

Complaint

124 F.T.C.

IN THE MATTER OF

LIFE FITNESS

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3766. Complaint, Sept. 9, 1997--Decision, Sept. 9, 1997*

This consent order requires, among other things, the Illinois-based manufacturer and distributor of stationary exercise cycles to substantiate future weight-loss, calorie-burning or fat-burning claims or benefits of any exercise equipment. In addition, the consent order prohibits the respondent from misrepresenting the result of any test, study or research relating to such benefits.

Appearances

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

For the respondent: *William C. Holmes, Freeborn & Peters*,
Chicago, IL.

COMPLAINT

The Federal Trade Commission, having reason to believe that Life Fitness, a general partnership ("respondent"), has 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 Life Fitness is a New York general partnership with its principal office or place of business at 10601 West Belmont Avenue, Franklin Park, Illinois.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed exercise products to the public, including "Lifecycles," which are exercise bicycles.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused to be disseminated advertisements for Lifecycles, including but not necessarily limited to the attached Exhibits A through C. These advertisements contain the following statements:

A. "Research has shown that the patented Lifecycle programs allow you to burn over 1,000 calories per hour!" (Exhibit A)

B. "Remember, the Lifecycle programs have been proven to burn over 1000 calories per hour!" (Exhibit B)

C. "BURN OVER 1300 CALORIES AN HOUR!" (Exhibit C)

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that users of the Lifecycle will burn calories at a rate of over 1,000 per hour under conditions of ordinary use.

6. Through the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in paragraph five, at the time the representation was made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in paragraph five, at the time the representation was made. Therefore, the representation set forth in paragraph six was, and is, false or misleading.

8. Through the means described in paragraph four, respondent has represented, expressly or by implication, that research shows that users of the Lifecycle will burn calories at a rate of over 1,000 per hour under conditions of ordinary use.

9. In truth and in fact, research does not show that users of the Lifecycle will burn calories at a rate of over 1,000 per hour under conditions of ordinary use. Therefore, the representation set forth in paragraph eight was, and is, false or misleading.

10. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A

EXHIBIT A

THE NEW LIFECYCLE TRAINER
HATES FAT AS MUCH
AS YOU DO



**INTRODUCING
THE NEW LIFECYCLE®
AEROBIC TRAINER
FROM LIFE FITNESS.**

FROM LIFE ITSELF

The Lifecycle™ aerobic trainer, the #1 choice of health clubs, is used by more than 17 million people in over 100,000 fitness programs. 1

**NEW EXCLUSIVE HEART RATE ZONE TRAINING
MAXIMIZES FAT BURNING!**

**EXCLUSIVE HEART RATE MONITORING
MAXIMIZES FAT BURNING!**

Reduce body fat, you can't beat the NEW Lifecycle program. Research has shown that the patented Lifecycle program automatically shows you to burn over 1,000 calories per hour. Heart Rate Zone Training, a patented Life Fitness program, automatically adjusts your pedal resistance, keeping you in your target heart rate zone so you'll reduce body fat and increase lean muscle tissue.

"EX-BACK" GUARANTEE!

While aerobic trainers have been used for years, the Lifecycle program is the only one that has been scientifically proven to maximize fat burning.

30-DAY "MONEY-BACK" GUARANTEE

...your problem is a
...life zone so you'll
...issue.

30-DAY "MONEY-BACK" GUARANTEE!

Now you can enjoy the new Lifecycle aerobic trainer in your home for a full 30 days. If you're not satisfied for any reason, simply return it for a full refund. Take advantage of our special financing, too! If you order by March 31, 1995, you pay nothing until October 1995 and we'll give you shipping and handling — a \$130.00 value — **ABSOLUTELY FREE** as your bonus! Call today!

Life Fitness
Interactive fitness solutions
...the way for the future

Life Fitness is a member of the Life Fitness Group, Inc. 1995

Call today to order or for a
FREE BROCHURE
1-800-877-3867
Dept. B276

EXHIBIT A

People
: x10
Final: None

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EXHIBIT B



10601 West Belmont Avenue • Franklin Park, IL 60131

Dear Fitness Enthusiast:

Congratulations on taking the first step toward losing weight, burning fat, building muscle and feeling better by inquiring about the Lifecycle® 3500 aerobic trainer. For over 20 years, Life Fitness has provided more than 17 million people a superior way to reach their personal fitness goals!

Experience Health Club Results At Home!

It's important you find a motivating fitness program that fits your lifestyle. That's why we introduced the new Lifecycle 3500 aerobic trainer – a streamlined version of the #1 exercise bike in health clubs. The Lifecycle 3500 gives you a superior workout, that utilizes the largest muscles found in your legs, hips and thighs. In addition, our specifically designed electronic programs create a workout with accurate feedback that's fun and challenging.

Discover An Easier, More Effective Way To Reach Your Fitness Goals!

