I. Dell and Micron Complaints

A. FTC Act Violations—Lease Advertising

1. Failure to Disclose Adequately that Transaction Advertised is a Lease.

Count I of the Dell complaint alleges that respondent Dell, in lease advertisements, represents that consumers can purchase the advertised computer systems for the monthly payment amounts prominently stated in the advertisements. These advertisements allegedly do no adequately disclose that each advertised monthly payment amount is a component of a lease offer. The Dell complaint alleges that the existence of this additional information would be material to consumers in deciding whether to lease or purchase a computer from Dell. Count I, therefore, alleges that the failure to disclose adequately this additional information, in light of the representation made, was, and is, a deceptive practice in violation of Section 5 of the FTC Act.

2. Failure to Disclose, and/or Failure to Disclose Adequately, Lease Terms.

Count II of the Dell complaint and Count I of the Micron complaint allege that respondents' lease advertisements represent that consumers can obtain the advertised computer systems at the terms prominently stated in the advertisements, including but not limited to the monthly payment amount. These advertisements allegedly fail to disclose, and/or fail to disclose adequately, additional terms pertaining to the lease offers, such as the total amount of any payments due at lease inception and/or the term of the lease. The existence of this additional information would be material to consumers in deciding whether to lease the advertised computer systems from respondents, according to the complaints, These practices, according to the complaints, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

B. CLA and Regulation M Violations

Dell and Micron's lease advertisements also allegedly violate the CLA and Regulation M. According to the complaints, these respondents' computer lease advertisements state a monthly payment amount but fail to disclose, and/or fail to disclose clearly and conspicuously, certain additional terms required by the CLA and Regulation M, including one or more of the following terms: that the transaction advertised is a lease; the total amount due prior to or at consummation or by delivery, if delivery occurs after consummation, and that such amount: (1) excludes third-party fees, such as taxes, licenses, and registration fees, and discloses that fact or (2) includes third-party fees based on a particular state or locality and discloses that fact and the fact that such fees may vary by state or locality; whether or not a security deposit is required; and the number, amount, and timing of scheduled payments.

Respondents' television, Internet, and/or print disclosures are not clear and conspicuous because they appear in fine print at the bottom of the advertisements. The Dell and Micron complaints, therefore, allege that these practices violate Section 184 of the CLA, 15 U.S.C. 1667c, as amended, and Section 213.7 of Regulation M, 12 CFR 213.7 as amended.

II. Proposed Consent Orders

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent respondents from engaging in similar acts and practices in the future. Specifically, subparagraph I.A. of the Dell proposed order prohibits Dell from failing to disclose clearly and conspicuously that any advertised lease terms, including but not limited to a monthly payment amount or downpayment, pertain to a lease offer.

Subparagraph I.B. of the Dell proposed order and subparagraph I.A. of the Micron proposed order prohibit respondents, in any lease advertisements, from making any reference to any charge that is part of the total amount due at lease signing or delivery or that no such amount is due, not including a statement of the periodic payment, unless the advertisement also states with equal prominence the total amount due at lease inception. The ''equal prominence'' requirement prohibits respondents from running deceptive advertisements that highlight low amounts ''down,'' with inadequate disclosures of actual total inception fees. This ''Equal prominence'' requirement for lease inception fees also is found in Regulation M.

Moreover, subparagraph I.C. of the Dell proposed order and subparagraph I.B. of the Micron proposed order prohibit respondents, in any lease advertisement, from stating the amount of any payment, or that any or no initial payment is required at consummation of the lease, unless the advertisement also states, clearly and conspicuously, all of the terms required by Regulation M, as follows: (1) that the transaction advertised is a lease; (2) the total amount due at lease signing or delivery; (3) whether or not a security deposit is required; (4) the number, amounts, and timing of scheduled payments; and (5) that an extra charge may be imposed at the end of the lease term where the liability of the consumer at lease end is based on the anticipated residual value of the leased property.

The information required by subparagraphs I.C. and I.B. of the Dell and Micron proposed orders, respectively, must be disclosed ''clearly and conspicuously'' as defined in the proposed orders. The ''clear and conspicuous'' definition requires respondents to present such lease information, as applicable, within the advertisement so that an ordinary consumer can read, or hear, and comprehend it. This definition is consistent with the ''clear and conspicuous'' requirement for advertising disclosures in Regulation M that require disclosures that consumers can see and read (or hear) and comprehend. It is also consistent with prior Commission orders and statements interpreting Section 5 to require that advertising disclosures be readable (or audible) and understandable to reasonable consumers.

Finally, subparagraph I.D. of the Dell proposed order and subparagraph I.C. of the Micron proposed order enjoin respondents from failing to comply in any other respect with Regulation M, 12 CFR 213, as amended, and the CLA, 15 U.S.C. 1667–1667e, as amended.

Like prior Commission orders involving lease advertising, these orders refer to Regulation M and the CLA, as amended, Thus, these orders contemplate that any modification to the advertising disclosure requirements provided in Regulation M or the CLA will be incorporated automatically into those parts of the orders referencing those laws.

