

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—embodies in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before August 22, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Kerry O'Brien, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356-5270.

**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 accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home page (for June 17, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. 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 Orders To Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, agreement to a proposed consent order from Kent & Spiegel Direct, Inc., and its officers, Marshal Kent and Peter Spiegel, and a proposed consent order from Abflex, U.S.A., Inc., and its officer, Martin Van Der Hoeven (collectively "respondents").

The proposed consent orders have 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 agreements and the comments received and will decide whether it should withdraw from the agreements and take other appropriate action or make final the agreements' proposed orders.

The Commission's complaints against respondents allege that they deceptively advertised the "Abflex" and abdominal exercise primarily through an infomercial, over the internet, and through print advertisements. The Commission's complaints charge that respondents' advertising contained unsubstantiated weight loss success, rate of weight loss, and spot reduction representations. Specifically, the complaints allege that the respondents did not possess adequate substantiation for claims that: (1) The Abflex causes fast and significant weight loss; (2) Consumers lose at least ten pounds and five inches, or three to six inches, off their waistline within thirty days by using the Abflex for just three minutes a day; (3) The Abflex causes weight loss and fat reduction in specific, desired areas of the body; and (4) Testimonials from consumers appearing in the advertisements for the Abflex reflect the typical or ordinary experience of members of the public who use the product.

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed orders would prohibit respondents from making any claim for the "Abflex," for any exercise equipment, or for any weight-loss product: (1) About the number of pounds users can lose; (2) About the rate of speed at which users lose weight; (3) About the length of time users must use such product to achieve weight loss; (4) That such product causes fast and significant weight loss; (5) That such product causes a reduction in the size or shape of specific, desired areas of the body; (6) That such product causes a reduction in users' body size or shape, or body measurements; or (7) About the benefits, efficacy, or performance of such product in promoting weight loss, unless at the time of making them, they possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence.

Part II of the proposed order addresses claims made through endorsements or testimonials. Under Part II, respondents may make such representations if they possess and rely upon competent and reliable scientific evidence that substantiates the representations; or respondents must disclose either what the generally expected results would be for users of the advertised product, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve.

The remaining provisions of the proposed orders relate to respondent's obligations to make available to the Commission materials substantiating claims covered by the order; to notify the Commission of changes in the corporations' structure; to notify the Commission of changes in the individual's employment or business affiliations; to provide copies for the orders to certain personnel of the corporations; and to file compliance reports with the Commission. The orders also provide that the orders will terminate after twenty years under certain circumstances.

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 to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

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#### **FEDERAL TRADE COMMISSION**

[File No. 962-3045]

#### **Icon Health and Fitness, Inc.; IHF Holdings, Inc.; IHF Capital; 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 August 22, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary,

Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:**

Laura Fremont, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356-5270. Jeffrey Klurfeld, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356-5270.

**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 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 accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for June 17, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. 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 Icon Health and Fitness, Inc., IHF Capital, Inc., and IHF Holdings, Inc. (collectively "respondents"), which market exercise equipment. All three companies are Delaware corporations.

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 and take

other appropriate action or make final the agreement's proposed order.

The Commission's complaint against respondents alleges that they deceptively advertised the "Cross Walk Treadmill," a motorized treadmill. The Commission's complaint charges that respondents' advertising contained unsubstantiated calorie burn and weight loss representations. Specifically, the complaint alleges that the respondents did not possess adequate substantiation for the claim that users of the Cross Walk Treadmill will burn calories at a rate of up to 1,100 per hour under conditions of ordinary use. The complaint notes that respondents obtained the 1,100 calorie figure from a study that measured the rate of calorie burn of persons who had exercised to the point of exhaustion. The complaint alleges that such "maximal exertion" tests are not appropriate measures of the number of calories people can burn during ordinary exercise because they measure calorie burn at a level of exercise intensity that is unsustainable for more than an extremely short period of time. The Commission's complaint also charges that the respondents did not possess adequate substantiation for the claim that weight loss testimonials from consumers appearing in advertisements for the treadmill reflect the typical or ordinary experience of members of the public who use the product.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed order would prohibit respondents from making any claim for the "Cross Walk Treadmill," or for any other exercise equipment: (1) About the relative, comparative, or absolute rate at which users burn calories, or the number of calories users burn, through use of such product; (2) about the relative, comparative, or absolute weight loss users achieve through use of such product; (3) about the relative, comparative, or absolute amount of fat or fat calories users burn through use of such product; or (4) about the benefits, performance, or efficacy of any such product with respect to calorie burning, fat burning, or weight loss; unless, at the time such a claim is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the claim.

Part II of the proposed order addresses claims made through endorsements or testimonials. Under Part II, respondents may make such representations if they

possess and rely upon competent and reliable scientific evidence that substantiates the representations; or respondents must disclose either what the generally expected results would be for users of the advertised product, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve. The proposed order's treatment of testimonial claims is in accordance with the Commission's "Guides Concerning Use of Endorsements and Testimonials in Advertising," 16 CFR 255.2(a).

The remaining provisions of the proposed order relate to respondents' obligation to make available to the Commission materials substantiating claims covered by the order; to notify the Commission of changes in the corporations' structure; to provide copies of the order to certain personnel of the corporations; and to file compliance reports with the Commission. The order also provides that the order will terminate after twenty years under certain circumstances.

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

**Donald S. Clark,**

*Secretary.*

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**FEDERAL TRADE COMMISSION**

[File No. 962-3041]

**Kent & Spiegel Direct, Inc.; Marsha Kent; Peter Spiegel; 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 August 22, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary,