

IN THE MATTER OF

ALDI, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FAIR CREDIT REPORTING ACT AND SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3764. Complaint, Sept. 5, 1997--Decision, Sept. 5, 1997*

This consent order requires, among other things, the Illinois-based grocery chain to comply with the provisions of the Fair Credit Reporting Act requiring the consumers to be notified when they are denied credit, insurance or a job based in whole or in part on information in their credit report and requiring the denying company to provide the name and address of the consumer reporting agency that supplied the report.

Appearances

For the Commission: *John Hallerud* and *C. Steven Baker*.

For the respondent: *Keith Reed, Seyfarth, Shaw, Fairwether & Geraldson*, Chicago, IL.

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Aldi, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts, 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:

DEFINITIONS

For the purposes of this complaint, the following definitions are applicable. The terms "*consumer*," "*consumer report*," and "*consumer reporting agency*" shall be defined as provided in Sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(c), 1681a(d) and 1681a(f).

PARAGRAPH 1. Respondent Aldi, 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 1200 N. Kirk Road, Batavia, Illinois.

PAR. 2. Respondent, in the ordinary course and conduct of its business, has used information in consumer reports obtained from consumer reporting agencies in the consideration, acceptance, and denial of applicants for employment with respondent.

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

PAR. 4. Respondent, in the ordinary course and conduct of its business, has denied applications or rescinded offers for employment with respondent based in whole or in part on information supplied by a consumer reporting agency, but has failed to advise consumers that the information so supplied contributed to the adverse action taken on their applications or offers for employment, and has failed to advise consumers of the name and address of the consumer reporting agency that supplied the information.

PAR. 5. By and through the practices described in paragraph four, respondent has violated the provisions of Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

PAR. 6. By its aforesaid failure to comply with Section 615(a) of the Fair Credit Reporting Act and pursuant to Section 621(a) thereof, respondent has engaged in unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 respondent with violations of Section 615(a) of the Fair Credit Reporting Act and Section 5(a) of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 the respondent 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 respondent has 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 Aldi, 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 1200 N. Kirk Road, Batavia, Illinois.

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

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

For the purpose of this order, the terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in Sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(c), 1681a(d), and 1681a(f).

I.

It is ordered, That respondent Aldi, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any application for employment, do forthwith cease and desist from:

1. Failing, whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency, to disclose to the applicant for employment at the time such adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report. Respondent shall not be held liable for a violation of Section 615(a) of the Fair Credit Reporting Act if it shows by a preponderance of the evidence that at the time of the alleged violation it maintained reasonable procedures to assure compliance with Section 615(a) of the Fair Credit Reporting Act.

2. Failing, within ninety (90) days after the date of service of this order, to mail two (2) copies of the letter attached hereto as Appendix A, completed to provide the name and address of the consumer reporting agency supplying the report to each applicant who was denied employment by Aldi, Inc. between January 1, 1994, and the date this order is issued, based in whole or in part on information contained in a consumer report from a consumer reporting agency, such copies of the letter to be sent first class mail to the last known address of the applicant that is reflected in respondent's files, and accompanied by a copy of the Federal Trade Commission brochure attached hereto as Appendix B, copies of which are to be provided by respondent. Copies of the letters attached as Appendix A need not be sent to any applicant who is denied employment with respondent during the time period specified above if the applicant's application file clearly shows that respondent Aldi Inc. has previously given the applicant notification that complies in all respects with the provisions of paragraph I.(1) of this order.

II.

It is further ordered, That respondent and its successors and assigns shall, for five (5) years from the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of Part I of this order, such documents to include, but not be limited to, all employment evaluation criteria relating to consumer reports, instructions given to employees regarding compliance with the provisions of this order, all notices or a written or electronically stored notation of the description

of the form of notice and date such notice was provided to applicants pursuant to any provisions of this order, and records of all applicants for whom consumer reports were obtained for whom offers of employment are not made or have been withheld, withdrawn, or rescinded based, in whole or in part, on information contained in a consumer report.

III.

It is further ordered, That respondent and its successors and assigns shall, for five (5) years from the date of issuance of this order, deliver a copy of this order at least once per year to all persons responsible for the respondent's compliance with Section 615(a) of the Fair Credit Reporting Act.

IV.

