

- a. Any further procedural steps;
- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondents by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

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, "respondents" shall mean Icon Health and Fitness, Inc., IHF Holdings, Inc., and IHF Capital, Inc., corporations, their successors and assigns, and their officers, agents, representatives and employees.

3. "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 respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the "Cross Walk Treadmill" or any other exercise equipment in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

A. About the relative, comparative, or absolute

- (1) rate at which users burn calories, or the number of calories users burn, through use of such product, or
- (2) weight loss users achieve through use of such product, or
- (3) amount of fat or fat calories users burn through use of such product; or

- B. 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, respondents 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 respondents, directly or through any 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 represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

- A. At the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or
- B. 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, that is, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

III.

IT IS FURTHER ORDERED that respondents Icon Health and Fitness, Inc., IHF Holdings, Inc., and IHF Capital, Inc., and their successors and assigns 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 respondents Icon Health and Fitness, Inc., IHF Holdings, Inc., and IHF Capital, Inc., and their successors and assigns, shall deliver a copy of this order to all current and future officers and directors, 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 a copy of this order to future personnel as required by this Part shall terminate three (3) years after the date upon which this order becomes final. Respondents 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 respondents Icon Health and Fitness, Inc., IHF Holdings, Inc., and IHF Capital, Inc., and their successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) 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 respondents learn less than thirty (30) days prior to the date such action is to take place, respondents 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. 20580.

VI.

IT IS FURTHER ORDERED that respondents Icon Health and Fitness, Inc., IHF Holdings, Inc., and IHF Capital, Inc., and their successors and assigns, 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 twenty (20) years from the date of its issuance, 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 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 Part.

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 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.

Signed this _____ day of _____, 19____

ICON HEALTH AND FITNESS, INC.

By: _____
GARY E. STEVENSON
President

IHF HOLDINGS, INC.

By: _____
GARY E. STEVENSON
President

IHF CAPITAL, INC.

By: _____
GARY E. STEVENSON
President

BRAD H. BEARNSON
Attorney for respondents

LAURA FREMONT
Counsel for the Federal Trade
Commission

APPROVED:

JEFFREY KLURFELD, Director
San Francisco Regional Office

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
)
)
)
ICON HEALTH AND FITNESS, INC.,)
IHF HOLDINGS, INC., and)
IHF CAPITAL, INC.,)
corporations.) DOCKET NO.
)
)
)

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 84321.
2. Respondent IHF Holdings, Inc. is a Delaware corporation with its principal office or place of business at 1500 S. 1000 W., Logan, Utah 84321.
3. Respondent IHF Capital, Inc. is a Delaware corporation with its principal office or place of business at 1500 S. 1000 W., Logan, Utah 84321.
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.

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

6. Respondents have disseminated or have caused to be disseminated advertisements for Cross Walk Treadmills, including but not necessarily limited to the attached Exhibit A. This advertisement contains the following statements and depictions:

SUPER: "Erin Waite
Exercises 4 times per
week on her CROSSWALK."

Consumer endorser: "From the time I first
started using the Crosswalk I have lost
almost 30 pounds."

. . . .

SUPER: "Barbara Veltrie
Exercises 5 times per
week on her CROSSWALK."

Consumer endorser: "I've taken off over 60
pounds now."

. . . .

SUPER: "Tim Rose
Michelle Rose
Exercise 3 times per week
on their CROSSWALK."

Consumer endorser (Michelle Rose): "I went
from a size 12 down to a size 8."

SUPER: "Erin Waite
Exercises 4 times per
week on her CROSSWALK."

Consumer endorser: "About the time I got to
a size 4, my secretaries at work started

asking me, 'What are you doing?' And I told them and both of my secretaries have bought one also."

. . . .

Narrator: "Work more muscles, burn calories faster, reach your target heart rate more quickly -- all in a low impact workout that burns up to 1,100 calories an hour."

. . . .

Narrator: "Burn up to 1100 calories per hour!"

(Exhibit A)

7. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, 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.

8. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 7, at the time the representation was made.

9. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 7, at the time the representation was made. 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. 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. Therefore, the representation set forth in Paragraph 8 was, and is, false or misleading.

10. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that testimonials from

consumers appearing in advertisements for the Cross Walk Treadmill reflect the typical or ordinary experience of members of the public who use the product.

11. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 10, at the time the representation was made.

12. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 10, at the time the representation was made. Therefore, the representation set forth in Paragraph 11 was, and is, false or misleading.

13. The acts and practices of respondents 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.

THEREFORE, the Federal Trade Commission this day of
, , has issued this complaint against respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL:

Proform Fitness
"Crosswalk Line"¹

[FADE IN DISCLAIMER:] This program is a paid advertisement presented by Proform Fitness Products, Inc.

{Interior of exhibit hall}

[Indistinct sounds, the rustle of milling bodies, muted voices, the cacophony of musical instruments warming up.]

KELLY

Hold it, hold it. Okay, everyone, let's go again in five.

[HOUSE LIGHTS UP... revealing the interior of a LARGE EXHIBITION HALL, as we realize we're in rehearsal for a much larger show to come.]

