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Complaint

IN THE MATTER OF

JACK LA LANNE MANAGEMENT CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2578. Complaint, Oct. 17, 1974—Decision, Oct. 17, 1974*

Consent order requiring a chain of Jack La Lanne health spas in the New York City area, among other things to cease misrepresenting the price of memberships and the benefits and facilities available to members, and using deceptive collection methods. The order contains a provision to insure that customers sued by the spas receive adequate notice of the suits.

Appearances

For the Commission: *George E. Schulman.*

For the respondents: *Irving Scher, Weil, Gotshal & Manges, New York, N.Y.*

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 Jack La Lanne Management Corp., Jack La Lanne Health Enterprises, Inc., Canadian International Health Spa, Inc., Jack La Lanne Madison Health Spa, Inc., Jack La Lanne Executive Health Spa, Inc., Jack La Lanne Lefrak City, Inc., Jack La Lanne Kings Highway, Inc., Jack La Lanne 5 Towns Health Club, Inc., Jacques-line Health Spa, Inc., Jack La Lanne Biltmore Health Spa, Inc., Jack La Lanne Fort Lee Health Spa, Inc., Jack La Lanne 86th St. Health Spa, Inc., Jack La Lanne Fifth Avenue Health Spa, Inc., Churchill Collection Service, Inc., corporations, and Harry Schwartz, individually and as an officer of said corporations, 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. For the purpose of this proceeding, the following definition shall apply:

Health spa. An establishment or establishments which provide services or facilities which are purported to assist patrons to improve their physical condition or appearance through change in weight, weight

control, treatment, dieting, or exercise. The term includes establishments designated as "reducing salon," "gym," "health studio," "health club," and other terms of similar import.

PAR. 2. Respondent Jack La Lanne Management Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 245-24 Horace Harding Expressway, Little Neck, N.Y.

Respondent Jack La Lanne Management Corp. advertises, offers to sell and sells health spa services or memberships to the purchasing public. Its volume of business has been, and is substantial.

PAR. 3. Respondent Jack La Lanne Health Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 245-24 Horace Harding Expressway, Little Neck, N.Y.

Respondent Canadian International Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 245-24 Horace Harding Expressway, Little Neck, N.Y. It advertises, offers for sale, sells and provides health spa services or memberships to the purchasing public, and requests and collects payment of accounts. Its volume of business has been, and is substantial.

Respondent Jack La Lanne Madison Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 551 Madison Avenue, New York, N.Y. It advertises, offers for sale, sells and provides health spa services or memberships to the purchasing public, and requests and collects payment of accounts. Its volume of business has been, and is substantial.

Respondent Jack La Lanne Executive Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at Woolworth Building, 233 Broadway, New York, N.Y. It advertises, offers for sale, sells and provides health spa services or memberships to the purchasing public, and requests and collects payment of accounts. Its volume of business has been, and is substantial.

Respondent Jack La Lanne Lefrak City, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 98-30 57th Avenue, Elmhurst, N.Y. It advertises,

offers for sale, sells and provides health spa services or memberships to the purchasing public, and requests and collects payment of accounts. Its volume of business has been, and is substantial.

Respondent Jack La Lanne Kings Highway, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 2032 Coney Island Avenue, Brooklyn, N.Y. It advertises, offers for sale, sells and provides health spa services or memberships to the purchasing public, and requests and collects payment of accounts. Its volume of business has been, and is substantial.

Respondent Jack La Lanne 5 Towns Health Club, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 961 Broadway, Woodmere, N.Y. It advertises, offers for sale, sells and provides health spa services or memberships to the purchasing public, and requests and collects payment of accounts. Its volume of business has been, and is substantial.

Respondent Jacqueline Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 2530 Flatbush Avenue, Brooklyn, N.Y. It advertises, offers for sale, sells and provides health spa services or memberships to the purchasing public, and requests and collects payment of accounts. Its volume of business has been, and is substantial.

