

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. _____
FITNESS BRANDS, INC., FITNESS BRANDS)	
INTERNATIONAL, INC., TARA PRODUCTIONS,)	
INC., NEW U, INC., DIRECT HOLDINGS)	
AMERICAS, INC., DIRECT)	
ENTERTAINMENT MEDIA GROUP, INC.,)	
JNL, INC., and JNL WORLDWIDE, INC.,)	
)	
Corporations,)	
)	
MICHAEL CASEY and)	
DAVID BRODESS,)	
)	
Individually and as officers of FITNESS)	
BRANDS INTERNATIONAL, INC. and)	
FITNESS BRANDS, INC.,)	
)	
TARA BORAKOS,)	
)	
Individually and as an officer of TARA)	
PRODUCTIONS, INC. and NEW U, INC., and)	
)	
JENNIFER NICOLE LEE,)	
)	
Individually and as an officer of JNL, INC.)	
and JNL WORLDWIDE, INC.,)	
)	
Defendants; and)	
)	
THE READER’S DIGEST ASSOCIATION, INC.,)	
)	
Relief Defendant.)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“FTC”) for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for defendants’ acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345 and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue in this District is proper under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, as may be appropriate in each case. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

DEFENDANTS

6. Defendant Fitness Brands, Inc. is a Nevada corporation with its principal place of

business at 3400 RR 620 S. #12101, Austin, Texas 78738. Fitness Brands, Inc. is the wholly owned subsidiary of Defendant Fitness Brands International, Inc., with which it shares its principal place of business. Defendants Michael Casey and David Brodess are the co-founders and only officers and directors of Fitness Brands, Inc. Fitness Brands, Inc. obtained the rights to the Ab Circle Pro, an exercise device, and contracted with Defendant Jennifer Nicole Lee to serve as the host of the Ab Circle Pro infomercial. Fitness Brands, Inc. also contracted with Defendant New U, Inc. to produce an infomercial for the Ab Circle Pro, which Fitness Brands, Inc. subsequently disseminated from approximately January 2009 to March 2009. Fitness Brands, Inc. entered into a Distributor Agreement with Defendant Direct Entertainment Media Group, Inc. in March 2009, pursuant to which Fitness Brands, Inc. granted Defendant Direct Entertainment Media Group, Inc. the right to market and distribute the Ab Circle Pro in the United States. The Distributor Agreement also provided that Fitness Brands, Inc. would provide Defendant Direct Entertainment Media Group, Inc. with a current copy, and future updates, of the Ab Circle Pro infomercial and websites. The Distributor Agreement provided as well that Defendant Direct Entertainment Media Group, Inc. periodically would consult with Fitness Brands, Inc. to obtain Fitness Brand, Inc.'s views and suggestions regarding the Ab Circle Pro marketing campaign. Fitness Brands, Inc. transacts or has transacted business in this district, and at times material to this Complaint, acting alone or in concert with others, has advertised, marketed, distributed, or sold the Ab Circle Pro to consumers throughout the United States.

7. Defendant Fitness Brands International, Inc. is a Nevada corporation whose principal place of business is 3400 RR 620 S. #12101, Austin, Texas 78738. Fitness Brands International, Inc. operates through its wholly owned subsidiary, Defendant Fitness Brands, Inc. Defendants Michael Casey and David Brodess are officers, directors, and partial owners of

Fitness Brands International, Inc. Fitness Brands International, Inc. transacts or has transacted business in this district, and at times material to this Complaint, acting alone or in concert with others, has advertised, marketed, distributed, or sold the Ab Circle Pro to consumers throughout the United States.

8. Defendant Tara Productions, Inc. is a Florida corporation with its principal place of business at 3589 SW 10th Street, Pompano Beach, Florida 33069. Defendant Tara Borakos is the sole shareholder of Tara Productions, Inc. Tara Productions, Inc. transacts or has transacted business in this district. At times material to this Complaint, acting alone or in concert with others, Tara Productions, Inc. has advertised, marketed, distributed, or sold the Ab Circle Pro to consumers throughout the United States.

9. Defendant New U, Inc. is a Florida corporation with its principal place of business at 3589 SW 10th Street, Pompano Beach, Florida 33069. Defendant Tara Borakos is the sole shareholder of New U, Inc. New U, Inc. entered into a contract with Defendant Fitness Brands, Inc. to produce an infomercial for the Ab Circle Pro. New U, Inc. transacts or has transacted business in this district. At times material to this Complaint, acting alone or in concert with others, New U, Inc. has advertised, marketed, distributed, or sold the Ab Circle Pro to consumers throughout the United States.

10. Defendant Direct Entertainment Media Group, Inc. is a Delaware corporation with its principal place of business at 8280 Willow Oaks Corporate Drive, Fairfax, Virginia 22301. At all times material to this Complaint, Direct Entertainment Media Group, Inc. was a wholly owned subsidiary of Relief Defendant The Reader's Digest Association, Inc. On or about March 24, 2009, Direct Entertainment Media Group, Inc. obtained from Defendant Fitness Brands, Inc. the rights to market and distribute the Ab Circle Pro in the United States. Direct

Entertainment Media Group, Inc. aired versions of the Ab Circle Pro infomercial from approximately April 2009 through approximately April 2011. Direct Entertainment Media Group, Inc. transacts or has transacted business in this district and, at times material to this Complaint, acting alone or in concert with others, has advertised, marketed, distributed, or sold the Ab Circle Pro to consumers throughout the United States.

11. Defendant Direct Holdings Americas, Inc. is a Delaware corporation and, at all times material to this Complaint, was a wholly owned subsidiary of Relief Defendant The Reader's Digest Association, Inc. with a principal place of business at 8280 Willow Oaks Corporate Drive, Fairfax, Virginia 22301. Employees of Direct Holdings Americas, Inc. have created, reviewed, and approved marketing materials for the Ab Circle Pro. Direct Holdings Americas, Inc. transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Direct Holdings Americas, Inc. has advertised, marketed, distributed, or sold the Ab Circle Pro to consumers throughout the United States.

12. Relief Defendant The Reader's Digest Association, Inc. is a Delaware corporation with its principal executive offices located at 750 Third Avenue, New York, New York 10017. The Reader's Digest Association, Inc. has received funds that were derived from consumers as a consequence of Defendants' unlawful acts and practices complained of herein. The Reader's Digest Association, Inc. has no legitimate claim to those funds. The Reader's Digest Association, Inc. transacts or has transacted business in this district and throughout the United States.

13. Defendant JNL, Inc. is a Florida corporation that shares a principal place of business with Defendant JNL Worldwide, Inc. at 6619 South Dixie Highway #178, Miami,

Florida 33143. JNL, Inc. has received payment of funds due Defendant Jennifer Nicole Lee pursuant to a contract between Jennifer Nicole Lee and Defendant Fitness Brands, Inc. in which Jennifer Nicole Lee agreed to appear as the host of the Ab Circle Pro infomercial. JNL, Inc. has transferred those payments to Defendant JNL Worldwide, Inc. JNL, Inc. transacts or has transacted business in this district. At times material to this Complaint, acting alone or in concert with others, JNL, Inc. has advertised, marketed, distributed, or sold the Ab Circle Pro to consumers throughout the United States.

14. Defendant JNL Worldwide, Inc. is a Florida corporation that shares a principal place of business with Defendant JNL, Inc. at 6619 South Dixie Highway #178, Miami, Florida 33143. JNL Worldwide, Inc. has received payment of funds due Defendant Jennifer Nicole Lee pursuant to a contract between Jennifer Nicole Lee and Defendant Fitness Brands, Inc. in which Jennifer Nicole Lee agreed to appear as the host of the Ab Circle Pro infomercial. Defendant JNL, Inc. also has transferred to JNL Worldwide, Inc. payments made pursuant to the contract between Jennifer Nicole Lee and Defendant Fitness Brands, Inc. JNL Worldwide, Inc. transacts or has transacted business in this district. At times material to this Complaint, acting alone or in concert with others, JNL Worldwide, Inc. has advertised, marketed, distributed, or sold the Ab Circle Pro to consumers throughout the United States.

15. Defendant Michael Casey is an officer, director, and partial owner of Fitness Brands International, Inc. and the chief executive officer and president of Fitness Brands, Inc. He was directly involved in the scripting and production of the Ab Circle Pro infomercial. After Fitness Brands, Inc. in March 2009 transferred the rights to market the Ab Circle Pro in the United States to Defendant Direct Entertainment Media Group, Inc., Michael Casey advised and worked on at least one occasion with Defendant Direct Entertainment Media Group, Inc. on the

Ab Circle Pro marketing campaign, including offering detailed suggestions regarding the content of the Ab Circle Pro infomercial. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Michael Casey, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Michael Casey has advertised, marketed, distributed, or sold the Ab Circle Pro to consumers throughout the United States.

16. Defendant David Brodess is an officer, director, and partial owner of Defendant Fitness Brands International, Inc. and the chief operating officer of Defendant Fitness Brands, Inc. He has entered into numerous Ab Circle Pro-related contracts on behalf of Defendant Fitness Brands, Inc., including the contract through which Defendant Fitness Brands, Inc. obtained the rights to the Ab Circle Pro and the contract with Defendant New U, Inc. to produce the Ab Circle Pro infomercial. After Defendant Fitness Brands, Inc. in March 2009 transferred the rights to market the Ab Circle Pro in the United States to Defendant Direct Entertainment Media Group, Inc., David Brodess advised and worked on at least one occasion with Defendant Direct Entertainment Media Group, Inc. on the Ab Circle Pro marketing campaign, including offering detailed suggestions regarding the content of the Ab Circle Pro infomercial. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. David Brodess, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, David Brodess has advertised, marketed,

distributed, or sold the Ab Circle Pro to consumers throughout the United States.

17. Defendant Tara Borakos is the president and creative director of Defendant Tara Productions, Inc. and the sole shareholder and officer of both Defendant Tara Productions, Inc. and Defendant New U, Inc. Tara Borakos was directly involved in the scripting and production of the Ab Circle Pro infomercial. At times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Tara Borakos resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Tara Borakos has advertised, marketed, distributed, or sold the Ab Circle Pro to consumers throughout the United States.

18. Defendant Jennifer Nicole Lee appears as the host of the Ab Circle Pro infomercial. During the infomercial, Jennifer Nicole Lee makes the claim that she lost eighty pounds using the Ab Circle Pro. Jennifer Nicole Lee is the sole officer and shareholder of Defendants JNL, Inc. and JNL Worldwide, Inc. Jennifer Nicole Lee earns a one percent royalty on gross worldwide sales of the Ab Circle Pro exercise device and a five percent royalty on all sales of the Ab Circle Pro through the Home Shopping Network. Jennifer Nicole Lee resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Jennifer Nicole Lee has advertised, marketed, distributed, or sold the Ab Circle Pro to consumers throughout the United States.

19. Defendants Fitness Brands International, Inc. and Fitness Brands, Inc. (collectively, "Fitness Brands Defendants") have operated as a common enterprise while

engaging in the deceptive acts and practices alleged below. The Fitness Brands Defendants have conducted the business practices described below through interrelated companies that have common ownership, officers, directors, business functions, employees, and office locations. Because the Fitness Brands Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendants Michael Casey and David Brodess have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Fitness Brands Defendants that constitute the common enterprise.

20. Defendants Tara Productions, Inc. and New U, Inc. (collectively, “Tara Defendants”) have operated as a common enterprise while engaging in the deceptive acts and practices alleged below. The Tara Defendants have conducted the business practices described below through interrelated companies that have common ownership, officers, directors, business functions, employees, and office locations. Because the Tara Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendant Tara Borakos has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Tara Defendants that constitute the common enterprise.

21. Defendants Direct Holdings Americas, Inc. and Direct Entertainment Media Group, Inc. (collectively, “DEMG Defendants”) have operated as a common enterprise while engaging in the deceptive acts and practices alleged below. The DEMG Defendants have conducted the business practices described below through interrelated companies that have common ownership, employees, business functions, and office locations. Because the DEMG Defendants have operated as a common enterprise, each of them is jointly and severally liable

for the acts and practices alleged below.

COMMERCE

22. At all times material to this Complaint, defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

23. At times relevant to the complaint, Defendants Fitness Brands, Inc., Fitness Brands, International, Inc., Direct Entertainment Media Group, Inc., Direct Holdings Americas, Inc., New U, Inc., Tara Productions, Inc., Michael Casey, David Brodess, Tara Borakos, Jennifer Nicole Lee, JNL, Inc., and JNL Worldwide, Inc. (“Defendants”) advertised, marketed, distributed, or sold to consumers throughout the United States an exercise device called the Ab Circle Pro. The Ab Circle Pro consists of a fiberglass disk approximately two feet in diameter that is affixed at a slight, upward angle to a metal frame that rests on the ground. The device has two handlebars that extend upward from the top of the frame and two bowl-shaped knee-rests set on rollers that track around the bottom perimeter of the disk. Consumers use the Ab Circle Pro by holding onto the handle bars, placing the knees on the knee-rests, and using the body to move the rollers from side to side along the perimeter of the disk, purportedly to exercise the abdominal and oblique muscles. Users also can adjust the bars to which the knee-rests are attached so that each leg can move independently, apart and then back together in the middle, purportedly to exercise the hips, buttocks, and thighs.