KELLY

Joel, if you wanted a part, all you had to do was ask.

JOEL

Sorry Kelly. I just need to borrow this one machine.

KELLY

Not right now you don't. I am still...

JOEL

No. No. No. I'll have it back in plenty of time for the show--

KELLY

Joel ... In less than 24 hours, this building is going to be filled with people and-- call me crazy-- but it seems like it might be a

¹ Stage directions from the original transcripts provided by respondents are indicated by squared brackets ([]). Those not crucial to conveying format or presentation of the material have been deleted. Information added by Commission staff, such as superscripts or narrative that are not indicated in respondents' transcripts but do appear on the tape, are indicated by curved brackets ({}). Emphasis is as it appeared in the transcripts supplied to staff.

good idea to get through a rehearsal of the real choreography, with real machines!

JOEL

Okay, okay. It's just that Bill thinks we're gonna need another Crosswalk upstairs.

KELLY

I can relate. Hey, I'm still waiting for the extra one I asked for... That's fine. So--how's it going up there in the daylight?

JOEL

Well, we're *only* spreading the incredible new information about walking and unveiling the hottest new equipment since the Original Crosswalk....

Other than that, it's just another ho-hum Fitness Expo.

KELLY

Well, good luck--
But Joel, I still have to have this machine.

{Switch to different set}

{SUPER: Peggy Fleming, Olympic Skating Champion}

PEGGY

Hi, I'm Peggy Fleming, with news that will probably surprise you as much as it did me.

Did you know that the latest research shows that walking is the most efficient method for burning fat calories and losing weight?

It's true. And to take advantage of that fact... plus all the benefits of total body fitness... nothing works like the Proform Crosswalk.

In fact, it's been such a phenomenal success, that now Proform has created two new Crosswalk models, which we'll be introducing in just a minute.

{SUPER: BURN MORE FAT}

I've seen all the ways the Crosswalk can help
you burn more fat...

{SUPER: SHAPE & TONE}

shape and tone your body...

{SUPER: REDUCE STRESS}

reduce stress...

{SUPER: CARDIOVASCULAR IMPROVEMENT}

and build your cardiovascular system. Not to
mention making the most of what little time
we have for exercise these days. I wouldn't
be here if I didn't believe you can have the
same success.

So stay right where you are to learn how to
put the news about walking...and all the
versatile benefits of Crosswalking... to work
for you.

{Switch to different set}

[The VIP room is a convention suite/hospitality room, where a
large gathering (10+) of people are mingling. A TV monitor is
positioned in one corner.]

[Three Crosswalk machines are positioned strategically around
room, draped as if ready for "unveiling." Also in room are Marty
Townes, V.P. Marketing for Proform, Bill Hansen, Proform Chief
Engineer, and our "cast of interested information-seekers:" Sue,
a TV reporter; Tom, a fitness writer; Mike, an equipment buyer;
and Carrie, a trainer.]

MARTY

Okay, everybody, I think we're just about
ready to get started. On behalf of Proform,
we'd like to thank everybody for coming here
today.

I'm Marty Townes, Proform's Marketing
Director...

MARTY

... and this is Bill Hansen, our Chief Engineer.

MARTY

Now, I know the Fitness Expo doesn't start until tomorrow, but this is going to be a very big year for us.

And we'd like to give you just a sneak preview of what we humbly consider the future of home fitness.

We'd like to share with you some of the thinking behind this new line of Crosswalks.

BILL

With the original Crosswalk, we knew we had something special. We just didn't know how special.

Now, most people assume that the more you sweat, the more fat you lose.

MIKE

No pain, no gain.

MARTY

Exactly. But, the latest research shows something very different: That a consistent, moderately intense workout is actually the best method for burning fat calories and losing weight.

MIKE

You mean you don't have to kill yourself to lose weight.

[Bill moves to TV monitor]

BILL

Well, that's right. But even more important to us than scientific findings, is that there's proof right here that real people are getting real results with the Crosswalk. Now, here are some interviews with actual Crosswalk owners.

[CUT to Monitor, where Bill has cued up consumer testimonials.]

[DISSOLVE to full screen consumer testimonials.]

{SUPER: Erin Waite
Exercises 4 times per week on her CROSSWALK.

ERIN WAITE
From the time I first started using the
Crosswalk I have lost almost 30 pounds.

SUPER: Pat Herman
Exercises 3 times per week on her CROSSWALK.

PAT HERMAN
This is the first piece of equipment we've
ever had that has really motivated me.

SUPER: Barbara Veltrie
Exercises 5 times per week on her CROSSWALK.

BARBARA VELTRIE
I've taken off over 60 pounds now.

SUPER: Elaine Williams
Exercises 10 times per week on her CROSSWALK.

ELAINE WILLIAMS
When you get to 71 like I am and your doctor
asks you to exercise or walk mainly. And in
the wintertime it's very difficult sometimes
on account of the snow and the rain and you
don't feel like you want to do that. You get
on the CrossWalk for 30 minutes. Oh and you
feel like... Well, I probably feel like I am
about 40.

