

IN THE MATTER OF

FLEETWOOD MANUFACTURING, INC., ET AL.

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

Docket C-3428. Complaint, May 18, 1993--Decision, May 18, 1993

This consent order prohibits, among other things, an Arizona-based company and its officer from representing that use, in a manner requiring little or no effort, of their continuous passive motion ("CPM") exercise tables: reduces or helps to reduce body fat; results in or contributes to weight-loss or inch loss; tones or firms human tissue; removes or eliminates cellulite; or provides health or physical fitness benefits similar or superior to those provided by rigorous exercise. In addition, respondents are prohibited from making similar representations, with respect to any passive exercise machine, or fitness or diet program, unless they possess competent and reliable scientific evidence to substantiate such claims. Furthermore, the order also prohibits the respondents from representing that a consumer endorsement or testimonial represents the typical or ordinary experience of those who use the exercise program or CPM machines, unless that is the case.

Appearances

For the Commission: *C. Steven Baker* and *Theresa M. McGrew*.

For the respondents: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Fleetwood Manufacturing, Inc., a corporation, and Thomas A. Fleetwood, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated Sections 5(a) and 12 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and alleges that:

PARAGRAPH 1. Respondent Fleetwood Manufacturing, Inc., is an Illinois corporation, with its principal office and place of business located at 1854 South McDonald, Mesa, Arizona.

Respondent Thomas A. Fleetwood, is an officer of the corporate respondent and is responsible for formulating, directing and controlling the acts and practices of respondent Fleetwood Manufacturing, Inc., including the acts and practices alleged in this complaint. His address is 3917 East June Street, Mesa, Arizona.

PAR. 2. Respondents have manufactured, advertised, offered for sale, sold and distributed to the public passive exercise machines, including such machines known or referred to as toning tables, vibrator tables, leg tables, situp tables, stretch tables, sandbag tables and waist, tummy and hip tables.

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

PAR. 4. In the course and conduct of their business respondents have prepared, or caused to be prepared, and have disseminated, or caused the dissemination of, advertisements and promotional materials for passive exercise machines by various means in or affecting commerce including, *inter alia*, placing advertisements for broadcast by radio and television, in magazines and newspapers distributed through the mail and across state lines, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of respondents' passive exercise machines and the use of said machines by consumers.

PAR. 5. Respondents have caused to be prepared and placed for publication and have caused the dissemination of advertising and promotional materials, including but not limited to, the advertising and promotional materials attached hereto as Exhibits 1 through 4, and have employed the use of various consumer testimonials and endorsements in said advertising and promotional materials to promote the sale of their passive exercise machines and the use of said machines by consumers.

PAR. 6. Typical of the statements made in such advertisements and promotional materials, but not necessarily all inclusive thereof, are the following:

1. "The Inch by Inch System has developed a successful program of passive exercise by using motorized tables that are designed to tone, firm and reduce in specific areas."
2. "Shape up with the Inch by Inch System. It's the perfect way to lose those unwanted inches and feel great at the same time."
3. "Well I came and I lost nine inches, and I didn't do any dieting. I ate candy and everything all those weeks and lost two to three pounds."
4. "Helping to tone and firm (not build) these muscles and break down unwanted cellulite."
5. "These motorized tables exercise one or more of the major muscle groups, helping to tone and firm these muscles and break down unwanted cellulite."
6. "Just two to three times a week (one hour per session) is equivalent to two hours of calisthenics per day."

PAR. 7. Through the use of the statements referred to in paragraph six and other statements contained in advertisements and promotional materials not specifically set forth herein, respondents have represented, directly or by implication, that use of respondents' passive exercise machines in a manner requiring little or no effort by the user:

1. Reduces overall body fat as well as body fat in particular areas such as hips, thighs, buttocks, arms, or stomach.
2. Results in the loss of inches or girth from various parts of the body, including the stomach, hips, thighs and buttocks.
3. Reduces overall body weight.
4. Contributes to the breakdown or removal of cellulite.
5. Tones and firms muscles and breaks down cellulite.
6. Provides health or physical fitness benefits for normal healthy individuals comparable or superior to the health or physical fitness benefits provided by a program of rigorous physical exercise.

PAR. 8. In truth and in fact, use of respondents' passive exercise machines in a manner requiring little or no effort by the user:

1. Does not result in the loss of inches or girth from various parts of the body including the stomach, hips, thighs or buttocks.
2. Does not reduce overall body fat or fat from any particular area of the body such as the hips, thighs, buttocks, arms or stomach.
3. Does not reduce overall body weight.
4. Does not contribute to the breakdown or removal of cellulite.
5. Does not tone and firm muscles or break down cellulite.
6. Does not provide health or physical fitness benefits for normal healthy individuals comparable or superior to the health or physical fitness benefits provided by a program of rigorous physical exercise.