24. Defendants have advertised and sold the Ab Circle Pro through a variety of means, including several iterations of an infomercial, print advertisements, a video loop playing at Ab Circle Pro retail sale locations, and internet websites, including www.tryabcircle.com and

www.abcirclepro.com.

25. The Ab Circle Pro infomercial informs consumers that for \$14.95 plus shipping and handling, they can receive the Ab Circle Pro for a 30-day “risk-free” trial. Consumers who call to order typically pay approximately \$200 to \$250 for the Ab Circle Pro exercise device, a three-minute workout DVD, and a “Lose Your Love Handles Slim Down Nutritional Plan.” The typical shipping and handling cost for one Ab Circle Pro exceeds \$35.

Defendants’ Advertising and Claims for the Ab Circle Pro

26. Defendant Fitness Brands, Inc. first aired an Ab Circle Pro infomercial on January 15, 2009, and ran the infomercial approximately twenty-five additional times, at least, before March 24, 2009.

27. On March 24, 2009, Defendant Direct Entertainment Media Group, Inc. entered into a Distributor Agreement with Defendant Fitness Brands, Inc. and began disseminating a revised version of the Ab Circle Pro infomercial that previously had been aired by Defendant Fitness Brands, Inc. Subsequent to March 24, 2009, Defendants Fitness Brands, Inc., Fitness Brands International, Inc., Michael Casey, and David Brodess continued to be involved in marketing strategy and discussions involving the content of the Ab Circle Pro advertising. From approximately March 24, 2009 through May 16, 2010, multiple versions of the Ab Circle Pro infomercial aired over 10,000 times. The infomercial was among the top ten most frequently aired infomercials in the nation from May 2009 through April 2010.

28. In April 2009, a sixty second and a one hundred-twenty second short-form television commercial for the Ab Circle Pro began running. These short-form advertisements were made up of segments taken from the longer Ab Circle Pro infomercials. At least two websites, www.tryabcircle.com and www.abcirclepro.com, advertised the Ab Circle Pro; the

websites contained links to portions of the infomercial and featured consumer testimonials that also appeared in the infomercial.

29. Print advertising for the Ab Circle Pro also appeared in the form of free-standing inserts and advertisements in publications such as TV Guide, Woman's Day, Shape, and Parade. The print advertising referenced the direct marketing television campaign by displaying "As Seen on TV" graphics.

30. Defendants additionally created, or caused to be created, a Facebook page for the Ab Circle Pro that includes links to segments of the Ab Circle Pro infomercial and contains responses to consumers' questions and comments.

31. The Ab Circle Pro is sold at retail, as well as through direct marketing television campaigns and the Internet. The packaging of the Ab Circle Pro sold at retail references the direct marketing television campaign by displaying "As Seen on TV" graphics.

32. The Ab Circle Pro infomercial features "expert fitness celebrity" Jennifer Nicole Lee, who makes a variety of claims about the purported benefits of the Ab Circle Pro. The claims are reinforced by text and graphics that appear throughout the program and make repeated reference to the speed and ease with which users of the Ab Circle Pro can lose weight, fat, and inches. The infomercial also features numerous testimonialists who claim that use of the Ab Circle Pro allowed them to dramatically transform their bodies in a short period of time.

33. The Ab Circle Pro infomercial and other advertising convey the following core messages: (1) use of the Ab Circle Pro causes rapid and substantial weight and fat loss; (2) use of the Ab Circle Pro causes rapid and substantial weight, fat, or inch loss in specific, desired areas of the body, such as the abdominal area, hips, thighs, and buttocks; (3) use of the Ab Circle Pro for three minutes a day (a) will cause consumers to lose ten pounds in two weeks, (b) is

equal to 100 sit-ups, and (c) provides weight and fat loss benefits equivalent or superior to significantly longer workouts on other exercise devices or gym equipment; and (4) consumers who use the Ab Circle Pro exercise device will likely obtain the rapid and substantial weight and fat loss obtained by the consumers who give testimonials in the Ab Circle Pro infomercials.