SUPER: Tim Rose
Michelle Rose
Exercise 3 times per week on their CROSSWALK.

MICHELLE ROSE
I went from a size 12 down to a size 8.

SUPER: Erin Waite
Exercises 4 times per week on her CROSSWALK.

ERIN WAITE

Exhibit A-5

About the time I got to a size 4, my secretaries at work started asking me, "What are you doing?" And I told them and both of my secretaries have bought one also.

SUPER: Pat Herman
Exercises 3 times per week on her CROSSWALK.

PAT HERMAN

That's why everyone should have one. I'm serious.}

{Switch back to "VIP" room set}

BILL

It's very clear that the Crosswalk phenomenon is growing. Fast. We need to stay one step in front of the momentum. And that's what led to Crosswalk...the Next Generation.

BILL

...the Proform Crosswalk Plus... additional features and convenience in a sleek, streamlined design ...

MARTY

...and our top of the line... the Crosswalk Advantage... precision engineering and the latest technology...

BILL

...two new models to join our best-selling original Crosswalk ...in a complete Crosswalk line.

SUE

[TV REPORTER, aside to Mike]
So...they're like a sidewalk that never ends

MIKE

[aside to Sue]
Or gets rained on....

SUE

These are all motorized treadmills. Correct?

MARTY

That is such an important question and the answer is yes, because only a motorized treadmill will keep you at a consistent pace, within a comfortable fat burning zone. In fact, the Crosswalk burns over 20% more fat calories than a manual treadmill.

BILL

Unlike regular walking, or regular treadmills, the Crosswalk gives you quicker results, and overall better muscle toning, because the resistance arms involve your upper body, as well.

MARTY

Listen. I'm sure you'll have lots of other questions after you've seen the machines in action. So go ahead and spend some time with them now... Bill and I will be ready with answers.

BILL

Joel. Joel. How we doing on getting another machine up here?

JOEL

I'm... working on it.

BILL

Good, good. We need to get it up here. I've a few more people than I expected ...

JOEL

I'll get right on it. Thanks.

[CUT to Marty approaching Sue, who is watching a model working out on the Crosswalk Advantage.]

MARTY

Hi. We haven't met yet. I'm Marty Townes.

[Sue shakes her hand. CUTAWAYS to close-up, model demonstrating Crosswalk Advantage]

SUE

Hi, Marty. Sue Meyers, Cable Fit Network.

MARTY

Exhibit A-7

Hi, Sue.

SUE

So -- a whole line of Crosswalks, huh? You really think there's going to be that kind of demand?

MARTY

Oh, not going to be. There already is. Do you know that we've sold nearly half a million of the original Crosswalks to date. But what's really very exciting to us is that our customers are telling us it's making a huge impact...not only in their fitness, but in their lives. So it seemed natural to just expand out the line and offer more options.

SUE

So you feel all the recent news about walking and fat burning is just going to fuel the fire?

MARTY

Exactly. In fact, I'd like to show you something ...

[They head toward TV monitor]

[CUT to Bill showing Mike the Crosswalk Plus.]

BILL

So what do you think, Mike?

MIKE

It's beautiful. I hope you didn't change everything.

BILL

Actually, the new Crosswalks keep all the important features of the original.... like the Pro-Tech key for safety, so no can start or stop the machine accidentally...

BILL (Cont'd)

...also, the dual action resistance arms for a total body workout and better muscle toning electronic feedback, which tracks your progress... and, of course, our quality

construction, with our limited ten-year warranty...

MIKE

It wouldn't be a Crosswalk without that...

BILL

Oh. But, here's a new design feature for this year. You see this? It's a speed control. It's built right into the handle.

MIKE

Hey, that's great--you don't have to stop and adjust it

BILL

.... and it gives you safe, smooth acceleration. For those tall athletes or runners with a long stride, we also eliminated the hood on the front of the tread, so they can really stretch out.

But overall, this machine takes up less space. In fact, we streamlined the whole frame.

[Bill adjusts the power incline.]

We've also added a power incline, which you can adjust without ever getting off the machine... So you can boost the intensity of your workout, and strengthen those legs.

MIKE

Yeah, I can't believe you could get all those features on a machine at this price point.

MIKE

My customers are going to love this.

[CUT to Marty and Sue at TV monitor. Dr. Upton is on monitor.]

MARTY

This is Dr. David Upton.

SUE

Oh. Hey, we quoted this guy in one of our stories about walking. Isn't he an expert on wellness?

MARTY

Uh, huh. And an author. Here, listen for yourself ...

[CUT TO MONITOR]

[Dr. Upton testimonial. DISSOLVE to full screen testimonial]

{SUPER: Dr. David Upton
Exercise Physiologist/Wellness Consultant}

{If your goal is to lose weight, you have to do more than just diet. While dieting does reduce your caloric intake, it also lowers your metabolism. And it's been proven that a low metabolism won't burn off your excess fat. So to achieve that desired high fat burning metabolism, I recommend regular, brisk exercise at a constant pace, a pace that raises your heart rate, or pulse, up to your target heart rate zone, for optimum fat burning. Recent studies have shown that walking is one of the best ways to accomplish this. However, you must walk a steady rate. One way to do that is to walk on a motorized treadmill. This keeps you walking at a constant pace which gives you the most benefit from your exercise.}

{Switch back to "VIP Room" set}

SUE

Great stuff. Y'know, I also have a few technical questions, if you don't mind...