You can begin to experience the benefits of cardiovascular fitness by using the Lifecycle 3500 for as little as 12 minutes a day, three times a week. The computerized console provides the same six programs found on our health club model. Programs like:

- | | | |
|---------|---------------------------|-----------|
| •Hill | •Heart Rate Zone Training | •Random |
| •Manual | •12-Speed Race | •Fit Test |

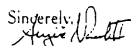
These interactive programs provide variety and motivational feedback for the most effective calorie burning workout you can find. As you exercise, you'll know the speed, the distance, the number of calories burned and more. You will see the results and be motivated to continue working toward your personal fitness goals. Remember, the Lifecycle programs have been proven to burn over 1000 calories per hour! It's just one more reason the Lifecycle 3500 is superior to ordinary fitness machines.

Pay Only \$29.95 Per Month!*

The only way you can discover what the Lifecycle 3500 can do for you is to ride it. That's easy too! Simply try it in your home for 30 days. If you're not completely satisfied, return it for a full refund! Order now and receive shipping and handling FREE! That's a \$69.00 savings! If you order now you'll pay as little as \$29.95 per month.* Simply fill out the enclosed credit application and order form and return it in the enclosed postage-paid envelope. If for any reason you are not convinced that it's the best in-home exerciser, just return it at our expense. You have nothing to lose – only health and fitness to gain.

Order Today! Call 1-800-877-3867 Now!

Experience health club fitness at home today! Call toll-free now and our knowledgeable fitness consultants will take your order and answer any questions you may have. Don't delay – this special offer expires soon. Call now and take your first step toward better fitness.

Sincerely, 

Augie Nieto
President, Life Fitness

EXHIBIT B

P.S. Remember, order today and receive shipping and handling ABSOLUTELY FREE! That's a \$69.00 value!

P.P.S. Take advantage of our 30-day in-home trial – it's the first step towards a lifetime of health and fitness.

1-800-877-3867
CALL FOR A 30-DAY "TEST RIDE!"

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EXHIBIT C

OWN THE #1 HEALTH CLUB EXERCISE BIKE IN AMERICA.



#1 IN HEALTH CLUBS

THE ONLY IN-HOME BIKE WITH HEALTH CLUB QUALITY!

Lifecycle's aerobic trainers revolutionized health clubs with the first computer consoles and motivating workout programs. Now you can own the same exercise bike found in over 90% of health clubs nationwide. Lose weight, tone muscles, reduce stress and improve your cardiovascular conditioning—all on your own schedule with the Lifecycle 5500 in your home.

BURN OVER 1300 CALORIES AN HOUR!

Ride just 20 minutes a day, three days a week, on the Lifecycle 5500 and you'll see results. This non-weight-bearing exercise burns maximum calories and gives you top cardiovascular training. Developed by Life Fitness, the leader in health club equipment, the Lifecycle 5500 lets you comfortably watch TV, read or talk on the phone while you reach your fitness goals.

LIFECYCLE

AEROBIC TRAINER

THE CALORIE BURNER THAT REVOLUTIONIZED AMERICA'S HEALTH CLUBS.

MOTIVATIONAL PROGRAMS KEEP THE WEIGHT OFF!

The Lifecycle 5500 features five motivational workout programs, including the popular Hill Profile that simulates outdoor riding by automatically varying the pedal resistance as you conquer hills and valleys. The computer console continuously displays your progress as your fitness level improves, so that you will stay motivated and challenged.

THE FIRST 30-DAY NO COST TRIAL OFFER—CALL TODAY!

Call now to try the Lifecycle 5500 FREE for 30 days. Should you feel it's not the best home workout ever, we'll pick it up free of charge and return your uncashed check or debit your credit card data. After 30 days it

costs only \$29.95 per month. Plus, order today and receive 0% financing and free shipping and handling—a total savings of over \$100! Join over 17 million daily Lifecycle trainer users. Call today!

CALL BEFORE DECEMBER 31, 1995 FOR 0% FINANCING & FREE SHIPPING & HANDLING

1-800-877-3867

Digs 3449

0% FINANCING! ONLY \$29.95 PER MONTH

YES! I'm ready for a health club workout at home! Please send me the Lifecycle 5500 for my FREE 30-day trial. Please send me a FREE booklet.

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Debit phone: _____

Card number: _____

Exp. date: _____

Life Fitness, Inc. 1000 W. Higgins Ave., Itasca, IL 60143

No down payment, 0% financing, plus state sales tax. Finance offer may not be available in all retail locations. This offer is only valid in the U.S. Offer subject to credit approval. © 1995 Life Fitness. All rights reserved. Life Fitness and Lifecycle are registered trademarks of Life Fitness. 473-414-6161

Sports Illustrated
p. 4, 12
LIFE FITNESS, INC. PED. 2, MEDS and 5 MPK
95-3965

EXHIBIT C

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 and its general partner, The Life Fitness Companies L.P., having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its general partner, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent and its general partner 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 respondent or its general partner that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 a 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 Life Fitness is a general partnership organized, existing, and doing business under and by virtue of the laws of the State of New York with its offices and principal place of business located at 10601 West Belmont Avenue, in the City of Franklin Park, State of Illinois.

