary

SEAL:

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

Analysis of Proposed Consent Order
to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from respondent Life Fitness ("respondent"), a New York general partnership that markets exercise equipment. Although not a respondent, Life Fitness' general partner, The Life Fitness Companies L.P., a Delaware limited partnership, has also agreed to be bound by the terms of the consent order.

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

The Commission's complaint against respondent alleges that respondent deceptively advertised the Lifecycle exercise bicycle. The Commission's complaint charges that respondent's advertising contained unsubstantiated calorie burn representations. Specifically, the complaint alleges that the respondent did not possess adequate substantiation for the claim that users of the Lifecycle will burn calories at a rate of over 1,000 per hour under conditions of ordinary use. The complaint also charges that respondent's representation that its calorie burn claim was based on competent and reliable research is false.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Part I of the proposed order would prohibit Life Fitness and The Life Fitness Companies L.P. from making any claim for the "Lifecycle," or for any other exercise equipment: (1) about the rate at which users burn calories, or the number of calories users burn, through use of such product; (2) about the weight loss or fat loss users achieve through use of such product; or (3) about the benefits, performance, or efficacy of such product with respect to calorie burning, fat burning, or weight loss; unless, at the time such a claim is made, the companies possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the claim. Part II of the order prohibits the companies from misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test, study, or research relating to calorie burning, fat burning, or weight loss.

The remaining provisions of the proposed order relate to respondents' obligation to make available to the Commission materials substantiating claims covered by the order; to notify the Commission of changes in the companies' structure; to provide copies of the order to certain personnel of the companies; and to file compliance reports with the Commission. The order also provides that the order will terminate after twenty years under certain circumstances.

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