34. Defendants have made changes to the Ab Circle Pro infomercial since it first aired in January 2009, but all versions of the infomercial contained one or more of the aforementioned claims, including the claim that use of the Ab Circle Pro causes rapid and substantial weight and fat loss.

35. To induce consumers to purchase the Ab Circle Pro, Defendants have disseminated, or caused to be disseminated, advertisements, including but not necessarily limited to the attached Exhibits 1 and 2.

36. The Ab Circle Pro advertising contains representations, including the following, about how the Ab Circle Pro causes rapid and substantial weight and fat loss:

- “In fact, with the Ab Circle Pro System, we guarantee you’ll lose ten pounds in just two weeks or your money back.”
- “Best of all, it’s fun and easy and takes just three minutes a day.”
- “You’ll firm and flatten your stomach in just weeks, not months. We guarantee it.”
- “When I use my Ab Circle, the weight flies off and my body looks sexy.”
- “Just riding around on the Ab Circle Pro, you’ll melt inches and pounds off – faster than you could ever imagine.”
- “As a personal trainer and a gym owner, I highly recommend the Ab Circle Pro. My clients were able to lose weight, lose inches – strengthen the core of the body in a short period of time.”

37. The claim that the Ab Circle Pro will cause rapid and substantial weight and fat

loss is further reinforced by numerous consumer testimonials in the Ab Circle Pro infomercial, including:

- ON SCREEN: Joan, Dental Technologist

JOAN: I think it works well and so fast because it works the hips, it works the waist, you can feel the movements.

ON SCREEN: Before and After Photos, “Lost 4 sizes,” “Results not typical. Joan ate a reduced calorie diet and did the Ab Circle Pro workout regularly.”

JOAN: You just see the pounds shed off.
- ON SCREEN: Jan, Retired School Teacher

JAN: Such a simple piece of equipment to use and, yet, it’s dramatically changed my body.

ON SCREEN: Before and After Photos, “Lost 60 lbs,” “Results not typical. Jan ate a reduced calorie diet and did the Ab Circle Pro workout regularly.”

JAN: The inches have melted away and I feel great. So, I’m very thankful.
- ON SCREEN: Kari, Tennis Instructor, 1-800-239-0605, www.TryAbCircle.com

KARI: With my upcoming wedding, it was very important for me to lose the weight and the inches because I wanted to have that wow factor when I walked down the aisle. I had to get a second dress because, from using the Ab Circle Pro –

ON SCREEN: Smaller Dress Size, Results not typical. Kari ate a reduced calorie diet and did the Ab Circle Pro workout regularly. 1-800-239-0605, www.TryAbCircle.com

KARI: – my original dress got too big. So, I got a new dress that makes me look very thin and has that wow factor for when I walk down the aisle.
- ON SCREEN: Michael, Bond Trader, 1-800-239-0605, www.TryAbCircle.com

MICHAEL: I put on a lot of weight being around my kids. All we would do is play and eat and I didn't have any time for exercise.

ON SCREEN: Before and After Photos, Lost 21 lbs, Time Required for Desired Results May Vary. 1-800-239-0605, www.TryAbCircle.com

MICHAEL: Using the Ab Circle Pro System, it only took me three minutes a day and I lost a lot of weight quickly.

38. The Ab Circle Pro advertising contains representations, including the following, about how use of the Ab Circle Pro causes rapid and substantial weight and fat loss in specific, desired areas of the body, such as the abdominal area, hips, thighs, and buttocks:

- “You’ll firm and flatten your stomach in just weeks, not months. We guarantee it.”
- “I have lost numerous inches off my buns and my thighs – and I love it.”
- “And watch this, simply remove the pin and the Ab Circle Pro becomes a fat-burning bun and thigh machine, trimming your buns, hips and thighs in no time. No more straining your back and neck.”
- “Ride the Ab Circle Pro to the sexy, hot body of your dreams as it flattens your abs, tightens your obliques, shrinks your love handles and even sculpts your buns and thighs and melts inches off your waist. You’ll hardly believe it when you start seeing results within two weeks as the Ab Circle Pro carves you out and transforms your body -- into that super sexy, head-turning V shape that you crave.”
- “Not only will the new AB Circle PRO help you “Lose Your Love Handles”, it’ll also help you slim down your buns, hips and thighs. Guaranteed!”