MARTY

No I don't mind...But actually...Bill would probably be better to answer those...

SUE

Hi, I'm Sue Meyers.

BILL

How do you do?

SUE

Oh, I just have a few questions about the design of the Crosswalk Advantage.

Exhibit A-10

BILL

Great. Why don't you come over with me and maybe I can answer them for you.

{SUPER: This program is a paid advertisement presented by Proform Fitness Products, Inc.}

[SUPER: To be continued]

{Switches to narrated portion}

{SUPER: LOSE WEIGHT}

FEMALE VOICE
[voiceover]

Lose weight...

{SUPER: TONE UP}

Tone up ...

{SUPER: LOOK GREAT}

Look great ...

ANNOUNCER [voiceover]
With the CrossWalk Line of motorized treadmills. Each CrossWalk gives you ...

{SUPER: TOTAL BODY EXERCISE}

FEMALE VOICE
Total body exercise ...

ANNOUNCER
While your lower body works at a steady pace, the resistance arms tone and firm your upper body. Work more muscles, burn calories faster, reach your target heart rate zone more quickly--all in a low impact workout that burns up to 1,100 calories an hour.

{SUPER: MOTIVATIONAL FEEDBACK}

Exhibit A-11

MALE VOICE
Motivational feedback...

ANNCR
Stay motivated. The electronic display shows you how many calories you're burning, how far you've gone, how close you are to your goals, and if you're in your target heart rate zone.

{SUPER: MOTORIZED CONTROL}

FEMALE VOICE
Motorized control ...

ANNCR
... The CrossWalk motorized belt puts you in total control. You select your own pace. And the motorized belt keeps you at that smooth consistent pace for maximum fat burn.

{SUPER: SAFETY}

FEMALE VOICE
... Safety ...

ANNCR
Insert the Pro-Tech safety key to start your workout -- remove it when you're done. Your CrossWalk won't run without it.

{SUPER: VERSATILITY}

FEMALE VOICE
... Versatility ...

ANNCR
No matter what your goal -- muscle toning, fat burning, aerobic conditioning, or weight loss -- you'll get it with a CrossWalk!

{SUPER: QUALITY SERVICE}

MALE VOICE
... Quality service ...

ANNCR

Exhibit A-12

Count on the support of Proform, the leading manufacturer of home fitness equipment in the world. That means a 10-year limited warranty on every CrossWalk, plus the backing of Proform's nationwide service network, ready whenever you need it!

{SUPER: WALK}

FEMALE VOICE
Walk.

{SUPER: RUN}

Run.

{SUPER: TOTAL BODY AEROBIC EXERCISE}

Total body aerobic exercise.
Burn fat. Lose weight. Choose your CrossWalk.

ANNCR

{CAPTION: (lists features of Original Crosswalk)}

The original CrossWalk; outstanding value and proven success with over half a million sold. Its quiet, one-and-a-half horsepower motor keeps you at a steady, fat burning pace. Simple controls make operating the CrossWalk as easy as walking.

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}

All for only \$49.95 a month!

{CAPTION: (lists features of Crosswalk Plus)}

The CrossWalk Plus. Its expanded hoodless walking deck provides over 20% more walking space than the Original, yet it actually takes up less space! The 2-horsepower motor delivers smooth response and solid acceleration. Finger tip speed control and Power Incline let's you burn more calories by increasing workout intensity without interrupting your workout.

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}

The spacious, convenient CrossWalk Plus...
only \$49.95 a month!

{CAPTION: (lists features of Crosswalk Advantage)}

The CrossWalk Advantage: A supersize deck give you one of the largest walking belts of any treadmill on the market. The 2 1/2 horsepower motor provides quiet, durable, smooth operation. The cushioned deck ensures a low impact workout for your ankles, knees, hips and back. Simple but advanced electronics provide four easy to use, pre-programmed workouts. And with speed and incline controls right at your finger tips you can easily vary your workout intensity.

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}

Our most advanced CrossWalk, for only \$49.95 a month!

SUPER: Call Now for FREE Brochure & Video

For a free brochure and video on the CrossWalk line, call the number on your screen now!

{SUPER: PROFORM PROMISE

If within 30 days you don't feel better, look better, and see the results you want, just return it for a full refund. Guaranteed! (Less \$75.00 S&H)}

And remember the Proform promise -- the CrossWalk is the finest piece of fitness equipment you can buy. If within 30 days you don't feel better, look better and see the results you want, just return it for a full refund. Guaranteed!

{SUPER: CALL NOW}

FEMALE VOICE

Call now.

ANNCR

Call now! And discover the benefits of
CrossWalk!