It is further ordered, That respondent and its successors and assigns shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation that may affect compliance obligations arising under this order, including, but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that with respect to any proposed change in the corporation about which respondent learns less than thirty days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

V.

It is further ordered, That respondent and its successors and assigns shall, within sixty (60) days of the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VI.

It is further ordered, That this order will terminate on September 5, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

APPENDIX A

Dear Employment Applicant:

Our records show that you applied for employment at Aldi, Inc., at some time after January 1, 1994. In assessing your job application, in which you authorized us to check your credit record, our decision may have been based, at least in part, on information obtained from the credit bureau identified below:

[NAME OF CONSUMER REPORTING AGENCY]

[ADDRESS]

It is important for you to know that a federal law, the Fair Credit Reporting Act, gives persons who are denied employment the right to know if the denial was based, in whole or in part, on information supplied by a consumer reporting agency, commonly known as a "credit bureau." If so, the name and address of the credit bureau must be disclosed to the applicant.

Information in your credit report may have led us, at least in part, to deny your application. Based on our actions you are entitled to a free disclosure of your credit report if you contact the credit bureau within (30) days. An extra copy of this notice is enclosed so that you may give it to the agency when you request to review your file.

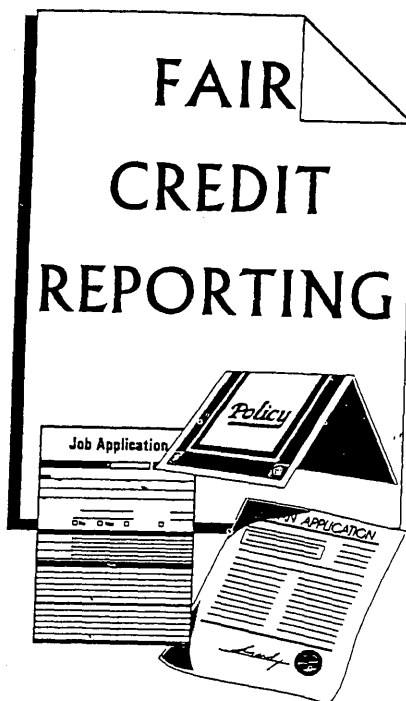
A brochure explaining your rights under the federal credit laws is enclosed. If you want more information about your rights, write to the Federal Trade Commission, Correspondence Branch, Washington, D.C. 20580.

Thank you.

Decision and Order

124 F.T.C.

APPENDIX B



Federal Trade Commission
Bureau of Consumer Protection
Office of Consumer & Business Education
(202) 326-3650

September 1997

APPENDIX B

IN THE MATTER OF

ICON HEALTH AND FITNESS, INC., ET AL.

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

Docket C-3765. Complaint, Sept. 9, 1997--Decision, Sept. 9, 1997

This consent order requires, among other things, the Utah-based advertisers and distributors of Cross Walk Treadmills to substantiate future weight-loss, calorie-burning or fat-burning claims or benefits of any exercise equipment. In addition, the consent order requires that the testimonials in the respondents' advertising either represent the typical experience of users, or include disclosures of the generally expected results.

Appearances

For the Commission: *Laura Fremont* and *Jeffrey Klurfeld*.

For the respondents: *David Seidl, Miles & Stockbridge*,
Baltimore, MD. and *Brad Bearson*, in-house counsel, Logan, UT.

COMPLAINT

The Federal Trade Commission, having reason to believe that Icon Health and Fitness, Inc., IHF Holdings, Inc., and IHF Capital, Inc., corporations ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Icon Health and Fitness, Inc. is a Delaware corporation with its principal office or place of business at 1500 S. 1000 W., Logan, Utah.

2. Respondent IHF Holdings, Inc. is a Delaware corporation with its principal office or place of business at 1500 S. 1000 W., Logan, Utah.

3. Respondent IHF Capital, Inc. is a Delaware corporation with its principal office or place of business at 1500 S. 1000 W., Logan, Utah.

4. Respondents have advertised, labeled, offered for sale, sold, and distributed exercise products to the public, including the "Proform Cross Walk Treadmill," the "Proform Cross Walk Plus," and the "Proform Cross Walk Advantage" ("Cross Walk Treadmill[s]"), which are motorized treadmills.