

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ICON HEALTH AND FITNESS, INC., HF  
HOLDINGS, INC., IHF HOLDINGS, INC.,  
AND IHF CAPITAL, INC., DELAWARE  
CORPORATIONS,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR CIVIL PENALTIES, INJUNCTIVE, AND OTHER RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), for

its Complaint alleg(n2 .89.46 )8S[-.0001 ,3 TD.00c0 Tw( )T1.T0m1 4 19635A793r 0 12 R-(dy01 ,3 TD:036

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and under 15 U.S.C. §§ 1114 and 56(a).

3. Venue in the District of Columbia is proper under 28 U.S.C. §§ 1391(b)(2), (c)(2), and 1395(a).

DEFENDANTS

4. Defendant ICON Health and Fitness, Inc. ("ICON") is a Delaware corporation with its place of business at 1500 S. 1000 W. Street, Logan, Utah 84321. At all times material to this Complaint, acting alone or in concert with others, ICON has advertised, marketed, distributed or sold its ab GLIDER™ products to consumers throughout the United States.

5. Defendant HF Holdings, Inc. ("HF Holdings") is a Delaware corporation with its principal office or place of business at 1500 S. 1000 W. Street, Logan, Utah 84321. HF Holdings owns 100% of ICON's stock. At all times material to this Complaint, acting alone or in concert with others, HF Holdings has advertised, marketed, distributed or sold its ab GLIDER™ products to consumers throughout the United States.

6. Defendant IHF Holdings, Inc. ("IHF Holdings") is a Delaware corporation with its principal office or place of business at 1500 S. 1000 W. Street, Logan, Utah 84321. At all times material to this Complaint, acting alone or in concert with others, IHF Holdings has advertised, marketed, distributed or sold its ab GLIDER™ products to consumers throughout the United States.

7. Defendant IHF Capital, Inc. ("IHF Capital") is a Delaware corporation with its principal office or place of business at 1500 S. 1000 W. Street, Logan, Utah 84321. At all

times material to this Complaint, acting alone or in concert with others, IHF Capital has advertised, marketed, distributed or sold GLIDER™ products to consumers throughout the United States.

#### COMMERCE

8. At all times material to this Complaint, the acts and practices of ICON, HF Holdings, IHF Holdings, and IHF Capital (collectively “Defendants”) alleged in this Complaint have been in effecting commerce, as “commerce”

10. The Commission Order states:

I.

IT IS ORDERED that respondents, directly 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, the number of calories users burn, through the 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, 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 testimony 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 result 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, "endorsements" shall mean as defined in 16 C.F.R. § 255.0(b).

### **DEFENDANTS' COURSE OF CONDUCT**

11. Since at least August 2010, Defendants have engaged in the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the product "ab GLIDER™" throughout the United States and abroad. The following conduct relates to three different models of Defendants' exercise equipment product, the basic ab GLIDER™, the ab GLIDER Sport™, and the ab GLIDER Platinum™ (collectively "ab GLIDER™").

12. Defendants' advertising and promotion of its ab GLIDER™ includes multiple video presentations with celebrity endorser Elisabeth Hasselbeck, and multiple consumer testimonials.

13. Defendants aired advertisements for its ab GLIDER™ from at least August 2010 to September 2012 on various television and cable programs and channels.

### **SHORT VIDEO ADVERTISEMENTS**

14. ab GLIDER™ advertisements, including video segments, appear on Defendants' website at:

[http://www.proform.com/webapp/wcs/stores/servlet/Product\\_-](http://www.proform.com/webapp/wcs/stores/servlet/Product_-)

1 14201 16002 29512 186869 and

[http://www.proform.com/webapp/wcs/stores/servlet/Product\\_-](http://www.proform.com/webapp/wcs/stores/servlet/Product_-)

1 14201 16002 29512 145203.

15. Additional ab GLIDER™ advertisements, including video segments, are available on the Internet. See <http://www.youtube.com/watch?v=p2FKuQSQx8>.

16. The ab GLIDER™ advertisements contain consumer testimonials representing that ab GLIDER™ users lost pounds, inches, clothing sizes. For example, one video contained the following statements:

Leslie M. says that with the ab GLIDER “I can do quick, easy, it’s so effective, and you know it fits into my day” while an on-screen statement emphasizes “Lost 27 lbs”;

Tim M. says he lost “30 inches off my body” while an on-screen statement emphasizes “Lost 30 inches”;

Raine B. says she was told “you look better than you did in high school” while an on-screen statement emphasizes “Lost 15 lbs Was size 12 now size 4”.

Elisabeth Hasselbeck follows these consumer endorsements, saying “When I say the ab GLIDER™ works, it works!” while an on-screen statement emphasizes “It Works!” See Att. C, at 0:02-2:09, 2:25-4:35. At no time during this video are there any qualifications or disclaimers regarding the results achieved by these consumers, but only references to ab GLIDER™ use. This video appeared on Defendants’ website at least as early as September 20, 2012, and continued to appear on Defendants’ website through June 4, 2013.

17. In numerous instances, Defendants' website attribute the consumer testimonials regarding lost pounds, inches, and clothing sizes to using the ab GLIDER™ for just 3 minutes a day. For example, one video includes the following consumer testimonials:

Raine B. says "It's really easy" and "I feel like I'm not even working out" while an on-screen statement emphasizes "15 lbs";

Leslie M. says "It's fun and it's fast and the results are amazing" while an on-screen statement emphasizes "25 lbs";

Tim M. says "You will lose pounds and, and you'll just be amazed by the change" while an on-screen statement emphasizes "30 inches."