{Switch to different set}

[SUPER: Peggy Fleming, Olympic Gold Medalist]

PEGGY

I know that no two people have exactly the
same fitness needs or goals. That's one
of the reasons I've been so impressed with
these Crosswalks.

[CUTAWAYS to models demonstrating]

{SUPER: BURN MORE FAT}

If you want a moderate intensity workout
for fat burning... just set your speed.
The electronic console tells you when
you've reached your optimum level and
achieved your goals.

{SUPER: CARDIOVASCULAR IMPROVEMENT}

Or, just increase the speed if you want a
great cardiovascular workout.

{SUPER: TOTAL BODY WORKOUT}

Add the resistance arms to get your whole
body involved and reach your maximum total
calories burned.

[CUT back to Peggy]

The possibilities for variations--and
results-- are almost endless.

I think you can see why the Proform
Crosswalk is the workout equipment I've
chosen to be associated with. Its quality
is legendary, which is easy to understand
when you know it's made by Proform, the
leader in home exercise equipment. Proform
is the largest manufacturer of treadmills
in the world.

Who better to bring the benefits of walking home to all of us? And for more on those benefits, stay right where you are.

{Switch to exhibit hall set}

KELLY

[to an assistant]

Okay, thanks..Yes, we can hang that later...

Alright people... Eighteen hours and counting until the entire Fitness Expo moves in here to watch you strut your stuff... And Corrigan, I want these Crosswalks to shine.

PROP ASSISTANT

Hey Kelly, here's that extra machine you wanted.

KELLY

Oh, great. Just set it up right there.

[He takes box off truck and pulls out the folded Crosswalk. He looks perplexed.]

PROP ASSISTANT

Okay..... so..... how are we supposed to put it together?

[With an amused look, Kelly walks over to the Crosswalk and in one simple move, turns the handle, and pulls the handlebars up into place. Without saying a word, she smugly looks over at him, and goes back to what she was doing.]

8.

PROP ASSISTANT

You're kidding, right?..... That's all there is to it...?

{Switch to "VIP Room" set}

BILL

Really, it's that simple

[PULL BACK to reveal he is showing the same easy handling feature on the Crosswalk Plus to TOM (the writer), only Bill is folding it back down, to show easy storage.]

TOM

Wow! You know, this is a great idea, having a preview of the new Crosswalks before the Fitness Expo starts tomorrow, 'cause its going to be crazy.

BILL

We wanted to make sure you guys knew what the real news was this year. And I don't see how the competition can top this.

TOM

Speaking of which, I heard you say something earlier about the Crosswalks being better than manual treadmills, because the Crosswalk is motorized. I'll tell you, there's a lot of people out there pushing manuals.

BILL

"Pushing" is exactly the right word. Because if you've ever tried to use one that's what you're doing. And they're cheaper to build. And if they were effective we'd build one ourselves. But, let me show you something.

[He moves over to TV monitor, finds tape, and puts it in. We see close-up action of manual treadmill. DISSOLVE to full screen manual treadmill demo.]

BILL

[voiceover]

Okay, here we go. Most manual treadmills are set at a 12% incline. That's pretty steep. But manuals have to be set that way because they depend on your body weight and on gravity to work. When they're level, you just can't get them to go.

{Depiction of chart showing target heart rate zone during 20 minute workout using a manual treadmill}

That means you have to over-exert.... and you get tired and slow down, the manual tread slows down, too.

{Depiction of chart showing target heart rate zone during 20

minute workout using a manual treadmill and using a CrossWalk}

Between pushing too hard... and not hard enough... you're not maintaining that consistency to stay within your fat burning zone.

And remember, the key to successful weight loss is consistent, moderate exercise within your fat burning zone. Now, that's why the Crosswalk's motorized tread is so much more efficient. You can set a pace, and maintain it. In fact, a recent university study showed you can lose over 20% more fat calories on the Crosswalk than working out on a manual treadmill.

[CUT back to Bill and Tom. Sue has joined them.]

SUE

Okay, I understand why motorized treadmills are better than manuals. My question is, why are the Crosswalks so much better than stair steppers and bikes?

BILL

Well, anyone that's used a stationary bike or a stair stepper knows they're fine for the lower extremities...

{SUPER: 65% of all muscles are above the waist}

But 65% of our muscles are above the waist. Those kinds of machines just don't give you a total body workout. And the same can be said for most manual treadmills.

TOM

How about ski machines?

BILL

We're constantly being told how difficult ski machines are to use, especially by people that are just starting out. And remember, ski machines aren't motorized, so you're not motivated to keep up a pace that you need, to stay within your fat burning zone.

BILL

Here, why don't I let some consumers tell you about their own experiences.

[Consumer testimonials appear on monitor. DISSOLVE to testimonials full screen.]

