

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 12-23065-CIV-ALTONAGA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**FITNESS BRANDS, INC.; FITNESS BRANDS
INTERNATIONAL, INC.; TARA PRODUCTIONS,
INC.; NEW U, INC.; DIRECT HOLDINGS
AMERICAS, INC.; DIRECT ENTERTAINMENT
MEDIA GROUP, INC.; JNL, INC.; JNL
WORLDWIDE, INC.; corporations; MICHAEL CASEY;
DAVID BRODESS; individually and as officers of
FITNESS BRANDS INTERNATIONAL, INC.;
FITNESS BRANDS, INC.; TARA BORAKOS, individually
and as an officer of TARA PRODUCTIONS, INC.; NEW
U, INC.; 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.

**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF AGAINST DEFENDANTS
TARA PRODUCTIONS, INC., NEW U, INC., and TARA BORAKOS**

Plaintiff, the Federal Trade Commission (AFTC® or ACommission®), pursuant to Section 13(b) of the Federal Trade Commission Act (AFTC Act®), 15 U.S.C. ' 53(b), filed its Complaint for Permanent Injunction and Other Equitable Relief (AComplaint®) against Defendants Fitness Brands, Inc., Fitness Brands International, Inc., Tara Productions, Inc., New U, Inc., Direct Holdings Americas, Inc., Direct Entertainment Media Group, Inc., JNL, Inc., JNL Worldwide, Inc., Michael Casey, David Brodess, Tara Borakos, and Jennifer Nicole Lee and Relief Defendant

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successors and assigns, individually, collectively, or in any combination.

3. ATara Borakos® means Tara Borakos, individually and as an officer and director of Tara Productions, Inc. and New U, Inc.
4. ATara Defendants® means all of the Corporate and Individual Defendants, individually, collectively, or in any combination.
5. ACommerce® means as defined in Section 4 of the FTC Act, 15 U.S.C. ' 44.
6. AAdequate and Well-Controlled Human Clinical Study® shall mean a human clinical study conducted by persons qualified by training and experience to conduct such study. Such study shall be randomized, and, unless it can be demonstrated that blinding or placebo control cannot be effectively or ethically implemented given the nature of the intervention, shall be double-blind and placebo-controlled.
7. ACovered Product® means any exercise equipment, or any food, drug, or device, as the terms A

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9. ASubstantially Similar Device® means an abdominal exercise device that is substantially similar in function, appearance, and design to the Ab Circle Pro device.
10. ADocument® or ADocuments® means any materials listed in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or nonidentical copy is a separate Document within the meaning of the term.
11. AEndorsement® or ATestimonial® means endorsement as defined in 16 C.F.R. ' 255.0(b). The two terms shall be treated identically in this Order, pursuant to 16 C.F.R. ' 255.0(c).
12. APlaintiff® means the Federal Trade Commission.
13. A requirement that any defendant Anotify,® Afurnish,® Asubmit to,® or Aprovide to® the Commission means that the defendant must send the necessary information via email to DEbrief@ftc.gov or by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Fitness Brands, Inc. (S.D. Fla.).
14. The term Aincluding® in this order shall mean Awithout limitation.®
15. The terms Aand® and Aor® in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

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- D. That such device makes a material contribution to any system, program, or plan that produces the results referenced in Subsections A through C of this Section;
- E. That consumers who use such device are likely to obtain the rapid and substantial weight or fat loss obtained by consumers who give testimonials concerning such device; and
- F. That any particular testimonialist achieved specific weight loss, fat loss, or other fitness benefits unless such representation is true and not misleading.

II.

IT IS FURTHER ORDERED that the Tara Defendants and their officers, agents, servants, and employees, and other persons in active concert and participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, are hereby permanently restrained and enjoined from representing, or assisting others in representing, directly or indirectly, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that:

- A. Such Covered Product causes or is likely to cause rapid and substantial loss of weight, inches, or fat;
- B.

buttocks;

- C. Use of such Covered Product for any period of time provides weight, inch, or fat loss benefits that are equivalent or superior to any form of exercise, including but not limited to exercising on specific devices or equipment;
- D.

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persons qualified by training and experience to conduct and measure compliance with such a study, and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

For purposes of this Section, for any Covered Product that is not a food, drug, or exercise equipment, competent and reliable scientific evidence shall consist of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

Provided, however, that in instances where any Tara Defendant, on behalf of a client, creates or develops advertising, or participates or assists in the creation or development of advertising, for a Covered Product, including but not limited to drafting all or part of an infomercial script or producing an infomercial, and does not have an ownership interest in such Covered Product or own or license the right to advertise such Covered Product, it shall be a defense hereunder for such Tara Defendant if it can establish that, after reasonable inquiry, it neither knew nor had reason to know that any representation listed in Subsection II.A, II.B, II.C, or II.D of this Section was not supported by competent and reliable scientific evidence as required under this Section.