These consumer testimonials are immediately followed by Elisabeth Hasselbeck saying "So who's got 3 minutes?" Att. C at 1:56-57. Elisabeth Hasselbeck states at the beginning of this video: "So with all this busyness, when do I work my workout? Whenever I have 3 minutes." Id. at 0:16-0:22.

This video appeared on Defendants' website at least as early as September 20, 2012, and continued through June 4, 2013. At no time during this video are there any qualifications or disclaimers regarding the results achieved by these consumers, but only references to using the ab GLIDER™ for 3 minutes a day.

18. In numerous instances, the ab GLIDER™ videos reference Elisabeth Hasselbeck's "3 Minute Rapid Results DVD".

19. In multiple videos, the voiceover promoting the "3 Minute Rapid Results DVD" says: "The ab GLIDER™ comes with everything you need to get the results you want,





just like you to try the ab GLIDER™ in their own homes for just minutes a day. These were real people who had real concerns about their bodies. So how did they do --- check this out.” (Emphasis supplied). Elisabeth Hasselbeck then proceeds to interview Raine B., Leslie M., and Micah H.

23.

total of approximately 5 seconds in small, difficult to read print as the video jumps from one consumer testimonial picture to another.

28. The infomercial ran on various channels from September 2010 through May 2011.

29. Different video advertisements used actual consumer testimonial video clips.

Sometimes the video clip has an accompanying

used this product?" In all of the consumer questionnaires, consumers answered they dieted while using the ab GLIDER™.

35. Consumers identified in the testimonial engaged in exercise in addition to using the ab GLIDER™. The additional exercises included circuit training, cardio, weight training, and running. For example,

€ Becky M. did circuit training with weights five times a week in addition to ab GLIDER™ workouts;

€ Christine W. did circuit training and cardio workouts in addition to using the ab GLIDER™;

€ Leslie M. used free weights, did circuit training and did cardio exercises in addition to using the ab GLIDER™;

€ Tim M. used free weights, did circuit training, and ran in addition to using the ab GLIDER™.

36. Defendants' revenues from GLIDER™ sales were \$28,530,777 through April 15, 2013.

### VIOLATIONS OF COMMISSION ORDER

#### FIRST CAUSE OF ACTION

37. Through the statements described in paragraphs 11-30, and other statements like those, Defendants have represented to consumers that consumers will lose pounds, inches, or clothing sizes by:

- a. using only the ab GLIDER™ without engaging in other exercise or dieting;
- or
- b. using the ab GLIDER™ for only 3 minutes a day.

38. Defendants do not possess, and did not possess at the time the representations were made, competent and reliable scientific evidence to substantiate the representations described in Paragraph 37. Therefore, Defendants have violated Sections I.A.2 and I.B of the Commission Order.

### SECOND CAUSE OF ACTION

39. Through the statements described in Paragraphs 11-30, and other statements like those, Defendants have represented that the experience represented in testimonials and endorsements describing lost pounds, inches, clothing sizes represent the typical or ordinary experience of members of the public:

- a. using only the ab GLIDER™ without engaging in other exercise or dieting;
- or
- b. using the ab GLIDER™ for only 3 minutes a day.

40. In making such claims, Defendants neither possessed competent and reliable scientific evidence to substantiate the representations described in Paragraph 39, nor “clearly and prominently” disclosed: (1) that the generally expected results would be of using only the ab GLIDER™ or using the ab GLIDER™ for only 3 minutes a day; or (2) the limited applicability of the endorsers’ experience to consumers who would generally expect to achieve using only the ab GLIDER™ or using the ab GLIDER™ for only 3 minutes a day.

41. Therefore, Defendants have violated Section 11 of the Commission Order.

#### CONSUMER INJURY

42. Consumers have suffered and continue to suffer substantial monetary loss as a result of Defendants' unlawful acts or practices. Absent injunctive relief by the Court, Defendants are likely to continue to injure consumers and harm the public interest.

#### CIVIL PENALTIES, INJUNCTIVE AND OTHER EQUITABLE RELIEF FOR ORDER VIOLATIONS

43. Section 50 of the FTC Act, 15 U.S.C. § 45 (as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and Section 1.98(c) of the FTC's Rules of Practice, 16 C.F.R. § 1.98), authorizes the Court to award monetary civil penalties of not more than \$16,000 for each violation of the Commission's Order.

44. Section 50 of the FTC Act, 15 U.S.C. § 45, authorizes this court to grant injunctive and such other relief as the Court may deem appropriate to halt Defendants' violations of the Commission Order and to prevent and remedy any violations of any provision of law enforced by the Commission.

#### PRAYER FOR RELIEF

45. WHEREFORE, plaintiff United States of America, pursuant to Sections 54 and c), authorizes the

not more than \$16,000 for each violation of the

- b. enter a permanent injunction to prevent future violations of the Commission Order by Defendants;
- c. award Plaintiff monetary civil penalties from Defendants for each violation of the Commission Order;
- d. award Plaintiff the costs of bringing the action, as well as such other and additional relief as the Court may determine to be just and proper.

FOR THE COMMISSIONER

FOR THE PLAINTIFFS

UNITED STATES OF AMERICA

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