The purpose of this analysis is to facilitate public comment on the proposed orders. It is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–12660 Filed 5–19–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9823633]

Fitness Quest, Inc., et al; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 19, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Robert Frisby & Robin Spector, FTC/S–4302, 601 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–2098 or (202) 326–3740.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 12th, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accomplished, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Fitness Quest, Inc. and Robert R. Schnabel, Jr. The agreement would settle a proposed complaint by the Federal Trade Commission that Fitness Quest and Robert R. Schnabel, Jr. engaged in unfair or deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising practices related to the sale of exercise equipment and weight-loss products, including the ''Airofit,'' ''SkyTrek'' and ''Gazelle Glider,'' exercise gliders, and the ''Ab Isolator'' and ''Abs Only Machine'' abdominal exercise devices. The proposed complaint charges that, through the use of statements contained in its advertisements and promotional materials, the respondents made the following unsubstantiated representations for their exercise gliders: (A) Under conditions of ordinary use, the Airofit (1) burns calories at a rate of up to 1,000 per hour; (2) burns three times more calories than burned while walking; (3) burns nearly twice the calories burned while cross-country skiing or exercising on a treadmill; (4) burns significantly more calories than are burned while swimming, bicycling or doing step aerobics; and (5) causes significant weight loss; (B) Testimonials from consumers appearing in advertisements for the Airofit reflect the typical or ordinary experience of members of the public who use the product; (C) Under conditions of ordinary use the SkyTrek (1) burns calories at a rate of up to 1,000 per hour; (2) burns three times more calories than burned while walking at 3 m.p.h.; and (3) burns nearly two times the calories burned while cross country skiing at 5 m.p.h.; and (D) Under conditions of ordinary use the Gazelle Glider (1) burns calories at a rate of up to 1,000 per hour; (2) burns three times more calories than burned while walking at 3 m.p.h.; (3) burns nearly twice the calories burned while cross country skiing at 5 m.p.h.; and (4) burns more calories than burned while running at 5.5 m.p.h.

The proposed complaint also charges that the respondents made the following unsubstantiated representations for their abdominal exercise devices: (A) The Ab Isolator is twice as effective as regular sit-ups; (B) The Ab Isolator is more effective than other abdominal exercise devices; (C) Use of the Ab Isolator three minutes a day results in a significantly reduced waistline in thirty days; (D) Use of the Ab Isolator results in a significant reduction in clothing size and waistline; (E) Testimonials from consumers appearing in advertisements for the Ab Isolator reflect the typical or ordinary experience of members of the public who use the product; and (F) The Abs Only Machine is twice as effective as regular sit-ups.

The proposed consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondents from making any representation about the benefits, performance or efficacy of any exercise equipment or weight-loss product unless, at the time they make the representation, they possess and rely upon competent and reliable evidence, which when appropriate must be scientific evidence, that substantiates the representation. Part I also provides that nothing in the order shall prohibit the respondents from making a truthful statement that merely describes the existence, design, instructions for use, or content of any such product.

Part II of the proposed order prohibits the respondents from representing that the experience represented by any user testimonial or endorsement of any exercise equipment or weight-loss product represents the typical or ordinary experience of members of the public who use the product unless either: (A) at the time it is made, the respondents possess and rely upon competent and reliable evidence that substantiates the representation; or (B) the respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either (1) what the generally expected results would be for users of the product; or (2) the limited applicability of the endorser's experience to what consumers may generally expect to achieve. Part II lists six statements that would satisfy the disclosure requirement:

(a) ''You should not expect to experience these results.''
(b) ''This result is not typical. You may not do as well.''

(c) ''This result is not typical. You may be less successful.''
(d) ''_____'s success is not typical. You may not do as well.''
(e) ''_____'s experience is not typical. You may achieve less.''
(f) ''Results not typical.''

The proposed order also contains standard provisions regarding record-keeping, notification of changes in the respondents' status, the filing of a compliance report, and termination of the order. In addition, the proposed order contains a provision requiring distribution of the order that sunsets after three years.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–12659 Filed 5–19–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9810327]

Quexco Incorporated; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 19, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Philip Eisenstat, FTC/S–3627, 601 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–2769.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 14th, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Agreement'') from Quexco Incorporated (''Quexco'') relating to a proposed acquisition by Quexco of Pacific Dunlop GNB Corporation (''GNB'').

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

Both Quexco, a Delaware corporation, and GNB, also a Delaware corporation, operate secondary lead smelters. Secondary lead smelters are facilities that recyle products containing lead, such as old lead-acid batteries and other lead bearing products, into pure lead or lead alloys that can be used again by batter manufacturers and other industries. The output of secondary smelters is called secondary lead. Primary lead smelters use lead bearing ore to produce pure lead or lead alloys. The output of primary smelters is called primary lead. For most uses for lead, either primary or secondary lead can be used.

The Proposed Complaint

The proposed complaint alleges that the relevant geographic market for evaluating the acquisition's effect in the relevant product markets is California, and that the proposed acquisition may substantially lessen competition in the smelting and refining of lead in California and in providing lead recycling services in California.

The proposed complaint alleges that Quexco and GNB are the only two operators of lead smelters in California and the only two firms that perform lead recycling in California. The complaint further alleges that the proposed transaction would create a monopoly and give Quexco the ability to unilaterally exercise market power.

The proposed complaint alleges that entry into the alleged markets would not be timely, likely, or sufficient to deter or offset the adverse effects of the acquisition on competition in these markets. Lead is a toxic substance. Construction of a new secondary lead smelter requires extensive permits before construction on a smelter could begin. Obtaining permits for a new smelter in California would take more than two years. Because lead is a toxic substance, community opposition is likely to any new smelters in California, and such community opposition may prevent the opening of any new smelters in California.

The proposed Order would remedy the alleged violation by preserving the competition that would otherwise be lost as a result of Quexco's acquisition of GNB. The proposed Order requires Quexco to divest the GNB secondary smelter in California to Gopher Resources, Inc. (''Gopher''), under the terms of a contract for the sale of that plant between Quexco and Gopher. The proposed Order allows Quexco to complete its acquisition of GNB during the sixty (60) day comment period, but requires that the GNB California smelter be held separate until the Order becomes final and then requires the sale of the smelter to Gopher within 10 days of the Order being made final by the Commission.

The sale of the GNB smelter to Gopher is subject to the approval by the Commission. If the sale to Gopher is not approved by the Commission, then Quexco must rescind the transaction with Gopher and divest the GNB