Respondent Jack La Lanne Biltmore Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at Madison Avenue and 43rd Street, New York, N.Y. It advertises, offers for sale, sells and provides health spa services or memberships to the purchasing public, and requests and collects payment of accounts. Its volume of business has been, and is substantial.

Respondent Jack La Lanne Fort Lee Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 100 Lynwood Plaza, Fort Lee, N.J. It advertises, offers for sale, sells and provides health spa services or memberships to the purchasing public, and requests and collects payment of accounts. Its volume of business has been, and is substantial.

Respondent Jack La Lanne 86th Street Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 144 East 86th Street, New York, N.Y. It

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advertises, offers for sale, sells and provides health spa services or memberships to the purchasing public, and requests and collects payment of accounts. Its volume of business has been, and is substantial.

Respondent Jack La Lanne Fifth Avenue Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 53rd Street and Fifth Avenue, New York, N.Y. It advertises, offers for sale, sells and provides health spa services or memberships to the purchasing public, and requests and collects payment of accounts. Its volume of business has been, and is substantial.

Respondent Churchill Collection Service, Inc. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 245-24 Horace Harding Expressway, Little Neck, N.Y., and with a post office box maintained at East Elmhurst, N.Y. It ceased doing business in November, 1972.

Respondent Harry Schwartz is an individual and is an officer and principal shareholder of the corporate respondents. He formulates, directs and controls the acts and practices of the said corporate respondents, including the acts and practices hereinafter set forth. His business address is 245-24 Horace Harding Expressway, Little Neck, N.Y.

PAR. 4. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale and sale of health spa memberships of various types; the financing of the purchase by the general public of health spa services or memberships; the collection of members' accounts; and the general management and supervision of said health spas located in the States of New York and New Jersey.

In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of services or use of facilities, respondents have disseminated, and caused the dissemination of, certain advertisements by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, sending promotional materials to persons located in various States of the United States, by means of the United States mail, advertisements inserted in newspapers of interstate circulation and by television broadcasts transmitted by television stations located in the State of New York, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of health spa memberships.

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

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PAR. 5. In the course and conduct of their business as aforesaid, respondents have made certain statements and representations, orally and in writing, in their advertisements, sales promotion literature and directly through their sales personnel and other representatives, with respect to the price of said health spa memberships and the benefits and facilities available to persons who purchase memberships.

Typical of the statements and representations in said advertisements and sales promotion literature, but not all inclusive thereof are the following:

(a) Enjoy New York's Most Complete and Luxurious Health, Fitness and Relaxation Facilities

Tropical swimming pools
Relaxing Steam Rooms
Authentic Turkish Steam Rooms
Hot Massaging Whirlpools
Eucalyptus inhalator rooms
Fully equipped broadloomed gyms
Jogging track and jogging machines
Special exclusive programs and equipment

- (b) Avoid a price increase! Inquire about low Phase 2 rates ending soon!
- (c) Last 2 days to reserve and AVOID A PRICE INCREASE.
- (d) Low economical Phase 2 rates expire May 27 or sooner is quota if filled.
- (e) Final Days * * * to enroll on low Summer rates.
- (f) Final 7 days or sooner if quota is reached.
- (g) FINAL DAY to enroll on low summer rates!
- (h) GRAND OPENING OFFER available at all locations to celebrate our newest spa.
- (i) Individual, personal, reducing and weight gaining programs for men and women.
- (j) LAST 2 DAYS! TO AVOID A PRICE INCREASE!
- (k) Low 1971 Price Freeze Rates End Dec. 23rd (or sooner if quota is reached at each location).
- (l) THE LOWEST PRICES EVER AGAIN!
- (m) You can shape up and trim down while you enjoy a scientifically designed program of relaxing exercise that's tailored specifically to help you reach your personal figure goal.
- (n) Low Winter Offer Ends Soon!
- (o) Limited enrollment for evening attendance still being accepted.
- (p) You can shape up fast with Jack La Lanne's exclusive 14 day slimming plan * * * in as little as 14 days you can lose up to 5" off waist, hips, legs and thighs and up to 5 to 20 pounds * * *.
- (q) Get into a new bikini, call Jack La Lanne. Find out about our 14 Day Slimming Program to shape up fast for the spring.
- (r) Chester Kober Proves that Jack La Lanne's 14 Day Slimming Plan Really Works! "I Lost 6 lbs. in 6 Visits."
- (s) 14 day slimming program * * * lose up to 5, 10 or even 20 lbs. before summer.
- (t) Cindy is one of Jack La Lanne's *professional* instructresses. She's together herself, and makes others the same way, using secrets taught by Jack La Lanne, the expert. But Cindy is not the only one that knows the secrets. All of Jack La Lanne's *professional* instructresses do * * * (The spa manager will) make an appointment for you with one of

