

IN THE MATTER OF

SILHOUETTE NATIONAL HEALTH SPAS, INC., ET AL.

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

Docket C-2532. Complaint, Aug. 26, 1974—Decision, Aug. 26, 1974

Consent order requiring an Indianapolis, Ind., operator of physical fitness and/or health salons, among other things to cease misrepresenting the efficacy of its facilities in weight reduction without regard to dietary considerations; the availability of memberships; their size; the extent, terms and conditions of special offers; and availability of facilities. Further, respondent is required to allow patrons to terminate programs within five business days and obtain a refund by delivering a letter from their physicians, stating that participation would be hazardous to their health.

Appearances

For the Commission: *William M. Rice, Jr.*

For the respondents: *William P. Wooden, Wooden, Stark, McLaughlin & Sterner, Indianapolis, Ind., and Donald Tunnell, Yarling, Winter, Tunnell, Robinson & Lamb, Indianapolis, Ind.*

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 Silhouette National Health Spas, Inc., a corporation, and Donald E. Gilman, individually and as an officer 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 Silhouette National Health Spas, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 7124 N. Tacoma Avenue, in the city of Indianapolis, State of Ind.

Respondent Donald E. Gilman is an individual and 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 business address is 7124 N. Tacoma Avenue, Indianapolis, Ind.

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

PAR. 3. In the course and conduct of its business as aforesaid, respondents have caused, and do now cause, advertisements for said health salons to appear in media of interstate circulation, including the Indianapolis Star and the Indianapolis News, and on television broadcasts of interstate transmission, all of which are designed and intended to induce persons to purchase said memberships and related services.

Accordingly, all of said respondents have maintained, and do now maintain, a course and conduct of business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, many times in the ordinary course of 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 their memberships and related services, respondents have made and are now making numerous statements and representations in advertisements inserted in newspapers of general circulation and by means of television broadcasts and promotional material, with respect to the price of said memberships and related services for the benefits and facilities available for those who purchase a membership.

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

LOSE 10-20-30 lbs. Or More the Easy, Fun, Way.

* * * * *

Come in for a free consultation.

* * * * *

ENROLL NOW!!!

Pay only \$1.25 PER VISIT (on a course basis).

* * * * *

Your Membership Honored in over 900 Spas World Wide.

* * * * *

60% OFF Regular Course Rate.

* * * * *

You save 50% on the regular price.

* * * * *

During this limited time offer . . . pay only \$1.25 per visit on a course basis!

* * * * *

Separate facilities for men and women.

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Representative and illustrative, albeit neither verbatim nor all inclusive, of oral statements made in some instances to prospective purchasers by respondents and their sales representatives and agents, are the following:

Lifetime memberships will be available only for a limited period of time.

* * * * *

You can receive six months of free membership for a limited time, when you purchase a two year membership program.

* * * * *

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 their sales representatives and agents, respondents have represented in some instances and are now representing, directly or by implication, that:

1. Patrons can lose from ten (10) to thirty (30) pounds in a one month period at respondents' salons or can attain other stated changes in weight in specified periods of time, usually without dieting, regardless of age.

2. Purchasers may purchase a membership in one of respondents' physical fitness and/or health salons for one dollar and twenty-five cents (\$1.25) per visit on a full course basis.

3. Respondents are part of a nationwide chain of physical fitness and/or health salons in most major cities of the United States.

4. The prices of memberships and services which are being offered are discount prices or special prices available for a limited time period.

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

6. A certain number of free months of membership are available with the purchase of certain programs, for a limited period of time.

PAR. 7. In truth and in fact:

1. All patrons cannot lose from ten (10) to thirty (30) pounds in a one month period, nor are all stated changes in weight possible in specified periods of time, regardless of dietary restrictions.

2. Purchasers may not purchase memberships in one of respondents' physical fitness and/or health salons for one dollar and twenty-five cents (\$1.25) per visit, for less than twenty-four (24) months. The minimum membership available to respondents' patrons is for one year.

3. Respondents are not part of a nationwide chain of reducing salons with facilities in most major cities of the United States. Respondents are members of associations which honor respondents' members' memberships to some extent.