{SUPER: Michael Ferguson
Suzy Ferguson
Exercise 2-4 times per week on their CROSSWALK.}

MICHAEL FERGUSON

{When I've used the CrossWalk, its made me feel good about myself. It's made me feel good physically. But more than that it's made me feel good just about life. Even though sometimes its hard work, I'm always come away feeling much better than when I started.}

{SUPER: Nancy DeJardin
Exercises 5-6 times per week on her CROSSWALK.}

NANCY DEJARDIN

{Well, I exercise like a lot of people just to keep in shape and I have a stressful job and I find that the CrossWalk not only helps my energy level, but helps with my stress and helps me to sleep better.}

{SUPER: Annette Nelson
Exercises 3 times per week on her CROSSWALK.}

ANNETTE NELSON

{I had a NordicTrack and I much prefer the CrossWalk because I'm able to vary my speeds with the CrossWalk and I have much more consistent workout.}

[Back to VIP Room. Sue continues listening to testimonials. Marty walks up to Bill.]

MARTY

Is it just me, or is this going extremely well?

BILL

Incredible.

MARTY

I just wish we had a few more CrossWalks. You know everyone wants to try them.

BILL

Joel's supposed to be bringing one up from downstairs.

{Switch to exhibit hall set}

A short dance montage down on stage, dancers going through their routines on the Crosswalks.]

STAGE HAND

Stale popcorn?

KELLY

Why, of course.

{Switch to "VIP room" set}

[back to VIP room, Carrie working out on Crosswalk Advantage. She is really burning up the deck, pushing it. She has the pulse clip attached to her ear.]

MARTY

Isn't that new bigger deck great?

CARRIE

This is fantastic... how long is it anyway?

MARTY

54 inches. And a full 18 inches wide. There's plenty of room on the Crosswalk Advantage. Another feature we've added is a Soft Stride suspension deck for extra cushioning. It helps protect your ankle, knee and hip joints.

CARRIE

That's a great feature.

MARTY

Well...oh that's right. You're a personal trainer.

CARRIE

Right.

MARTY

Then you should appreciate the two and a half horsepower motor. Solid, steady power at a range of speeds, right up to 10 mph on the Crosswalk Advantage.

CARRIE

You know, my clients need something that can keep challenging them as they improve... so they can really push their workout when they want to.

[Mike walks up]

MIKE

So this is the Advantage?

CARRIE

Would you like to try it?

[She gets off. Mike gets on.]

MIKE

Thanks. Wow. That's quite a control pad.

MARTY

And it's so easy. See? You can track your speed..... time distance... incline...even heart rate. And, of course, it calculates the calories that you've burned. If you want to concentrate on the lower body only, you don't have to lock the arms in place. Just let go...

MIKE

Oh, that's nice.

MARTY

...and then pick them back up anytime.

MIKE

How about automatic workouts?

MARTY

The Crosswalk Advantage has 4 pre-set routines, so you can vary your workout according to your goals. It's like having a personal trainer in your home.

MIKE

That'd be nice.

SUE

So this one has all the extras, huh?

{SUPER: This program is a paid advertisement presented by Proform Fitness Products, Inc. }

MARTY

Except for the extra cost. We've managed to price this very affordably.

[SUPER: To be continued....]

{Switches to narrated portion}

{SUPER: LOSE WEIGHT}

FEMALE VOICE {voiceover}

Lose weight...

{SUPER: TONE UP}

Tone up ...

{SUPER: LOOK GREAT}

Look great ...

ANNOUNCER

No other fitness machines offer the versatility of every CrossWalk ...

FEMALE VOICE

{SUPER: TOTAL BODY EXERCISE}

Total body exercise ...

ANNCR

... Achieve weight control more quickly by working your entire body. Get the benefit of a lower body workout by walking or running while you tone and condition your upper body with the resistance arms. Burn up to 1,100 calories per hour!

FEMALE VOICE

{{SUPER: MOTORIZED PACING}}

Motorized pacing ...

ANNCR

You control the pace for a full range of workouts. Unlike manual treadmills, you select the perfect speed for your fitness

goals. There's no guesswork, no missing your goal because you're not at the right pace. You are in control.

{SUPER: CUSTOMIZED RESULTS}

FEMALE VOICE

Customized results ...

ANNCR

Lose weight, tone muscle, reduce stress, increase energy, or just feel better about yourself -- the CrossWalk can give you the personal results you want!

FEMALE VOICE

Three different crosswalks.
Three sets of features...
Three proven ways to succeed...

{CAPTION: lists features of Original Crosswalk}

ANNCR

The original CrossWalk: Smooth, quiet tread acceleration up to 8 miles per hour. Choose a moderate fat burning speed or gently increase the speed for a cardiovascular workout. And with the dual-action arms you'll reach your goals more quickly because you're using your entire body. Or just lock the arms in place for a walking-only workout.

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}

Flexibility and value for only \$49.95 a month!

{CAPTION: lists features of Crosswalk Plus}

The new Crosswalk Plus. Advanced tread design gives you a longer stride base in a more compact frame! Vary the pace of your workout with the convenient new fingertip speed control. The exclusive Power Incline lets you increase your workout intensity: reach your target heart rate zone faster, tone and shape hips, thighs, calves and buttocks. You'll see results quicker.

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping &

Handling}

Even more versatility for only \$49.95 a month!