Therefore, the claims set forth in paragraph seven were and are false and misleading.

PAR. 9. Through the use of the statements referred to in paragraph six and others not specifically set forth herein, respondents have represented, directly or by implication, that at the time respondents made the representations set forth in paragraph seven respondents possessed and relied upon a reasonable basis for those representations.

PAR. 10. In truth and in fact, at the time respondents made the representations set forth in paragraph seven respondents did not possess and rely upon a reasonable basis for those representations. Therefore, the representation set forth in paragraph nine was and is false and misleading.

PAR. 11. Through the use of the advertisements and promotional materials referred to in paragraph six, and others not specifically set forth herein, respondents have represented, directly or by implication, that various testimonials and endorsements contained therein reflect the typical or ordinary experiences of consumers, in terms of weight loss and inch loss, after using respondents' passive exercise machines in a manner requiring little or no effort by the user.

PAR. 12. In truth and in fact, the various testimonials and endorsements contained in respondents' advertising and promotional materials, do not reflect the typical or ordinary experiences of

consumers, in terms of weight loss or inch loss, after using respondents' passive exercise machines in a manner requiring little or no effort by the user. Therefore, the representation set forth in paragraph eleven was and is false and misleading.

PAR. 13. The acts and practices of respondents as alleged in this complaint, and the placement in the hands of others of the means and instrumentalities by and through which others may have used said acts and practices, constitute unfair and deceptive acts or practices in or affecting commerce and the dissemination of false advertisements in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Commissioner Owen dissenting.

FEDERAL TRADE COMMISSION DECISIONS

116 F.T.C.

Complaint EXHIBIT 1

RECEIVED
JUN 11 1954

The Inch by Inch system of
measuring is a system of
measuring in which the
unit of measurement is the
inch. The system is based
on the fact that there are
12 inches in a foot, 3 feet
in a yard, and 36 inches
in a yard. The system is
used in the United States
and in many other countries.
The system is a simple and
easy system of measuring.

Inch by Inch
475 Park Avenue — New York, N. Y. 10017

The Inch by Inch system of
measuring is a system of
measuring in which the
unit of measurement is the
inch. The system is based
on the fact that there are
12 inches in a foot, 3 feet
in a yard, and 36 inches
in a yard. The system is
used in the United States
and in many other countries.
The system is a simple and
easy system of measuring.

The Inch by Inch system of
measuring is a system of
measuring in which the
unit of measurement is the
inch. The system is based
on the fact that there are
12 inches in a foot, 3 feet
in a yard, and 36 inches
in a yard. The system is
used in the United States
and in many other countries.
The system is a simple and
easy system of measuring.

355

Complaint

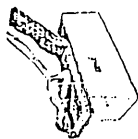
EXHIBIT 2

This table stimulates the blood circulation and eliminates excess water retention. By walking exercise the feet and tone the legs. This table is also beneficial to people who have trouble with circulation. The massaging action of the legs stimulates blood circulation in these particular areas exercised by walking.



Leg Lift Table

This table tones and firms the legs, stomach or abdominal muscles, and increasing flexibility in the joints. Women feel that a major concern is flabby stomach muscles. By raising you to 60-90 degrees, this table can show the results in just a few weeks.



This table is good for the entire leg area. It is especially good for the upper thighs where most women have a problem. This table also helps to eliminate "saddlebags".

This table exercises the waist, tummy, and legs, while also strengthening the lower back muscles. It combines waist twisting exercises along with leg lifting exercises. In the same time, giving you the equivalent of exercises you would receive from side-bends and sit ups.



Stretch Table

This table is good for the entire part of the body. It lifts the legs, hips, improves posture, and furthers back, midriff, upper arms, neck and bustline. It also improves stretching muscles and tendon.

Q. How can I expect results?
A. Results are usually noticeable after only a few sessions. The best results in toning the body come from a regular exercise program. Even if you are not a regular exerciser, you can still lose inches, firm and tone your body by regular use of the system.

Q. How does this compare to Nautilus type exercises?
A. Both work on the same principle as the Nautilus system. With the Nautilus type equipment—the equipment provides the resistance while you do the exercise and toning. With both by inch tables, you provide the resistance while the tables do the pushing and pulling. The high resistance provided by the tables and the toning your muscles without the stress and strain of Nautilus type equipment can cause.

Q. I have had a back injury. Is the system safe for me?
A. Yes, the system is designed to provide the resistance in their conditions. The system is designed to provide the resistance in their conditions. The system is designed to provide the resistance in their conditions. The system is designed to provide the resistance in their conditions.

Q. Will this exercise benefit?
A. Yes, the inch by inch tables move the body in only a few minutes. This allows increased flexibility and range of motion which is great for stiff or arthritic joints.

Q. Will I build muscle?
A. No. The system is designed to tone, firm and reduce. You will see more definition in the muscles but will not add bulk.

Q. If I have arthritis can I use the system?
A. Yes. The fact that the system increases flexibility and range of motion, patients and physicians agree that the system is very beneficial for people with arthritis.

Complaint

116 F.T.C.

THE ABOVE IS A SUMMARY OF THE FACTS OF THE CASE. THE FOLLOWING IS A SUMMARY OF THE DECISION OF THE COMMISSION.

Continued

we decide the culprit is the smoking out on the stove. Michael wasn't using the vent in deference to my tape recorder, which was having enough trouble with Max's piano playing in the living room. Unfortunately, no one had passed along directions to the alarm disconnect, and we lose the chief while he hunts for it.

Meanwhile there is time for getting to know this soft-spoken lady, about whom I know some bare facts: She was an only child of midwestern parents but was born in New Haven, where her father went to Yale Law School. He chose to go into the insurance business rather than law (is there some irony here with Jill playing Ann the lawyer?). and as he moved up, was constantly transferred. Thus Jill was raised all over the Midwest, her first eight years of school being spent in eight different schools. Her parents separated when she was 15.

Says Jill, "My mom told me that even though she was working almost all my life, her best time was when I was a baby and she stayed home. And she told me my favorite year was fourth grade, when she wasn't working. I don't remember that. I think my mother's a real model of how you can do it all. I was

not lacking at all for a mother, and yet she was truly involved in something else. My father, you know, left her when I was fifteen, so she didn't really have it all. The attempt to have it all is what I grew up with. I saw it was necessary for her to fulfill herself professionally in order to be happy. And that's why I just don't want to have a home and children, and that's all. That's the model my daughter Alison sees, and I think there's a lot to it."

Michael returns, successful at last with the live alarm, and quips, "Your mother, your mother; why don't we talk about my mother?" Jill ignores him and continues, "I'm not saying all this is easy. I'm saying I'm very hard to have it all. The first job I took after Max was born I had originally turned down to stay home with him. Then I got completely depressed because I wasn't going to be able to do this wonderful part in this wonderful play with my favorite director. I walked the streets with Max, so depressed, thinking, 'This is supposed to be such a great time, and I want to work.' Then something happened to the actress who had taken the part I was offered, and the director called me in a panic. I went to work and I haven't

forgotten it's a constant conflict for me, and I'm just willing to do with that."

"When it comes to work," he says, "we don't advise each other. I wouldn't ever want to be responsible for her turning down a job." With that he puts the onions in the pan, and when they're translucent, adds a half pound of diced peppers and puts a pound of pasta—cutty little things called tortini—into a pot of boiling salt water. And I'm telling you this because the result of his tossing the drained pasta with the stuff in the pan is incredible. You should try it.

Meanwhile Jill sets the table in the kitchen, and we break for supper. Mike talks about their backgrounds, and sometime during dinner they hold hands. "They were very different up-brings," he says. "Mostly in the area of expressing oneself. My family expressed themselves too much," he laughs, "and Jill's much less, especially her dad, who was pretty close to the chest. And I think that in there somewhere is where the attraction comes from. It's funny, Jill's image is of the male, upright WASP. But in terms of expressiveness—she's the one who makes sure." (continued on page 6.)



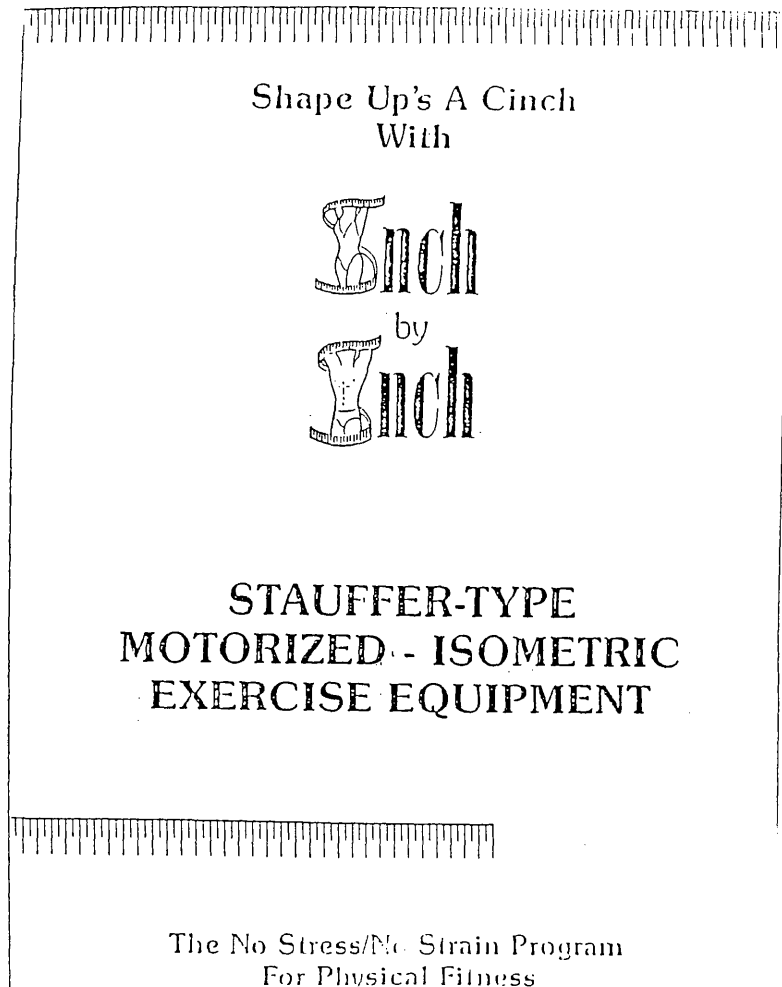
Face It. Getting yourself in better shape has got to be tough, right? Wrong! People like you, all over the country, are discovering Inch by Inch Toning Salons. This unique and effective form of fitness program uses isometrics, a proven and accepted form of exercise, to gently isolate and exercise all major muscle groups in the body without the sweat, strain and fatigue of traditional exercise programs. Toning increases flexibility and gives you more energy and vitality, while you lose inches for a trimmer figure — Inch by Inch! Call our toll-free number today to receive your invitation for a FREE trial visit at the Inch by Inch Toning Salon nearest you!

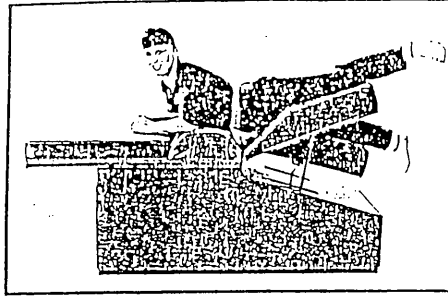
1-800-543-INCH

Inch by Inch
The Toning Professionals



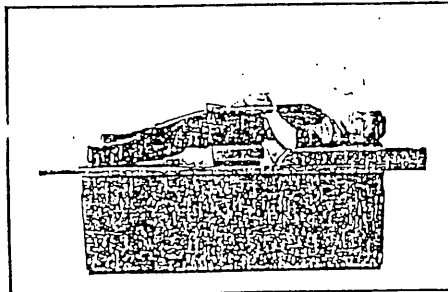
EXHIBIT 3





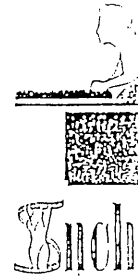
WAIST-TUMMY-THIP TABLE (3 in 1)

This table exercises the waist, tummy, and hips, while also strengthening the lower back muscles. It combines waist-twisting exercise along with leg-lifting exercise movements. It also exercises both sides of the body at the same time, giving you the equivalent exercise you would receive from side-bends and sit-ups.

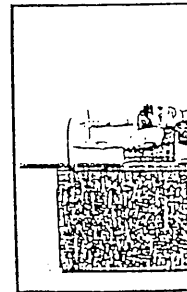


SAND BAG TABLE

This table tones and firms tummy and the hips. The two moving parts simulate the hip walk exercise which some women are familiar with as a float exercise to firm and tone the hips. This table is a great benefit to people who have trouble getting off the floor. The massager is made of a sturdy, heavy



The INCH BY INCH Isometric exercise tables designed to isolate and with 500 to 1000 (10 minutes). This is utilized two times per session, will give you ex of calisthenics per day!

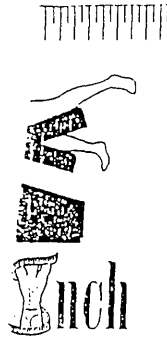


STRETCH TABS

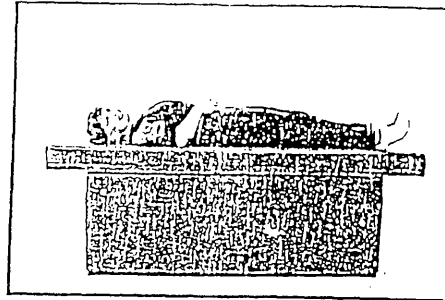
This table is good to lift the oblique abdominal muscles, tones the back and improves the digestive system. It also improves the circulation.

355

Complaint

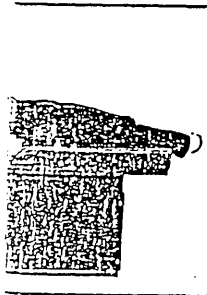


IAN offers live different
combination of the live being
ALL major muscle groups
is per table treatment,
form of exercise which, if
approximately one hour each
instead of doing two hours

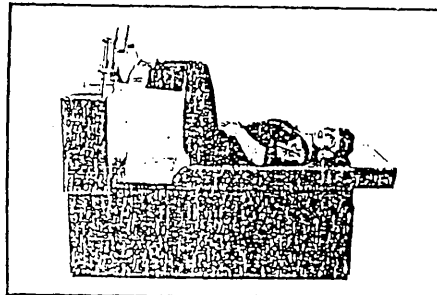


CIRCULATION TABLE

This table stimulates the blood circulation and eliminates
excess water retention. By increasing blood circulation in
surface skin cells, the gentle vibration helps rid the body of
excess water and acid waste. Although it is very relaxing, it
serves a very important purpose and was designed to work
along with the other 4 tables.



upper part of the body. It
improves posture, and limbs &
muscles, tummy, and
by stretching muscles and



LEG TABLE

This table is good for the whole leg area. It is especially good
for the upper thighs where most women have a problem.
There are two different exercises we will be showing you on
the table, one concentrates on toning and burning the inner
thighs and the lower burning muscles, and the other one tones
and burns the outer thighs and hips to help eliminate
cellulite.

Complaint

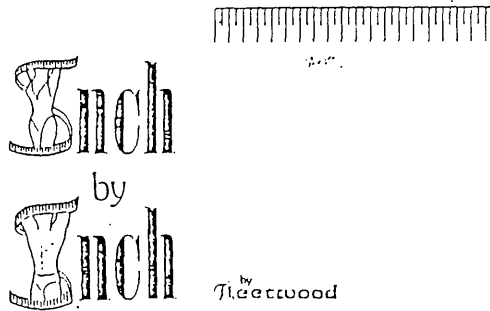
116 F.T.C.

The INCH BY INCH PROGRAM is based on a concept originally known as the Stauffer System, in which therapy equipment was designed to treat polio victims and others with arthritis and various other muscular diseases.

Today, this updated-more modern equipment with the INCH BY INCH PROGRAM is also providing a great way to exercise and stay in shape with amazingly fast inch loss in those problem areas.

With just two 50-minute sessions per week, these motorized tables exercise one or more of the major muscle groups, helping to tone and firm (NOT BUILD) these muscles and break down unwanted "cellulite". Through high repetition movement, the tables increase the flow of blood and oxygen, flushing out the fat-inducing acid waste, leaving you with a trimmer figure and a healthy surplus of energy.

Along with the fact that you can come in your everyday street clothes and not work up a sweat, what more could you ask!



Fleetwood Manufacturing
961 W. State Street
Sycamore, IL 60178
(815) 895-4334

355

Complaint

EXHIBIT 4

INCH BY INCH

Narrator: Exercise, a word that oftentimes evokes images of exhaustion and sore muscles. A never ending battle to stay in shape. And sometimes winding up with more than you bargained for. Wouldn't it be great if there were a machine to do some of the work for you? Well, now there is. Shape up with the Inch By Inch System. It's the perfect way to lose those unwanted inches and feel great at the same time!

Victoria Hoge: You see people come in here who have never exercised or have never been able to stick to any particular program, and you see them doing things that they haven't been able to do for quite some time, and getting those real good results!

Narrator: Here's how it works. Based on a concept originally used to treat polio, arthritis and muscular disease victims. The Inch By Inch System has developed a successful program of passive exercise by using motorized tables that are designed to tone, firm and reduce in specific areas.