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Jack La Lanne's *professionals*. You can discuss your problems with her. Get *professional* answers. (Emphasis added.)

Additionally, respondents utilize "after" pictures and other pictorial representations of participants who describe their achievements or success in respondents' programs.

Typical and illustrative albeit neither verbatim nor all inclusive, of said oral statements and representations made to prospective members are statements and representations which imply, directly or indirectly, that the number of memberships is limited, that the facilities are never crowded, that special price offers are about to expire, that special price offers represent significant savings, that prices will rise shortly, that members may pay on a weekly basis, that charter prices are less expensive than regular rates which will prevail upon the opening of the health spa, that the health spa is due to open on some specific date, that all members receive personal instruction and programs are altered or designed to fit the physical condition of each member, that the price is a certain number of dollars per week or lesson, and that results can be assured or predicted.

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

1. The prices of many programs and services which are being offered are discount or special prices or that charter members are receiving a special price which will not be made available for other health spa members after the opening of the new health spa.

2. The prices or terms of many of the programs offered are available only for a limited period of time or to a limited number of people.

3. Respondents' programs do not involve memberships or long-term contractual obligations, and patrons can purchase respondents' services on a per week basis.

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

5. Respondents' programs will slenderize, beautify, proportion, and eliminate pounds and inches from every member's figure, without dieting.

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6. In fourteen (14) days, or some similarly specified short period of time or number of visits, it is possible for every member to lose five (5) to twenty (20) pounds or to attain other significant changes in body size, configuration or weight.

7. All of the different types of equipment and facilities advertised are available at every one of respondents' health spas.

8. Respondents' salons use reducing methods which are scientifically designed and are administered by professionally trained personnel.

9. Personal instruction for all members is offered and available at all times.

10. Respondents' exercise program is personally designed for each individual's particular physical condition and, if necessary, planned exercises are provided to be performed at home.

11. There is a limit on the number of memberships which are available for sale at each of the health spas so that the facilities would not be overcrowded.

12. Respondents sell monthly or weekly programs, and programs extending for a similarly limited period of time.

13. The prices of memberships and services which are being offered are special prices available only for a limited period of time before a price increase.

14. Respondents "guarantee" that persons who undertake their programs, services, treatments, or exercises will experience certain changes in body size, configuration or weight.

15. Health spas for which respondents sell charter memberships will open on specified dates.

PAR. 7. In truth and in fact:

1. The prices of programs and services which are being offered are not discount prices, or special prices, and the prices at which charter memberships are sold are not special prices nor are they limited to charter members. They are the usual and customary prices charged for respondents' programs and services, and they have been substantially the same for an extended period of time.

2. The prices and terms of many of the programs offered are not available only for a limited time or to a limited number of people.

3. Ordinarily respondents' patrons are required to sign a contract obligating them to a lengthy program of services and payments. Individual sessions cannot be purchased from respondents.

4. The results depicted in "after" photographs and other pictorial representations contained in advertising and employed as part of the oral sales presentation will not be achieved by every person participating in respondents' program.

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5. Respondents' programs will not slenderize, beautify, proportion, and eliminate pounds and inches from every member's figure without dieting.