39. The Ab Circle Pro advertising contains representations, including the following, about how use of the Ab Circle Pro for three minutes a day will cause users to lose ten pounds in two weeks:

- “In fact, with the Ab Circle Pro System, we guarantee you’ll lose ten pounds in just two weeks or your money back.”

- “Best of all, it’s fun and easy and takes just three minutes a day.”
- “I guarantee with the Ab Circle Pro System you’ll lose ten pounds in just two weeks – or your money back. Take the ride of your life and get the body of your dreams.”
- “In fact, I am so confident about the results my system will give you that I’m taking the bold step of guaranteeing – that you’ll lose ten pounds in just two weeks – or your money back.”
- “I guarantee if you don’t lose ten pounds in just two weeks – you can return it for a full refund, no questions asked. Now, that’s a great promise. So, why not pick up the phone and give it a try? I promise you’ll be glad you did. You have the power to change your life, just like I did . . .”

40. The Ab Circle Pro advertising contains representations, including the following, about how use of the Ab Circle Pro for three minutes a day is equal to 100 sit-ups:

- “Only 3 mins = 100 Sit Ups!”
- “In fact, three minutes on the Ab Circle Pro is equal to over 100 sit-ups.”
- “It’s impact-free. And because you’re engaging your entire core – just three minutes on the Ab Circle Pro is equivalent to doing more than 100 sit-ups.”
- “In fact, three minutes on the Ab Circle Pro is equal to 100 sit-ups. These machines cost thousands of dollars. But the Ab Circle Pro does the work of all these machines.”
- “Just 3 minutes = more than 100 sit-ups!”

41. The Ab Circle Pro advertising contains representations, including the following, about how use of the Ab Circle Pro for three minutes a day provides weight and fat loss benefits equivalent or superior to significantly longer workouts on other exercise devices or gym equipment:

- “You know what else? Keep doing this and you’ll have an unbelievable cardio workout. You don’t need to go to the gym and work out your abs and then do cardio. This does it all for you.”

- “It will actually cut your workout time in half – and you’ll get yourself in the target heart rate zone faster than any other aerobic machines in the gym. No other ab machine in the world can give you a cardio workout like this.
- “Burns Fat Faster than Treadmill!”
- “And look at this, it fires up faster than working on a treadmill, so you burn fat faster. The Ab Circle Pro is like a treadmill for your abs.”
- “Normally, my clients come in and it takes them anywhere up to 15 to 20 minutes to get warmed up, get a cardiovascular and abs in. A lot of people don’t have that kind of time. With the Ab Circle Pro, you’re able to combine the two.”
- “Cardio & Abs at the SAME TIME!”
- “So, you can do your cardiovascular workout, as well as your abs in a short period of time, and the results are amazing.”
- “On the Ab Circle Pro, it takes me three minutes to raise my heart rate – and I would have to do 30 minutes on the treadmill to get the same effect. Because of the Ab Circle Pro, I am in the best shape of my life right now and I feel terrific.”
- “The Ab Circle Pro is the last ab machine you will ever need because now you can replace your long and boring workout with my short and fun easy-to-do workouts that are clinically proven to be more effective. So, what are you waiting for? This is your opportunity to change the way you look and feel. . . .”
- “Look, ordinary equipment just goes back and forth – but doesn’t burn fat. These machines burn fat – but won’t flatten your abs. But the Ab Circle Pro combines cardio and abs to burn fat while its unique friction-free track uses the momentum of gravity to target your entire mid-section in a full circular motion – firing your core like no other machine has ever done.”
- “It has a friction-free track, allowing you to glide smoothly to chisel out your abs. You can either do 30 minutes of abs and cardio or just three minutes a day. The choice is yours.”
- “In fact, three minutes on the Ab Circle Pro is equal to 100 sit-ups. These machines cost thousands of dollars. But the Ab Circle Pro does the work of all these machines.”

42. The Ab Circle Pro advertising contains representations, including the following, that consumers who use the Ab Circle Pro likely will obtain the rapid and substantial weight and fat loss purportedly obtained by the consumers who appear and give testimonials in the Ab Circle Pro infomercial:

- UNIDENTIFIED MALE: On the Ab Circle Pro System, I lost 14 pounds and I feel great.
- APRIL: I noticed results almost immediately. Within the first two weeks, I was transformed. It was amazing.
- JAN: With the Ab Circle Pro System, I've now lost 60 pounds, I feel great and I'm one hot mama.
- JOAN: I think it works well and so fast because it works the hips, it works the waist, you can feel the movements.

