

Complaint

IN THE MATTER OF

UNIVERSAL FIGURE FORM OF YOUNGSTOWN,
INCORPORATED, ET AL.CONSENT ORDER, ETC. IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2317. Complaint, Nov. 15, 1972—Decision, Nov. 15, 1972*

Consent order requiring a Youngstown, Ohio, health club, among other things to cease misrepresenting time limits on offers of membership; representing prices as constituting a reduction or savings unless it is substantial; misrepresenting the benefits derived from membership; using "before and after" photographs deceptively, and failing to inform customers of their right to cancel within three business days.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Universal Figure Form of Youngstown, Inc., a corporation, and Jerome B. Kahn, George W. Jaconetti, and Donald W. Hudson, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Universal Figure Form of Youngstown, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its offices and principal place of business located at 5922 Market Street, in the city of Youngstown, State of Ohio.

Respondent Jerome B. Kahn is an individual and an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is G-3371 South Saginaw Street, Flint, Michigan.

Respondent George W. Jaconetti is an individual and an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is G-3371 South Saginaw Street, Flint, Michigan.

Complaint

81 F.T.C.

Respondent Donald W. Hudson is an individual and an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is G-3371 South Saginaw Street, Flint, Michigan.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for sometime last past have been, engaged in the operation of physical fitness and/or health clubs, and in the advertising, offering for sale, and sale of memberships and related services to the public in said physical fitness and/or health clubs.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for sometime last past have caused, memberships in their health clubs to be advertised and sold to purchasers thereof located in the various States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said memberships and related services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, many times in the ordinary course of their business, negotiate to third parties installment sales contracts or other instruments of indebtedness executed in connection with credit purchases.

PAR. 5. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of health club memberships, respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of general circulation and other promotional material with respect to the price of said memberships and the benefits and facilities available for those who become members.

Typical and illustrative of said statements and advertising representations, but not all inclusive thereof, are the following:

A Glorious New You! In Just 12 weeks lose or gain up to 20 lbs. in 20 visits

* * * * *

LAST WEEK

Before Rate Increase

Men—Women—

Enroll Now

* * * * *

785

Complaint

Enroll Now—\$10

Announcing the Spa's
Annual Spring Size Smaller
Sale—

10	\$10
Consecutive	Total Cost
Visits	

* * * * *

WAIST
Lose 2 Inches

No Other Figure Control Salon Can Offer You These Fabulous Holiday Extras!
Near Olympic Size Indoor Grecian Swimming Pools. Hot Hydro Swirlpools for
the Ultimate in Relaxation. Huge Sauna and Adjoining Steam Rooms Completely
Equipped. Modern Exercise Rooms. Beauty Sun Ray Booths to Give You a
Palm Springs Tan.

* * * * *

Facilities For Men And Women

From "Matronly" to Glamorous * * * in 3 Months! Carol Kahn, 26-Year-Old
Mother, Achieved these Changes in Her Measurements.

Before		After
34"	BUST	36"
27"	WAIST	23"
38"	HIPS	35"

Special courses for new mothers are designed and regulated to restore firm
body tissues & help you to regain your youthful figure!

(These statements are accompanied by a picture showing Carol Kahn before
and after changes in her measurements.)

In the course and conduct of their business, respondents instruct
their salesmen, agents and other representatives to utilize various sales
methods and statements in order to sell health club memberships to
prospective purchasers. Typical and illustrative of such methods and
statements, but not all inclusive thereof, are the following:

This is the time in the Interview Sheet you explain the Pending Event (the
reason we are running our discount on memberships, the reason he has to MAKE
A DECISION TO BUY TODAY). HIT STRONG HERE. TELL HIM YOU
HAVE ONLY A FEW CARDS LEFT AND IF HE DOESN'T GET STARTED
NOW HIS CHANCES OF GETTING THIS FANTASTIC VALUE ARE VERY
SMALL.

Do not mention what days men or women are here until AFTER THE SALE
HAS BEEN MADE.

Use the term "PAYMENT AGREEMENT" instead of "contract."

PAR. 6. By and through the use of said advertisements, and others of similar import and meaning, but not expressly set out herein, and by oral statements and representations made by salesmen, agents, and representatives, respondents have represented, and are now representing, directly or by implication, that:

1. There are a limited number of memberships for sale at "special" or reduced prices for a limited period of time.

2. Prospective purchasers may purchase a membership for \$10 per 10 visits or \$20 per 20 visits.

3. In 60 to 90 days, or some similarly short period of time, members are likely to achieve a substantial reduction in body size or weight.

4. The results which are depicted in "before and after" photographs contained in advertisements, and employed as part of the oral sales presentation, will be achieved by any person participating in respondents' program.

5. Respondents' program will slenderize, beautify, and proportion peoples' figures without these people having to diet.

6. Respondents' facilities are open to both men and women every day of the week.

7. All advertised facilities are available at respondents' health clubs.

8. Respondents do not fail to discuss all the provisions of their membership agreement with prospective purchasers and also do not fail to inform prospective purchasers whether a third party will purchase their membership agreement.

PAR. 7. In truth and in fact:

1. There is no limit on the number of memberships available at respondents' facilities. Moreover, the prices at which memberships and services are sold are not special prices nor are they available for only a limited period of time. They are the usual and customary prices charged for health club memberships and have been substantially the same for an extended period of time.

2. Few, if any, prospective members are able to purchase a membership in respondents' health clubs at the low price of \$10 per 10 visits or at any other such low price.

3. Few, if any, members are likely to achieve a specified reduction in body size or in weight in a stated period of time.