6. It is not possible for every person who might become a member of respondents' health spas to achieve a specified reduction in weight or other specified changes in body size or configuration in a stated period of time.

7. All of the different types of equipment and facilities advertised are not available at every one of respondents' health spas.

8. Respondents' methods of weight reduction have neither been scientifically designed nor administered by professionally trained personnel.

9. Instruction is not offered or made available on a personal basis to all members at all times.

10. Respondents' exercise program is basically the same for all members regardless of personal physical condition and no exercises are prepared or planned to meet particular physical conditions or for use in the home.

11. In the main there is no limit on the number of memberships available for sale at each of respondents' health spas, and prospective members have not been turned away at any time because memberships are oversubscribed.

12. Respondent does not sell monthly or weekly programs, fourteen day programs or programs for a similarly limited period of time. Its regular membership is customarily for a period of one year, although other lengths of time have, on occasion, been sold.

13. The prices at which memberships and services are sold are not special prices nor are they available for only a limited time before a price increase. They are the usual and customary prices charged by respondent for memberships and services, and they have been substantially the same for an extended period of time.

14. Respondents' "guarantee" that persons who undertake their programs, services, treatments, or exercises will experience certain changes in body size, configuration or weight is subject to conditions which usually make it unenforceable and of no value to the member. Money is never refunded; rather, patrons who are able to enforce the guarantee merely receive an extended use of the facilities.

15. None of the health spas for which charter memberships were sold opened at the time stated; in fact, some opened months later and charter members who had relied on the specified date were denied refunds and the right to cancel.

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

PAR. 8. In the course and conduct of its business as aforesaid, respondent Churchill Collection Service, Inc., represented to members of the health spas through the use of letters sent to said members through United States mails and by telephone conversations that the accounts of such members with the health spas had been turned over to Churchill for collection purposes. Churchill represented itself to be a separate entity and its officers, agents and employees alleged that they had no knowledge of any complaints of defects in the operation of the health spas. In many instances, Churchill referred complaining members back to the health spa, and the health spa often referred the same complaining members back to Churchill for a supposed resolution of their complaint.

PAR. 9. In truth and in fact, Churchill Collection Service, Inc. was created as a business entity by respondent Harry Schwartz. Churchill was located in the main office of the health spa at 245-24 Horace Harding Expressway, Little Neck, N.Y., and Churchill was operated by the officers, agents and employees of the respondents at that location.

Therefore, the statements and representations as set forth in Paragraph Eight were and are false, misleading and deceptive.

The foregoing acts, practices, contractual provisions, understandings and oral representations are all to the prejudice and injury of the public, and constitute unfair methods of competition and unfair acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

PAR. 10. Respondents deny prospective customers the opportunity to reflect upon the value of health spa services or membership. As a consequence, some such customers never use, or shortly thereafter cease to use, respondents' health spa facilities and services. Therefore, respondents' failure to permit customers to visit and use said facilities and services on a trial basis after the contract is signed with right of cancellation regardless of whether said customers visit or use said facilities and services on a trial basis, is an unfair act or practice.

Respondents have in some cases obtained default judgment against customers who have not received sufficient notice of the institution of legal proceedings. Respondents' failure to give customers sufficient notice of the institution of legal proceedings constitutes an unfair act or practice.

PAR. 11. In the course and conduct of their business as aforesaid and at all times mentioned herein, respondents have been and now are in substantial competition in commerce with corporations, firms and individuals engaged in the same general kind and nature of business as that engaged in by the respondents.

PAR. 12. The use by the respondents of the aforesaid false, mislead-

ing and deceptive statements, representations, acts and practices and their failure to disclose material facts have had, and do now have, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said advertisements and representations were and are true and complete, and into the purchase of substantial numbers of respondents' health spa memberships by reason of said erroneous and mistaken beliefs, and into the payment of certain monies to respondents which otherwise may have been disputed.