ON SCREEN: Before and After Photos

Lost 4 sizes

Results not typical. Joan ate a reduced calorie diet and did the Ab Circle Pro workout regularly.

JOAN: You just see the pounds shed off.

43. The consumer testimonialists lost the claimed weight and fat by going on a reduced calorie diet and engaging in cardiovascular exercise, in addition to using the Ab Circle Pro.

44. The Ab Circle Pro advertising also contains representations, including the following, that Jennifer Nicole Lee lost eighty pounds through use of the Ab Circle Pro:

- JENNIFER NICOLE LEE: Hello and welcome. We're at fabulous Fort Lauderdale Beach where all the hottest bodies come out to be seen. And just a short while ago, I would have never have come here. I lost over 80 pounds –

ON SCREEN: Before and After Photos, Lost 80 lbs, Results not typical. The complete Ab Circle Pro system includes a reduced calorie diet and regular aerobic exercise.

JENNIFER NICOLE LEE: – and was just crowned Ms. Bikini Diva all thanks to the Ab Circle Pro. And why? Because it was so easy, I didn't even know I was working out.

- JENNIFER NICOLE LEE: Do you want to know what it feels like to have the perfect shape, to stop hiding that body and wear today's hottest V-shaped fashions –

ON SCREEN: Lost 80 lbs, Results not typical. The complete Ab Circle Pro system includes a reduced calorie diet and regular aerobic exercise. 1-800-239-0605, www.TryAbCircle.com

JENNIFER NICOLE LEE: – and finally take off your fat suit just like I did? Here's your last chance to call the toll-free number on your screen right now and try the Ab Circle Pro –

ON SCREEN: Lose Your Love Handles System, 1-800-239-0605
www.TryAbCircle.com

JENNIFER NICOLE LEE: – with my exclusive Lose Your Love Handles System for 30 days risk-free.

45. The Defendants' infomercial, and other advertising, contain some disclaimers that are displayed in conjunction with certain of the above claims. The disclaimers appear in small font relative to the other graphics displayed, are difficult to read, and, in the case of the infomercial, typically appear towards the bottom of the screen.

DEFENDANTS' VIOLATIONS OF SECTIONS 5(a) AND 12 OF THE FTC ACT

46. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce." Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

47. Section 12 of the FTC Act, 15 U.S.C. § 52, prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. For the purposes of Section

12 of the FTC Act, the Ab Circle Pro is a “device” as defined in Section 15(d) of the FTC Act, 15 U.S.C. § 55(d).

COUNT I

CLAIM REGARDING RAPID AND SUBSTANTIAL WEIGHT AND FAT LOSS

48. Through the means described in Paragraphs 35-37, Defendants Fitness Brands, Inc., Fitness Brands, International, Inc., Direct Entertainment Media Group, Inc., Direct Holdings Americas, Inc., New U, Inc., Tara Productions, Inc., Michael Casey, David Brodess, and Tara Borakos have represented, directly or indirectly, expressly or by implication, that use of the Ab Circle Pro causes rapid and substantial weight and fat loss.

49. The representation set forth in Paragraph 48 above is false and/or was not substantiated at the time the representation was made.

50. Therefore, the making of the representation set forth in Paragraph 48 above constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT II

CLAIM REGARDING RAPID AND SUBSTANTIAL WEIGHT AND FAT LOSS IN SPECIFIC, DESIRED AREAS OF THE BODY

51. Through the means described in Paragraphs 35 and 38, Defendants Fitness Brands, Inc., Fitness Brands, International, Inc., Direct Entertainment Media Group, Inc., Direct Holdings Americas, Inc., New U, Inc., Tara Productions, Inc., Michael Casey, David Brodess, and Tara Borakos have represented, directly or indirectly, expressly or by implication, that use of the Ab Circle Pro causes rapid and substantial loss of weight, fat, or inches in specific, desired areas of the body, such as the abdominal area, hips, thighs, and buttocks.

52. The representation set forth in Paragraph 51 above is false and/or was not substantiated at the time the representation was made.