{CAPTION: lists features of Crosswalk Advantage}

The CrossWalk Advantage: Versatile speed range up to 10 miles per hour provides a moderate fat burning pace yet can challenge even the most advanced athlete. Enhanced electronics give you easy-to-read feedback to track your progress with four pre-set workouts. It's like having your own personal trainer!

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}

Every option... for only \$49.95 a month!

{SUPER: Call Now for FREE Brochure & Video}

For a free brochure and video on the CrossWalk line, call the number on your screen now!

{SUPER: PROFORM PROMISE

If within 30 days you don't feel better, look better, and see the results you want, just return it for a full refund. Guaranteed! (Less \$75.00 S&H)}

{SUPER: CALL NOW}

FEMALE VOICE

Call now...

ANNCR:

Call now! And discover the benefits of CrossWalk!

{Switches to different set}

{SUPER: Peggy Fleming, Olympic Skating Champion}

PEGGY

Walking is something that almost everyone can do--I know I enjoy going for walks in my neighborhood.

But I also know that I'd never stick with my fitness program if I didn't have my Crosswalk at home.

For one thing, I don't know about your climate, but where I live the weather is never a sure thing.

It's also nice to have the security of staying at home to exercise. With the Crosswalk, I can walk after dark, or at times when I might not feel as comfortable going out.

I'm a mother, too. And there are lots of times when leaving the house just isn't practical.

{SUPER: BURN FAT}

The Crosswalk is also incredibly versatile. You can burn fat.

{SUPER: TONE MUSCLES}

You can tone muscles.

{SUPER: CARDIOVASCULAR IMPROVEMENT}

You can get cardiovascular exercise.

{SUPER: REDUCE STRESS}

You can even work off stress. And you can do it all, without ever leaving your home.

Those are just a few of the Crosswalk's advantages. And there's lots more to come. So stay tuned for the next chapter of the Crosswalk story.

{Switch to exhibit hall set}

KELLY

OK, start stretching out and we'll take it again in 5 with lights.

JOEL

Wow. This is looking really good, Kelly.
H-e-e-y.... I see you got that extra
machine

KELLY

O-o-o-h no you don't. I still have a final
rehearsal to go, and I absolutely cannot in
any way, shape or form, no matter what -- have
you got there?

KELLY

Hot egg rolls??... You are shameless, How
about a big cup of coffee to go with it?

JOEL

Done.

KELLY

Okay. Two hours. But, as soon as you've
finished upstairs, you come back down here
for final rehearsal.

JOEL

It'll be here. Scout's honor.

{Switch to "VIP Room" set}

CUT to Marty and Bill, over at the original Crosswalk,
spotting him, pleased to have the extra machine.]

MARTY

Allright, Joel... Look, another
treadmill...

BILL

I knew making it easy to move would come
in handy.

SUE

Excuse me -- Bill, do you think I could get
you to run through that new research on
walking and fat loss again? Maybe one of
those video tapes with Dr. Upton?

BILL

Sure. Let's take a look.

[CUT to Sue and Bill at TV monitor. Bill inserts tape.]

BILL

Well, so what do you have so far?

SUE

[reviewing notes]

Well... new studies show that walking is

the most effective workout for weight loss.

BILL

That's correct.

SUE

And the Crosswalk is the best way to do that, because it's motorized, so you have total control over the pace and intensity of your workout.... Correct?

[Bill nods.]

BILL

You got it.

{SUPER: 20% more **fat** burned}

SUE

Which is why research is proving that the Crosswalk can burn over 20% more fat calories than manual treadmills.

BILL

You got it.

{SUPER: 1100 cph, burn 1100 calories per hour}

SUE

Plus you get quicker results than regular walking, since you work your lower and upper body... and, if you want really want to push yourself, you can burn over 1100 calories an hour.

BILL

I can see you've been doing your homework.

SUE

It also offers convenience and safety-- you can workout anytime you want, in any kind of weather, right in your own home ... And, it gives you the incentive you need, with constant, electronic feedback on how you're doing.

BILL

I wouldn't add a thing.

SUE

Great. I just want to hear the tape one more time.

BILL

Sure.

[Bill starts tape. Expert testimonial comes up on monitor.]

{SUPER: Dr. David Upton
Exercise Physiologist/Wellness Consultant}

DR. DAVID UPTON

{I can't emphasize enough that study after study has demonstrated that to lose weight you have to burn more calories than you take in. And the more muscles you use during your workout the more calories you'll burn in the shortest period of time. Using a motorized treadmill with resistance arms lets you work all the large muscle groups in both your upper and lower body. This gives you the maximum calories burn, plus the added benefits of overall cardiovascular fitness.}

[Switch to "VIP Room" set]

MARTY

You know a few years ago when we first introduced the Crosswalk...

[CUTAWAY to Crosswalk Classic]

MARTY

[voiceover]

...it was a real pioneer in home exercise equipment...the first dual-action motorized treadmill of its kind. And, as you know, the response has been tremendous.