PAR. 13. 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 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 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 Jack La Lanne Management Corp. is a corporation organized, existing and doing business under and by virtue of the laws

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of the State of New York with its principal office and principal place of business located at 245-24 Horace Harding Expressway, Little Neck, N.Y.

Respondent Jack La Lanne Health Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 245-24 Horace Harding Expressway, Little Neck, N.Y.

Respondent Canadian International Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 245-24 Horace Harding Expressway, Little Neck, N.Y.

Respondent Jack La Lanne Madison Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 551 Madison Avenue, New York, N.Y.

Respondent Jack La Lanne Executive Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at Woolworth Building, 233 Broadway, New York, N.Y.

Respondent Jack La Lanne Lefrak City, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 98-30 57th Avenue, Elmhurst, N.Y.

Respondent Jack La Lanne Kings Highway, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 2032 Coney Island Avenue, Brooklyn, N.Y.

Respondent Jack La Lanne 5 Towns Health Club, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 961 Broadway, Woodmere, N.Y.

Respondent Jacqueline Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 2530 Flatbush Avenue, Brooklyn, N.Y.

Respondent Jack La Lanne Biltmore Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at Madison Avenue and 43rd Street, New York, N.Y.

Respondent Jack La Lanne Fort Lee Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and principal place of business located at 100 Lynwood Plaza, Fort Lee, N.J.

Respondent Jack La Lanne 86th Street Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 144 East 86th Street, New York, N.Y.

Respondent Jack La Lanne Fifth Avenue Health Spa, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 53rd Street and Fifth Avenue, New York, N.Y.

Respondent Churchill Collection Service, Inc. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and principal place of business located at 245-24 Horace Harding Expressway, Little Neck, N.Y., and with a post office box maintained at East Elmhurst, N.Y.

Respondent Harry Schwartz is an officer and principal shareholder of the corporate respondents. He formulates, directs and controls the acts and practices of the said corporations. His business address is 245-24 Horace Harding Expressway, Little Neck, N.Y.

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 Jack La Lanne Management Corp., Jack La Lanne Health Enterprises, Inc., Canadian International Health Spa, Inc., Jack La Lanne Madison Health Spa, Inc., Jack La Lanne Executive Health Spa, Inc., Jack La Lanne Lefrak City, Inc., Jack La Lanne Kings Highway, Inc., Jack La Lanne 5 Towns Health Club, Inc., Jacqueline Health Spa, Inc., Jack La Lanne Biltmore Health Spa, Inc., Jack La Lanne Fort Lee Health Spa, Inc., Jack La Lanne 86th St. Health Spa, Inc., Jack La Lanne Fifth Avenue Health Spa, Inc., Churchill Collection Service, Inc., corporations, their successors and assigns, and their officers, and Harry Schwartz, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchise, or other device, in connection with the advertising, offering for sale, or sale of health spa services or memberships, hereinafter sometimes referred to as "membership services," in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, orally or in writing, directly or by implication:

(a) that any price advertised or charged for membership services is reduced from a previous price or the usual and customary price unless such price represents a reduction from the price at which similar membership services were offered for sale for a reasonably substantial period of time in the recent, regular course of business;

(b) that any savings are afforded in the purchase of membership services from respondents' regular price unless the price at which the membership services are offered constitutes a reduction of not less than five percent from the price at which such membership services have been usually and customarily offered by respondents in the recent, regular course of their business.

or misrepresenting, in any manner, the price at which membership services are offered.

2. Representing, orally or in writing, directly or by implication, that an increase in price will occur, unless:

(a) the amount and the effective date of said increase have been determined by respondents;

(b) the effective date of said increase is disclosed in close proximity or in immediate conjunction with any representation to each person to whom such representation is made or in each advertisement, brochure or other promotional literature where such representation appears;

(c) the increase takes effect on the previously determined date in the previously determined amount and prevails for all sales of the membership services to which it applies for a period of not less than thirty days.

This paragraph shall apply to representations made in connection with the advertising, offering for sale or sale of membership services for health spa facilities which have not yet begun operations as well as to other such representations made by respondents.