The Life Fitness Companies L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 10601 West Belmont Avenue, in the City of Franklin Park, State of Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent and respondent's general partner, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. Unless otherwise specified, "*respondent*" shall mean Life Fitness, a general partnership, and its successors and assigns.

3. Unless otherwise specified, references to respondent's "*general partner*" shall mean The Life Fitness Companies L.P., a limited partnership, and its successors and assigns.

4. Unless otherwise specified, "*the partnerships*" shall mean respondent and its general partner as defined in this order.

5. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent and its general partner, and their officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any "Lifecycle," or any other exercise equipment in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

A. About the rate at which users burn calories, or the number of calories users burn, through use of such product;

B. About the weight loss or fat loss users achieve through use of such product; or

C. About the benefits, performance, or efficacy of such product with respect to calorie burning, fat burning, or weight loss,

unless, at the time the representation is made, respondent and its general partner possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

II.

It is further ordered, That respondent and its general partner, and their officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research relating to calorie burning, fat burning, or weight loss.

III.

It is further ordered, That respondent and its general partner shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating the representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

IV.

It is further ordered, That respondent and its general partner shall deliver a copy of this order to all current and future principals, partners, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, provided, however, that the duty to deliver this order to future personnel as required by this Part shall terminate three (3) years after the date upon which this

order becomes final. Respondent and its general partner shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

It is further ordered, That respondent and its general partner shall notify the Commission at least thirty (30) days prior to any change in the partnership(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, incorporation, or other action that would result in the emergence of a successor entity; 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 partnership name or address. Provided, however, that, with respect to any proposed change in the partnership about which the partnerships learn less than thirty (30) days prior to the date such action is to take place, the partnerships 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.

VI.

It is further ordered, That respondent and its general partner shall, within sixty (60) days after 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 they have complied with this order.

VII.

This order will terminate on September 9, 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 Part in this order that terminates in less than twenty (20) years;

B. This order's application to any party 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 Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent or its general partner 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 Part as though the complaint had never been 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.

Commissioner Azcuenaga concurring in part and dissenting in part.

STATEMENT OF COMMISSIONER AZCUENAGA
CONCURRING IN PART AND DISSENTING IN PART

I concur in the Commission's final decision and order in this matter except to the extent that The Life Fitness Companies, L.P. (the parent company of Life Fitness), although not named in the complaint or in the caption of the order, is included in the order's substantive provisions. Rather than consenting to be named in the complaint and order, The Life Fitness Companies, L.P., has agreed to be bound by the order as if it were a named respondent. It is fundamental that complaints are the predicate on which Commission orders must be based. *See* 15 U.S.C. 45(b). Either Life Fitness Companies, L.P., as a party responsible in whole or in part for the unlawful conduct alleged, should be included in both the complaint and the order, or the company should be removed from the order.

Only those persons named in Commission complaints as alleged wrongdoers, their successors or assigns, or those who are employed by or otherwise are subject to the direction and control of such parties, should be included in Commission orders. The Life Fitness Companies, L.P., owns 99% of the named respondent and thereby controls, or is capable of controlling, its subsidiary's actions rather than the reverse. Indeed, it may have participated in some way in the actions challenged in the complaint, but I see no basis under Section 5 of the FTC Act for imposing an order to cease and desist on a nonparty.

Modifying Order

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IN THE MATTER OF

OERLIKON-BUHRLE HOLDING AG

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3555. Consent Order, Feb. 1, 1995--Modifying Order, Sept. 9, 1997*

This order reopens a 1995 consent order -- involving Oerlikon-Buhrle's acquisition of Leybold AG -- and modifies the consent order by substituting a prior notice provision for the prior approval provision of the consent order.

ORDER REOPENING AND MODIFYING ORDER

On May 12, 1997, Oerlikon-Buhrle Holding AG ("Oerlikon"), the respondent named in the consent order issued by the Commission on February 1, 1995, in Docket No. C-3555 ("order"), filed its Petition To Reopen and Modify Consent Order ("Petition") in this matter.

Oerlikon asks that the Commission reopen and modify the order pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and consistent with the Statement of the Federal Trade Commission Concerning Prior Approval and Prior Notice Provisions, issued June 21, 1995 ("Prior Approval Policy Statement"),¹ to eliminate the requirement that Oerlikon obtain the prior approval of the Commission before acquiring certain assets or interests relating to the manufacture and sale of compact disc metallizer machines or turbomolecular pumps. Oerlikon's Petition was on the public record for thirty days until May 14, 1997, and no comments were received. As discussed below, the prior approval requirement of paragraph VII of the order is set aside and a limited prior notice provision is substituted in paragraph VII.

The Commission, in its Prior Approval Policy Statement, concluded that a general policy of requiring prior approval is no longer needed, citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. 18a, to protect the public interest in effective merger law enforcement. Prior approval or prior notice may be appropriate in the public interest in certain limited circumstances. For example, a narrow prior approval provision may be appropriate "where there is

¹ 60 Fed. Reg. 39,745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.