4. Generally the prices at which memberships and services are sold are not discount prices or special prices, nor are they available for only a limited period of time. They are the usual and customary prices charged for respondents' memberships and services, and they have been substantially the same for an extended period of time.

5. Each of respondents' spas is not open to all patrons every day of the week. At each spa there are separate days specifically set aside when either men or women may use the facilities of the spa.

6. Offers of a number of free months membership with the purchase of a membership are not limited to stated periods of time.

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

PAR. 8. Respondents by means of oral statements and representations of their salesmen and representatives, in some instances, have misrepresented and/or failed to disclose certain material facts relating to contracts to be executed by prospective purchasers. Knowledge of such facts would indicate the full nature of the obligation being undertaken by the prospective purchaser. Thus, respondents have failed to disclose material facts which, if known by certain prospective purchasers would be likely to affect their consideration of whether or not to purchase respondents' memberships or services. Therefore, the aforesaid acts and practices were false, misleading, and deceptive or unfair.

PAR. 9. 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. 10. 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. 11. 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 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 Chicago 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, 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 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(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Silhouette National Health Spas, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 7124 North Tacoma Avenue, city of Indianapolis, State of Indiana.

Respondent Donald D. Gilman is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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 Silhouette National Health Spas, Inc., a corporation, its successors and assigns, and its officers, and Donald E. Gilman, individually and as an officer of said corporation, and respondents' officers, agents, representatives 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 services or products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, orally or in writing, that purchasers of memberships in respondents' physical fitness and/or health salon facilities will lose weight as a result of using the facilities of respondents' physical fitness and/or health salons without regard to dietary habits.
2. Representing, directly or by implication, orally or in writing, that health club memberships are available for any period of time less than the shortest period for which a significant number of memberships are in fact sold to the public.
3. Representing, directly or by implication, orally or in writing, that respondents operate physical fitness and/or health salons in more than one state in the United States or in other countries.
4. Representing, directly or by implication, orally or in writing, that the availability of any service, specially-priced program, free treatments or other inducement for membership is limited in time or otherwise when they are not a bona fide limited period sale; or failing to disclose completely and accurately in immediate conjunction with any represented promotional inducement all conditions and limitations on its availability.
5. Representing, directly or by implication, orally or in writing, that any facilities are available at all clubs referred to in any particular advertisement unless they are, in fact, available at all facilities, and are available to persons of either sex at all said clubs during all of said clubs' business hours. If the facilities are not available to all members at all hours at each club referred to in such advertisement, such representation shall be qualified by a clear and conspicuous disclosure in immediate conjunction therewith providing that "such facilities and hours may differ at each location."
6. Failing to provide each purchaser a copy of each contract, note or other instrument of indebtedness executed by or on behalf of

such customer; and failing to include, clearly and conspicuously, on the face of all such documents:

- (a) A statement that the document is a contract and will become legally binding on said purchaser upon its acceptance by respondents.
- (b) All terms and conditions of such document.
- (c) The following statement:

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 will 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.

7. Failing to disclose clearly, conspicuously, completely and accurately, both orally and in writing, before enrolling any person in any program:

(a) That prospective patrons with health problems or who are under a doctor's care should consult their physician to be sure that respondents' programs are not incompatible with figure control or other health plans prescribed by such physician.

(b) That the patron may terminate his program, cancel any indebtedness in connection with said program and obtain a refund of any monies paid to respondents by delivering a letter from his physician, stating clearly that participation in respondents' program would be hazardous to his health and setting forth the medical reasons for such opinion, to respondents within five (5) business days from the date of execution of said contract.

8. Failing to terminate the contract of any patron who requests termination pursuant to Subparagraph b of Paragraph 7, and failing to mail, within ten (10) business days of receipt of said request, a refund in accordance with said Subparagraph.

It is further ordered, That respondents herein deliver by registered mail a copy of this Decision and Order to each of the present and future employees, salesmen, agents, solicitors, independent contractors, advertising agent, or to any other person who promotes, offers for sale, sells or distributes any health club membership or any other product or service offered by respondents.

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

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

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.

IN THE MATTER OF

CARE-FREE SWIMMING POOL MANUFACTURING CORP.,
ET AL.

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