4. The results depicted in "before and after" photographs contained in advertising and employed as part of the sales presentation will not be achieved by every person participating in respondents' health club programs.

5. Respondents' exercise programs will not slenderize, beautify and proportion peoples' figures unless these people adhere to a diet.

785

Decision and Order

6. Respondents' health clubs are not open to all patrons every day of the week. On the contrary, there are separate days specifically set aside for which men or women may not use the facilities of the clubs.

7. All advertised facilities are not available at respondents' health clubs.

8. Respondents fail to discuss with prospective members all of the terms of the membership agreement. Moreover, the respondents also fail to mention that the membership agreement is often sold to a third party.

Therefore, the statements, representations, and practices as set forth in Paragraphs Five and Six hereof were, and are, false, misleading, and deceptive.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition in commerce with corporations, firms, and individuals in the sale of memberships and related services in their physical and/or health clubs, said memberships and services being of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the unfair, false, misleading, and deceptive statements, representations, and practices, their failure to disclose material facts, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements, representations, and advertisements are true and complete, and into the purchase of memberships in respondents' health clubs and/or physical fitness facilities by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents, respondents' 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 complaint to issue herein, 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, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Universal Figure Form of Youngstown, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its offices and principal place of business located at 5922 Market Street, Youngstown, Ohio.

Respondents Jerome B. Kahn, George W. Jaconetti, and Donald W. Hudson are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is G-3371 South Saginaw Street, Flint, Michigan.

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

It is ordered, That respondents Universal Figure Form of Youngstown, Inc., a corporation, its successors and assigns, and its officers, and Jerome B. Kahn, George W. Jaconetti, and Donald W. Hudson, individually and as officers of said corporation, and respondents' agents, representatives, salesmen, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, and sale of health club memberships, or other related services, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I. Representing, directly or by implication:

A. That fewer health club memberships or related services are available for sale for a limited time or in a limited number than are, in fact, available.

B. That any price is a special price or constitutes a savings or reduction from the regular price unless:

1. Respondents maintain records with respect to each sale at a special price or at a savings or reduction from the regular price indicating:

- a. The name and address of each customer.
- b. The type of health club membership or related service sold to each customer.
- c. The price charged for each such sale.
- d. The terms and conditions of each such sale of the health club membership or related service.

2. Such price at which the health club membership or related service is offered constitutes a reduction from the price at which said membership is usually and customarily sold at retail by respondents in the recent course of business.

C. That membership in respondents' health club programs and/or use of respondents' health club facilities automatically means that every person will alter his body size or configuration or will lose weight.

D. That purchasers of memberships in respondents' health club facilities will lose weight as a result of using the facilities of respondents' health clubs without regulating caloric intake.

E. That any advertised facilities are available, unless such facilities are, in fact, available and generally in working condition and, regardless of the patron's sex, are available for use. If respondents' facilities are not available to all members at all hours, such fact must be clearly and conspicuously disclosed in all of the respondents' advertisements of such facilities. Such disclosure shall appear in a type larger than the size used to set out the facilities. If respondents' facilities are not available to all members at all hours, this fact must be affirmatively disclosed to patrons before any contractual agreement for use of the facilities is made between the patrons and the respondents.

II. Use of "before and after" or comparison photographs indicating any changes or body configuration, unless:

A. The person so depicted has attended respondents' health clubs and the results depicted were achieved through participation in respondents' health club programs; or

B. The photographs are accompanied by the following statement, to appear in clear and conspicuous fashion in immediate conjunction therewith: "Posed Photographs."

III. Failing to incorporate the following statement on the face of all sales contracts, all notes, or other instruments of indebtedness (excluding charge slips of Master Charge, BankAmericard, or similar charge cards providing the following statement is shown to the patron before any contractual agreement is consummated) executed by or on behalf of respondents' customers, with such conspicuousness and clarity as is likely to be read and understood by the purchaser:

NOTICE

If you are obtaining credit in connection with this purchase, you will be required to sign a promissory note, a sales contract or other instrument of indebtedness which may be purchased from the seller by a bank, finance company or any other third party. If such is the case, you will be required to make your payments to someone other than the seller. You should be aware that if this happens you may have to pay the note, contract, or other instrument of indebtedness in full to its new owner even if your purchase contract is not fulfilled.

IV. Obtaining customer's signatures on any applications for membership, contract, note, or other document which fails to contain a clause allowing customers to void said agreement or obligation, within three (3) business days of the date of execution of said document, upon the tender of a certificate from the customer's physician that participation in respondents' health club programs would impair the health of said customer during the term of said contract, provided such certificate is accurate and correct.

V. Selling any sales contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the third business day after the date of execution by the buyer.

VI. Failing to deliver a copy of this order to cease and desist to all present and future employees, instructors or other persons engaged in the sale of respondents' health club memberships and related services and failing to secure from each employee or other person a signed statement acknowledging receipt of said order.

VII. Failing to post in a prominent place in any health club operated by respondents a copy of the cease and desist order, with a note that any member or prospective member may receive a copy on demand.

VIII. Failing, after the acceptance of the initial report of compliance, to submit a report to the Commission once a year during

785

Complaint

the next three (3) years, describing all known complaints respecting unauthorized representations, all known complaints received from customers respecting representations by salesmen which are claimed to have been deceptive, the facts uncovered by respondents in their investigation thereof, and the action taken by respondents with respect to each such complaint.

It is further ordered, That respondents notify the Commission within thirty (30) days of any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation and/or corporations, the creation or dissolution of subsidiaries or any other changes in the corporation and/or corporations which may affect compliance obligations arising out of this order.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth, in detail, the manner and form in which they have complied with this order.