Simone O'dem: Inch By Inch has helped me to tone, tone areas that I didn't think I'd be able to tone. It's helped me reduce in my thighs and my back area.

Jeanette Battisto: I, I love it, I feel better. I have more energy, and I don't have the arthritis pain that I have been carrying around.

Narrator: Through a series of natural movements, each of the seven tables manipulates and exercises one or more of the major muscle groups without adding any bulk. These tables utilize isometric toning; thereby, eliminating any stress or strain on joints and muscles, in other words, you provide the resistance while the tables do the pushing and pulling for you.

Simone O'dem: You can make it harder for yourself so that you get more benefit out of the machine. If you want to just lay there and let the machine do all the work, you can do that also. You don't have to work the machine. The machine can just work for you.

Narrator: Through high repetitive movements, the exercise tables increase the flow of blood and oxygen flushing out fat induced acid waste, leaving you with a trimmer figure and a greater sense of well being.

Rube Wenger: Well, I came and I lost nine inches, and I didn't do any dieting. I ate candy and everything all those weeks and lost two or three pounds, which I was real glad to see, and I was really amazed with my nine inches. I didn't think I had that many inches to lose all over, but I'm amazed. I'm looking better and my husband says that I look like twenty-five again. He did (laugh).

Narrator: The Waist, Tummy, Hip Table or the 3 in 1 as it's sometimes called, exercises three different areas at once (the waist, the stomach and the hips) while also strengthening the lower back muscles. It firms and tones by combining waist twisting exercise along with leg lifts. This table exercises both sides of your body at the same time, giving the equivalent exercises of side bends and sit-ups. The Side By Side Table exercises the lower part of the body which to deep side bend calisthenics, without any stress in the lower back.

Tony Turner: I went to health clubs and was working out, and I would join one. I would go faithfully for about six months after buying a three year membership, and I just got tired. You're always tired when you leave and you're not clean. You have, you really do have to go home and start all over before you can do anything else. So when a friend of mine came to Inch By Inch and told me that she could tell a difference after one month of visits and the way her clothes were fitting. Well, I thought, "I'll try that". And it really was simple and somehow it gives me more energy. When I leave here, I feel like going out and doing something. I feel like jogging or something because it doesn't wear you out, and, but if I want to just go to a party or anything after here I'm still fresh, and I don't have to go home and start all over. So it's not as time restrictive, so I really can stick with it. I've been coming for six weeks and I don't intend to stop. I really am seeing results. So it doesn't matter how many times I have to come. It's so simple that I can keep on coming.

Narrator: The Sand Bag Table tones and firms hips, buttocks and stomach by using the weight of twenty pound sand bag placed on the abdominal area while two moving pads gently simulate the hip walk exercise. This table will also help to break down cellulite. The messaging action of the moving pads stimulates blood circulation in those particular areas affected by cellulite. The Stretch Table exercises the complete upper portion of the body. Not only does it lift the rib cage to help improve your posture, but at the same time it tones and firms the back, midriff, upper arms, waistline and that hard to reach area, the stomach. It also stretches the muscles and tendons; thereby, improving flexibility. You don't need a warm-up session. You can start right away with your inch loss program. A trained technician will be happy to work with you. Naturally the most successful results come from a combination of dieting and the exercise program. Even if you don't want to lose weight, you can still lose inches and tone up what you do have. Should you decide that you do want to lose weight as well as inches, your Inch By

355

Complaint

Inch technician will be happy to provide a personalized figure consultation for you. Each Isometric Toning Table will exercise one or more of the major muscle groups with just 500 to 1,000 repetitions per table treatment for eight minutes each. Just two to three times a week (one hour per session) is equivalent to two hours of calisthenics per day. If you've ever tried to do leg lifts on your own, you'll really appreciate this next table. The Leg Lift Table does the work for you while protecting the muscles in your back. It tones and firms the stomach muscles and at the same time improves flexibility in the lower back. Just 95 to 100 leg lifts per session on this table will give amazing result in a very short time. The Leg Table exercises the entire leg area and is especially built for that common problem that many women have known as "saddle bags". It firms the inner and outer muscles of the upper thighs and the hip area.

Ruby Wenger: After two weeks of one hour sessions, I had lost 6 ½ inches.

Ramona Baldwin: In the first seven sessions, I lost nineteen inches and the last three months I've lost a total of 37 ½ inches.