3. Representing, orally or in writing, directly or by implication, that any membership service is available at a certain amount or for a certain period of time unless the membership service is actually available at that amount or for that period of time.

4. Failing to post in each room or office or other place where membership services are sold or offered for sale, a price list, being of sufficient size and posted in such a manner that it can be easily observed and read by potential purchasers of membership services, clearly and conspicuously disclosing;

(a) each type of membership service offered for sale;

- (b) the duration of each type of membership service;
- (c) any limitations in respect of any offer of membership service;
- (d) the regular price, any sale price, any special offer or inducement such as "one month free" or "entire summer free" which in effect decreases the price charged for membership services, and any price intended to take effect in the future pursuant to Paragraph 2, when such price increase has been advertised or any representation has been made in respect thereof.

5. Representing, orally or in writing, directly or by implication, that there is any limitation on the number of memberships available for sale at any health spa facility or any limit on the number of members who may use the facilities, unless a reasonable limit has been determined by respondents, or in any way misrepresenting the number of memberships for sale or the number of people who will be using the facilities.

6. Representing, orally or in writing, directly or by implication, that any offer of sale of membership services or any other offer or inducement is limited to a specific time period unless such is the fact and the expiration date of said offer is disclosed along with the information required by Paragraph 2 of this order, if applicable, or that the offer expires on the same day as it is made unless such offer is made on the last day of a period previously disclosed under this paragraph or Paragraph 2 to expire on that day.

7. Falsely disparaging, in any manner, any offer or advertisement of membership services.

8. Representing, orally or in writing, directly or by implication, that exercise programs, instruction, or equipment are unique or exclusive unless such is the fact.

9. Representing, orally or in writing, directly or by implication, that any exercise program or program of nutritional guidance is designed personally for the purchaser of membership services unless such program has been or will be developed or prepared for that particular purchaser.

10. Representing, orally or in writing, directly or by implication, that services, programs, equipment, or instruction are available at respondents' locations if such services, programs, equipment, or instruction are not available at all of respondents' locations unless:

- (a) when the representation is made in a television or radio advertisement, it is disclosed in the advertisement that some services, programs, equipment, or instruction are not available at all locations;

(b) when the representation is made in a newspaper, magazine, or other print advertisement, the locations at which such services, programs, equipment, or instruction are or are not available are disclosed;

(c) when the representation is made at one location, the services, programs, equipment or instruction available at that location are disclosed;

or representing that any facilities or membership services are available to both men and women at all times a health spa is open, unless such is the fact, and failing to disclose before the consummation of any contract any restrictions on use of the facilities or membership services by men or women.

11. Representing orally or in writing, directly or by implication, that any change in body size, configuration, or weight is guaranteed, unless:

(a) any results guaranteed are conditioned solely upon reasonably regular attendance at the health spa facilities, and adherence to a diet, if one is suggested or required;

(b) the nature and extent of such guarantee, any conditions thereto, the manner in which the guarantor will perform, and the identity of the guarantor are clearly and conspicuously disclosed; and

(c) the results to be guaranteed are clearly and conspicuously disclosed in writing either in contract or along with the guarantee.

12. Representing, orally or in writing, directly or by implication, that respondents' programs are effective in reducing or changing body weight or size unless respondents disclose, in immediate conjunction with any such claim, that said programs include and require for effectiveness a diet or program of nutritional guidance.

13. Representing, orally or in writing, directly or by implication, that all members or prospective members will in fact obtain specific reductions or changes in weight or body size, or other changes in body configuration, in a specific period of time.

14. Misrepresenting, in any manner, orally or in writing, directly or by implication, the qualifications, education or training of instructors.