[PAN TO other Plus and Advantage]

MARTY

[voiceover]

And today, with the new Crosswalks, Proform has pushed the standard for home fitness equipment even higher and made total body fitness even more accessible and more exciting.

[CUT back to Marty, gesturing to all 3 machines]

MARTY

Now, what we're doing is spreading the news about just what a powerful change the Crosswalk can make in people's lives.

MARTY

And we're hoping you'll help us with that. So thank you very much for coming. Oh, they're still rehearsing downstairs. So tomorrow when the Expo opens, I hope you'll all go down and catch the Proform Fitness Show on the main level ...

{Switch to exhibit hall set}

KELLY

Okay, this is final, full out!

[Stab in show music. Show springs to action.]

{Switch to different set}

{SUPER: Peggy Fleming, Olympic Skating Champion}

PEGGY

So that's our story. But now it's your turn.

No other fitness equipment compares to the Crosswalk, for burning fat calories and getting a total body workout right at home. It's an important part of my life. And there have never been more reasons to make it part of yours ... Or a better time.

{Switch to testimonials}

{SUPER: Val Herman

Exercises 4 times per week on his CROSSWALK.}

VAL HERMAN

{The CrossWalk is the safest machine that I've ever owned ... The size is convenient and the fact that it's always there is probably the most convenient thing. It's

a marvelous piece of equipment. I'd
recommend it to anybody.}

{SUPER: Tracie McBeth
Exercises 2-3 times per week on her CROSSWALK.}

TRACIE MCBETH

{Not only have I lost the weight and lost the inches, but I'm also gaining strength and toning my entire body up at the same time.}

{SUPER: Earl Johnson

Exercises 2-3 times per week on her CROSSWALK.}

EARL JOHNSON

{Pretty soon your confidence level comes back to where you feel good about yourself and that alone is worth the price of the unit.}

{Switches to narrated portion}

{SUPER: LOSE WEIGHT}

FEMALE VOICE
(voiceover)

Lose weight...

{SUPER: MOTIVATION}

Motivation

{SUPER: STAY FIT}

Stay fit

{SUPER: SUCCESS}

Success

ANNCR

Whatever your fitness goal, get there faster with the safety and convenience that only CrossWalk can offer ...

{SUPER: EASY OPERATION}

FEMALE VOICE

Easy operation ...

ANNCR

Simply adjust the arms to the resistance you want... Insert your Pro-Tech key... set your pace... and the CrossWalk gradually ramps up to the speed you set. The bright display panel tracks your progress. When you're done, remove your key... your CrossWalk is ready to store in seconds.

SUPER: SAFETY & PROTECTION

FEMALE VOICE

Safety and protection...

ANNCR

Your personal Pro-Tech key keeps the Crosswalk worry free, even in homes with young children. It won't run without the key in place, so there's no chance of accidental starting.

FEMALE VOICE

A CrossWalk for every budget...

{SUPER: EVERY BUDGET}
{SUPER: EVERYBODY}

A CrossWalk for every body...

{SUPER: EVERYONE}

A CrossWalk for everyone...

{CAPTION: (lists features of Original Crosswalk)}

ANNCR

The original CrossWalk: Proven dependability, with a one-and-a-half horsepower motor specifically designed to never need replacing. It's easy to use, it's fun, and with motivational electronics you'll see progress... and you'll get results.

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}

It's even easy to own, for only \$49.95 a month!

{CAPTION: (lists features of Crosswalk Plus)}

The new CrossWalk Plus: Redesigned with a longer, hoodless tread that gives you over 20% more walking space -- in a machine that's actually smaller than the Original! New fingertip speed adjustment lets you vary your workout and control your pace while you get a total body workout... And with Power Incline, you can increase the intensity without missing a beat.

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}

Conveniently priced at only \$49.95
month.

{CAPTION: (lists features of Crosswalk Advantage)}

The new CrossWalk Advantage has the added safety of a full cage railing which allows you to pick up or put down the resistance arms at any time and a supersize deck that's one of the largest on the market. The Soft Stride suspension deck cushions joints and muscles. Plus, you get speed control in one hand, power incline adjustment in the other. And four pre-set workouts make the Advantage as convenient as having your own Personal Trainer!

{CAPTION: \$49.95, For 10 Months, \$499 plus \$75, Shipping & Handling}

Our most advanced CrossWalk... for only
\$49.95 a month!

{SUPER: Call Now for FREE Brochure & Video}

For a free brochure and video on the
CrossWalk line, call the number on your
screen now!

{SUPER: PROFORM PROMISE

If within 30 days you don't feel better, look better, and see the results you want, just return it for a full refund. Guaranteed! (Less \$75.00 S&H)}

And remember the Proform promise -- the CrossWalk is the finest piece of fitness equipment you can buy. If within 30 days you don't feel better, look better and see the results you want, just return it for a full refund. Guaranteed!

SUPER: CALL NOW

FEMALE VOICE

Call now.

ANNCR

Call now! And discover the benefits of CrossWalk!

[FADE IN DISCLAIMER:]

This program is a paid advertisement presented by Proform Fitness Products, Inc.

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 C.F.R. 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.