Brenda Johnson: Since I started with Inch By Inch, I lost 35 ½ inches, and I feel great and this is the only type of exercise I can do. I have Lupis, and I have bone deterioration and until I found Inch By Inch I couldn't do any form of exercising.

Steve Bramlett: I've been going for two and a half months and I've lost fifteen inches.

Leo Treadway: In eighteen visits, I lost five pounds and fourteen inches.

Narrator: The Circulation Table stimulates blood circulation and eliminates excess water retention, through increasing circulation to surface skin cells. It's especially beneficial for improving the quality of the skin and hair and also helps to rid the body of acid waste through gentle vibrations; all the time relaxing and rejuvenating the body.

Simone O'dem: From what I've noticed, the girls that come here, the ones that need it most enjoy it the most because they see more benefit from it. They lose more inches. I myself haven't necessarily lost that many inches, but I have definitely toned up. I can tell by the way my clothes fit and I came here more for stress reduction than anything. It has definitely helped in that area.

Trula Nighswonger: Well, I'm 84 years old and I've realized I was getting lethargic, and I also was getting stiff because of sitting too much, I guess, just sitting and I knew I should do some exercising, but I knew it's not much fun doing it alone, so when I saw this ad in the paper, these exercises, I thought, "that's just

what I needed". So I came down and enrolled and I've been bothering the girls ever since.

Narrator: Let's review some of the benefits of the Inch By Inch program. Trims and Tones: With Inch By Inch, you trim and tone all major muscle groups. With this passive form of exercises, you can experience an amazingly rapid inch loss without losing weight. Say goodbye to unwanted cellulite! Facilitates Weight Loss: If you wish to lose weight in addition to losing inches, Inch By Inch can help you to lose weight fast with our personalized figure consultation and diet program. Reduces Stress: You'll be much more relaxed and you'll Sleep Better. You'll have More Energy. Inch By Inch helps to Improve Your Posture. You'll have greater Flexibility of Movement. Get rid of stiff creaky joints! Improved Mental Outlook. When you look better, you'll feel better. Relief From Daily Aches and Pains. No Warm-Up Required: You can come in straight form work without having to change clothes and leave the same way. Improved Circulation. You'll glow, and you'll feel better about yourself.

Ruby Wenger: I want to recommend it to everybody. And if your thin and just want to firm up a little bit.

Steve Bramlett: Inch By Inch can benefit anybody. Tennis players, golfers, just whoever is active.

Simone O'dem: I would definitely recommend Inch By Inch to anyone who is interested in losing inches without a lot of stress and effort because you don't have to put a lot of effort into this. It's definitely a thing for vanity. There's no doubt about it; but, who doesn't want to look good?

Narrator: Inch By Inch is a major company that is internationally recognized with centers throughout the United States and Overseas. Inch By Inch supports everyone of its centers 100%, and insures customer satisfaction. We hope you've enjoyed our program. You too can look forward to a trimmer healthier body and have fun at the same time. Come in for a complimentary visit. We'll show you our facilities and a trained technician will work out an inch loss program for you. Tone and firm your way to good health with The Inch By Inch System.

Ruby Wenger: My husband said I looked like twenty-five again. He did (laugh).

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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Fleetwood Manufacturing, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1854 South McDonald, in the city of Mesa, State of Arizona.

2. Respondent Thomas A. Fleetwood is an officer of Fleetwood Manufacturing, Inc. His address is 3917 East June Street, Mesa, Arizona.

3. 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

DEFINITION

For the purpose of this order, the following definition shall apply:

“Passive Exercise Machine” means any motorized table, equipment or device that supports body weight, and is capable of continuously moving isolated groups of muscles through a range of motion in a manner requiring little or no effort by the user. For purposes of this order a passive exercise machine shall include such devices known or referred to as toning tables, motorized calisthenics tables or any other device of substantially the same construction, design or operation.

I.

It is ordered, That respondents Fleetwood Manufacturing, Inc., a corporation, its successors and assigns, and Thomas A. Fleetwood, individually and as an officer and director of Fleetwood Manufacturing, Inc., and respondents’ agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, selling or distributing of any passive exercise machine in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that use of any such machine in a manner requiring little or no effort by the user:

a. Reduces or helps to reduce overall body fat or body fat in any particular areas of the human body.

- b. Results in or contributes to inch loss or weight loss or the reduction of any particular part of the human body.
- c. Tones or firms human tissue including muscle in a normal healthy individual.
- d. Removes or eliminates cellulite or any other form of subcutaneous body fat from the human body.
- e. Provides health or physical fitness benefits similar or superior to those provided by rigorous forms of exercise for normal healthy individuals.

II.

It is further ordered, That respondents Fleetwood Manufacturing, Inc., a corporation, and Thomas A. Fleetwood, individually and as an officer of the corporation, their successors and assigns, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, selling or distributing of any passive exercise machine or any fitness or diet program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that use of any such machine or program:

- 1. Reduces or helps to reduce overall body fat or body fat in particular areas of the human body.
- 2. Results in or contributes to inch loss or weight loss or the reduction of any particular part of the human body.
- 3. Tones or firms human tissue including muscle.
- 4. Removes or eliminates cellulite or any other form of subcutaneous body fat.
- 5. Provides health or physical fitness benefits for normal healthy individuals similar or superior to those provided by rigorous forms of exercise.

unless at the time of making such representation, they possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of the order, for any test, analysis research study or other evidence to be "competent and reliable," the test, analysis, research, study, or other evidence shall be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results.

B. Representing, directly or by implication, that any consumer endorsement or testimonial in favor of any such machine or program represents the typical or ordinary experience of members of the public who use the machine or program unless such is the case.

III.

It is further ordered, That respondents shall for at least three (3) years after the date the representation is last disseminated, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this order.

B. All tests, reports, studies, surveys, demonstrations or other evidence, including consumer complaints, in their possession or control that contradict, qualify or call into question any representation covered by this order.

C. A copy of each non-identical form of promotional material disseminated by respondents.

IV.

It is further ordered, That respondents shall for at least three (3) years after the date of service of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying records of the name and last known address

of each dealer, distributor, purchaser or lessee for commercial use of respondents' passive exercise machine, along with a copy of any training manuals or other training material disseminated to such persons.

V.

It is further ordered, That respondents shall:

A. Within sixty (60) days after the date of service of this order send via certified mail with return receipt, a copy of this order to each person or firm that is a current or former Fleetwood salon operator or dealer, and to each distributor, purchaser or lessee for commercial use of Fleetwood equipment, and that respondents shall maintain for three (3) years and upon request make available to the Federal Trade Commission for inspection and copying each such return mail receipt, as well as a list of the names, addresses and phone numbers of those parties to whom respondents distributed a copy of this order.

B. Distribute a copy of this order to each of respondents' current officers, agents, representatives or employees who are engaged in the preparation of advertisements or other promotional materials, or any training or instructional materials, for passive exercise machines.

VI.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to the effective date of 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 this order.

VII.

It is further ordered, That the individual respondent named herein shall for a period of 5 years from the date of service of this order, promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment whose activities include the manufacture, advertising, promotion, offering for sale, sale or distribution of passive exercise machines and of his affiliation with any new business or employment in which his own duties and responsibilities involve the manufacture, advertising, promotion, offering for sale, sale or distribution of passive exercise machines, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

VIII.

It is further ordered, That respondents shall, within sixty (60) days after the date of service 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.

Commissioner Owen dissenting.

IN THE MATTER OF

PROMODES, S.A., ET AL.

Docket 9228. Consent Order, May 17, 1990--Modifying Order, May 20, 1993

This order reopens the proceeding and modifies the Commission's consent order issued May 17, 1990 (113 FTC 372) by requiring the Tennessee company to divest a specific Red Food supermarket in Chattanooga, rather than the store specified in East Ridge. The Commission concluded that the respondents had demonstrated that the public interest warranted the change, and therefore it approved the substitution.

ORDER GRANTING REQUEST TO REOPEN AND MODIFY

Promodes, S.A. ("Promodes") and The Red Food Stores, Inc. ("Red Food") filed a Petition to Reopen and Modify Consent Order ("Petition") in Docket No. 9228 on January 29, 1992, pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commissions Rules of Practice and Procedure, 16 CFR 2.51. Promodes and Red Food (collectively, "respondents") request that the Commission reopen and modify the consent order issued by the Commission on May 17, 1990 ("order"), which became final on May 29, 1990, to substitute a supermarket that they are not required to divest for one that paragraph II.A.4 of the order requires them to divest.

For the reasons discussed below, the Commission has determined that respondents have not shown that changed conditions of fact require reopening the order but that they have demonstrated that it is in the public interest to reopen and modify the order for the limited purpose of the substitution of assets to be divested.

I. The Complaint And Order

The complaint in this case alleged that if Red Food, a subsidiary of Promodes, consummated the acquisition of seven supermarkets located in the Chattanooga, Tennessee Metropolitan Statistical Area ("MSA") from The Kroger Company ("Kroger"), the effect may be