III.

IT IS FURTHER ORDERED that the Tara Defendants, and their officers, agents, servants, and employees, and other persons in active concert and participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company,

subsidiary, division, or other device, or any of them, in connection with the advertising, promotion, offering for sale, sale, or distribution of any food, drug, or device, as those terms are defined in Section 15 of the FTC Act, 15 U.S.C. ' 55, in or affecting commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, directly or indirectly, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation, other than representations covered under Section II of this Order, about the health, weight-loss, or fitness-related performance or benefit of such food, drug, or device unless the representation is non-misleading, and, at the time of making such representation, the Tara Defendants possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Section, competent and reliable scientific evidence shall consist of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

Provided, however, that in instances where any Tara Defendant, on behalf of a client, creates or

conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

Provided, however, that for purposes of this Section IV, in instances where any Tara Defendant, on behalf of a client, creates or develops advertising, or participates or assists in the creation or development of advertising, for a Covered Product, including but not limited to drafting all or part of an infomercial script or producing an infomercial, and does not have an ownership interest in such Covered Product or own or license the right to advertise such Covered Product, such Tara Defendant will have complied with the substantiation requirement of this Subsection IV.B if it can establish that, after reasonable inquiry, it neither knew nor had reason to know that any representation covered under this Section was not supported by competent and reliable scientific evidence as required under this Section.

V.

EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. The Commission=

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the Commission or its agents to be used for equitable relief, including, but not limited to, consumer redress, and any attendant expenses for the administration of such equitable relief. If the Commission determines, in its sole discretion, that direct redress to consumers is wholly or partially impracticable, or funds remain after the redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Tara Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. The Tara Defendants shall have no right to challenge the Commission's choice of remedies under this Section. The Tara Defendants shall have no right to contest the manner of distribution chosen by the Commission. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

- D. The Tara Defendants relinquish all dominion, control, and title to any funds paid, to the fullest extent permitted by law. The Tara Defendants shall make no claim to, or demand return of the funds, directly or indirectly, through counsel or otherwise.
- E. The Tara Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including, but not limited to, a nondischargeability complaint in any bankruptcy case. The Tara Defendants further stipulate and agree that the facts alleged in the Complaint establish all elements necessary to sustain an action by

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the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C.

' 523(a)(2)(A), and that this Order shall have collateral estoppel effect for such purposes.

- F. In accordance with 31 U.S.C. ' 7701, the Tara Defendants are hereby required, unless they have done so already, to furnish to the Commission their taxpayer identifying numbers, which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of the Tara Defendants= relationship with the government.
- G. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

VI.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that the Tara Defendants obtain acknowledgments of receipt of this Order:

- A. Each Tara Defendant, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For five (5) years after entry of this Order, Tara Borakos, for any business in which she, individually or collectively with any other Defendant, is the majority owner or directly or indirectly controls and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and managers with responsibilities with respect to the subject matter of this Order; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting

from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which a Tara Defendant delivered a copy of this Order, that Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of

this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

2. Additionally, Tara Borakos must: (a) identify all telephone numbers and all email,

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and identify its name, physical address, and Internet address, if any.

- C. Each Tara Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within fourteen (14) days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 18 U.S.C. ' 1746, such as by concluding: I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on:_____@ and supplying the date, signatory-s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Fitness Brands, Inc. (S.D. Fla.).

VIII.

RECORDKEEPING

IT IS FURTHER ORDERED that Tara Defendants must create certain records for twenty (20) years after entry of the Order, and retain each such record for five (5) years. Specifically, each Corporate Defendant, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Covered Product, and Tara Borakos for any business in which she, individually

or collectively with any other defendant in this case, is a majority owner or directly or indirectly controls, must maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Customer files showing the names, addresses, telephone numbers, dollar amounts paid, and the quantity and description of goods or services purchased;
- D. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- F. A copy of each adver

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depositions; and produce documents, for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

- B. For matters concerning this Order, the Commission is authorized to communicate directly with each Tara Defendant. The Tara Defendants must permit representatives of the Commission to interview any employee or other person affiliated with any Tara Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to the Tara Defendants or any individual or entity affiliated with the Tara Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

X.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

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