15. Use of "success" statements, comparison photographs, "before and after" photographs or similar depictions, statements or representations (all of which are referred to in this paragraph by the term "representations") unless:

(a) the person or persons shown actually used respondents' facilities and obtained the represented results at respondents' facilities;

(b) the "after" representation was created while the subject or subjects were actually participating in a program or course of treatments at respondents' facilities, or accurately reflects the person's appearance at that time;

(c) the "before and after" representations are as nearly the same as possible in pose, style of clothing, facial expression, camera angle, lighting and all other conditions;

(d) a disclosure is made in conjunction with any such representation that not every purchaser of respondents' membership services can or will achieve the results represented or implied by the representation.

16. Failing, in connection with the sale or offering for sale of health spa membership services, to:

(a) Furnish the buyer with a fully completed copy of the contract pertaining to the sale at the time of its execution which shows the date of the transaction, the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer and in bold face type of a minimum size of ten points, the following statement:

NOTICE TO THE BUYER: DO NOT SIGN THIS CONTRACT BEFORE READING THE PROVISIONS UNDER THE CAPTION "CANCELLATION AND REFUNDS".

(b) Disclose, on the same page as the customer's signature line in the contract pertaining to the sale, under the caption "CANCELLATION AND REFUNDS," which caption shall be printed in bold face type of a minimum size of ten points, the following cancellation and refund provisions:

You are permitted to visit and use the facilities of Jack La Lanne within three business days after the date of this contract, on a trial basis. If, within those three days, and regardless of whether you make any visits, you decide that you want to cancel this contract, you may do so by notifying Jack La Lanne on the form provided you, or by any other writing mailed or delivered to Jack La Lanne at the address shown on the contract. If you so cancel, any payments made by you under the contract will be refunded, and any evidence of indebtedness executed by you will be cancelled by Jack La Lanne or other arrangements will be made to relieve you of any further obligation to pay the same, except that Jack La Lanne may retain as compensation a sum not in excess of \$5.00 for each day on which you visited and used its facilities.

(c) Provide the buyer with a copy of a note or any other instrument of indebtedness executed by him or on his behalf.

(d) Furnish each buyer, at the time he signs the contract, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall set forth the date and identification of the transaction, the name and address of the seller, language sufficient to give notice of the buyer's intention to cancel the transaction, and a space for the buyer's signature.

(e) Inform each buyer orally, immediately prior to the time he signs the contract, of his cancellation rights as set forth in (b).

(f) Honor any notice of cancellation received or mailed within three (3) business days after the date of the contract, and within 10 business days after the receipt of such notice, (1) refund any payments due the buyer, and (2) cancel and return any evidence of indebtedness executed by the buyer, or take any action necessary or appropriate to terminate the buyer's obligation to pay any sum in excess of that due under the applicable cancellation and refund provision in (b).

17. Misrepresenting in any manner, directly or by implication:

(a) that any of respondents or their successors or assigns are holders in due course of any notes, contracts or other documents executed by respondents' customers.

(b) that a member's account has been turned over to an attorney or an independent organization engaged in the business of collecting past-due accounts.

18. Failing to print in 18 point bold face type at the top of any paper which includes a contract, a title which includes the word "CONTRACT."

19. Obtaining from the customer release of, or agreement to language which purports to release, respondent from liability for causes of action arising out of customer's use of respondents' services, facilities, or exercise equipment, when said release or purported release would not be legally operative in the state of contracting.

20. Representing that a health spa facility will open on a specific date, unless such representation is also made in writing in each and every contract signed by a customer to whom such representation is made; failing to disclose, clearly and conspicuously, to all such customers that if the health spa facility does not open on the specified date, the customer may choose between (1) extension of the contract so that the full time period for which the customer contracted does not begin to run until the health spa facility is open, and the right to use any of respondents' health spa facilities in the

meantime, or (2) cancellation of the contract with a refund in the amount to which the customer would be entitled if he or she cancelled pursuant to Paragraph 16 of this order; and failing to extend the contract, or refund the appropriate amount of money, within 10 business days of receipt of written notification of the customer's choice.