53. Therefore, the making of the representation set forth in Paragraph 51 above constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT III

CLAIMS REGARDING RESULTS ACHIEVED BY CONSUMERS WHO USE THE AB CIRCLE PRO FOR ONLY THREE MINUTES A DAY

54. Through the means described in Paragraphs 35 and 39-41, Defendants Fitness Brands, Inc., Fitness Brands, International, Inc., Direct Entertainment Media Group, Inc., Direct Holdings Americas, Inc., New U, Inc., Tara Productions, Inc., Michael Casey, David Brodess, and Tara Borakos have represented, directly or indirectly, expressly or by implication, that use of the Ab Circle Pro for just three minutes a day:

- A. Will cause users to lose ten pounds in two weeks;
- B. Is equal to 100 sit-ups; and
- C. Provides weight and fat loss benefits equivalent or superior to significantly longer workouts on other exercise devices or gym equipment.

55. The representations set forth in Paragraph 54 above were false and/or were not substantiated at the time the representations were made.

56. Therefore, the making of the representations set forth in Paragraph 54 above constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT IV

CONSUMER TESTIMONIAL CLAIM

57. Through the means described in Paragraphs 35 and 42, Defendants Fitness Brands, Inc., Fitness Brands, International, Inc., Direct Entertainment Media Group, Inc., Direct Holdings Americas, Inc., New U, Inc., Tara Productions, Inc., Michael Casey, David Brodess, and Tara Borakos have represented, directly or indirectly, expressly or by implication, that consumers who use the Ab Circle Pro exercise device are likely to obtain the rapid and substantial weight and fat loss obtained by the consumers who give testimonials in the Ab Circle Pro infomercial.

58. The representation set forth in Paragraph 57 above is false and/or was not substantiated at the time the representation was made.

59. Therefore, the making of the representation set forth in Paragraph 57 of this Complaint constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

COUNT V

CLAIM THAT JENNIFER NICOLE LEE LOST EIGHTY POUNDS USING THE AB CIRCLE PRO

60. Through the means described in Paragraphs 35 and 44, Defendants Fitness Brands, Inc., Fitness Brands, International, Inc., Direct Entertainment Media Group, Inc., Direct Holdings Americas, Inc., New U, Inc., Tara Productions, Inc., Michael Casey, David Brodess, Tara Borakos, Jennifer Nicole Lee, JNL, Inc., and JNL Worldwide, Inc. have represented, directly or indirectly, expressly or by implication, that Jennifer Nicole Lee lost eighty pounds

using the Ab Circle Pro.

61. In truth and in fact, Jennifer Nicole Lee did not lose eighty pounds using the Ab Circle Pro.

62. Therefore, the representation set forth in Paragraph 60 of this Complaint is false and misleading and constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT VI

MEANS AND INSTRUMENTALITIES

63. By furnishing Defendants Direct Entertainment Media Group, Inc. and Direct Holdings Americas, Inc. with the Ab Circle Pro infomercial and other advertising and promotional materials that included deceptive representations, including but not limited to the representations described in paragraphs 36-45, 48, 51, 54, 57, and 60, Defendants Fitness Brands, Inc., Fitness Brands International, Inc., Michael Casey, and David Brodess have provided others with the means and instrumentalities for the commission of deceptive acts and practices.

64. Therefore, the actions of Defendants Fitness Brands, Inc., Fitness Brands International, Inc., Michael Casey, and David Brodess, as described in paragraph 63, constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT VII

DISGORGEMENT OF RELIEF DEFENDANT'S ILL-GOTTEN GAINS

(Benefit from Funds Directly Traceable to Consumers)

65. Paragraphs 1 through 64 are incorporated herein by reference.

66. The Reader's Digest Association, Inc. received funds directly or indirectly from Defendants Direct Holdings Americas, Inc. and/or Direct Entertainment Marketing Group, Inc. Those funds are either proceeds of, or are traceable to the proceeds of, the unlawful acts and practices alleged herein. The Reader's Digest Association, Inc. has no legitimate claim to those funds.

67. The Reader's Digest Association, Inc. obtained the funds described in Paragraph 66 under circumstances in which it is unjust, inequitable, or unconscionable for it to retain those funds, and it has been unjustly enriched.

68. The Commission is entitled to an order requiring The Reader's Digest Association, Inc. to disgorge the funds described in Paragraph 66.

CONSUMER INJURY

69. Consumers have suffered and continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

70. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

- A. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;
- B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
- C. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

Willard K. Tom
General Counsel



Edward Glennon
Katherine Campbell
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
Ph.: 202-326-3126 (Glennon)
Ph.: 202-326-2924 (Campbell)
Fax: 202-326-3259
Email: eglennon@ftc.gov
Email: kcampbell@ftc.gov

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

Dated: 8/22/2012