21. Commencing any legal action in any court to collect any amount alleged to be due to respondents unless:

(a) the suit or action is commenced in the county in which the defendant resides or in which the contract was executed; and

(b) a summons and/or complaint are served pursuant to the applicable provisions of State law and a copy is sent, by registered or certified mail, return receipt requested, to the last known address of the defendant; *Provided, That*, if the summons and/or complaint are returned as undeliverable or if the defendant has moved, respondents shall request the United States Postal Service to provide the forwarding address of the defendant, and if the Postal Service provides same, shall send said summons and/or complaint to that address by registered or certified mail, return receipt requested.

22. In connection with any default judgment:

(a) Levying on or otherwise attempting to enforce any default judgment unless the defendant is sent within ten days of the entry of judgment a letter setting forth his rights under applicable state law and this order;

(b) Levying on or otherwise attempting to enforce any default judgment unless sixty days have passed from the date of entry of judgment;

(c) Levying on or otherwise attempting to enforce any default judgment unless each defendant against whom a default judgment is entered, is notified that he may have the default set aside at his request by stipulation by the respondents and receive a trial on the suit brought by respondents, if, within forty days after the entry of a default judgment and after receipt of the notification provided for in Subparagraph (a) above, he notifies respondents by certified or registered mail that he desires to enter into a stipulation with respondents to reopen the default;

(d) Failing to consent and stipulate to the reopening of any default judgment obtained by respondents within sixty days after the entry of judgment, upon receipt by respondents of a

request by a defendant to reopen such judgment pursuant to this paragraph or state law:

(e) Failing to send the notice required by this paragraph by certified or registered mail, return receipt requested, to the last known address of the defendant; *Provided*, That, if the notice is returned as undeliverable, or if the defendant has moved, respondents shall request the United States Postal Service to provide the forwarding address of the defendant, and if the Postal Service provides same, shall send said notice to that address, by certified or registered mail, return receipt requested.

Nothing in this paragraph shall require respondents to stipulate to reopen any default judgment more than once in each case.

23. Including in any contract any confession of judgment or any waiver of any rights to which the buyer is entitled under this order, or misrepresenting, orally or in writing, directly or by implication, the buyer's right to cancel the contract pursuant to this order.

It is further ordered, That respondents maintain at all times, complete records relative to the manner and form of their compliance with the terms and provisions of this order, such records to include:

(1) all advertising copy, films, voice and video tapes, and correspondence with advertising agencies;

(2) all brochures, forms, notices, booklets, disclosures, and promotional material used in respondents' business;

(3) all contracts, notes, agreements, and forms offered for execution by or actually executed by members;

(4) all correspondence, including notices of cancellations and complaints, received from or sent to consumers;

(5) all correspondence, notes, or evidence of indebtedness sent to or received from banks or other extenders or arrangers of consumer credit;

(6) all correspondence and copies of agreements with any franchisor, franchisee, successor, lessee, lessor, person or firm with whom respondents maintain such a business relationship relative to the conduct of their health spa business;

(7) records of each member's attendance, weight and measurements, if relevant to a guarantee or representation of results to be attained;

(8) any records required to be maintained under other provisions of this order.

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After entry of this order, all such records shall be retained for a period of not less than three years from the date of their creation or last use, whichever is longer.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to each operating division, to all present and future franchisees and licensees, and to all personnel of respondents now or hereafter engaged in the offering for sale or sale of respondents' services, or in the collection of patron's accounts, in the consummation of any extension of consumer credit, or in any aspect of preparation, creation or placing of advertising; and that respondents secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in any of the corporate respondents, such as dissolution, assignment, or sale resulting in the emergence of any successor corporation or corporations, the creation or dissolution of subsidiaries, or any other change in the corporations 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 address and a statement as to the nature of the 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

MULDOON LOCKERS, INC., TRADING AS BOB'S MULDOON
LOCKERS, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket C-2579. Complaint, Oct. 22, 1974—Decision, Oct. 22, 1974

Consent order requiring an Anchorage, Alaska, retailer of meat and meat products, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as