

**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
JNL, INC., JNL WORLDWIDE, INC., AND JENNIFER NICOLE LEE**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), filed its Complaint for Permanent Injunction and Other Equitable Relief ("Complaint") 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

The Reader's Digest Association, Inc. alleging deceptive acts or practices and false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

Defendants JNL, Inc., JNL Worldwide, Inc., and Jennifer Nicole Lee (collectively, the "JNL Defendants"), having been represented by counsel, and acting by and through said counsel, have consented to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief ("Order") without a trial or adjudication of any issue of law or fact herein.

NOW THEREFORE, the Plaintiff and the JNL Defendants, having requested the Court to enter this Order, and the Court having considered the Order reached between the parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

This is an action by the Commission instituted under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). The Commission has the authority to seek the relief contained herein.

1. The Commission's Complaint states claims upon which relief may be granted under Sections 5(a), 12, and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 52, and 53(b).
2. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over the JNL Defendants.
3. Venue in the United States District Court for the Southern District of Florida is proper pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).
4. The alleged activities of the JNL Defendants are "in or affecting commerce" as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. This Order is for settlement purposes and does not constitute, and shall not be interpreted to constitute, an admission by the JNL Defendants or a finding that the law, including but not limited to the FTC Act, has been violated as alleged in the Commission's Complaint.
6. The JNL Defendants waive: (a) all rights to seek appellate review or otherwise challenge or contest the validity of this Order; (b) any claim that they may have against the Commission, its employees, representatives, or agents; (c) all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996); and (d) any rights to attorney's fees that may arise under said provision of law. The Commission and the JNL Defendants shall each bear their own costs and attorney's fees incurred in this action.
7. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.
8. Entry of this Order is in the public interest.
9. This Order reflects the negotiated agreement of the parties. The Commission and the JNL Defendants have agreed that entry of this Order settles and resolves all matters of dispute between them arising from the conduct alleged in the Commission's Complaint as of the date of entry of this Order.

DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

1. The "Ab Circle Pro" means the Ab Circle Pro exercise device described in the Commission's Complaint and any related accessories or supplies.

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2. “Corporate Defendants” means JNL, Inc. and JNL Worldwide, Inc., and their successors and assigns, individually, collectively, or in any combination.
3. “Jennifer Nicole Lee” means Jennifer Nicole Lee, individually and as an officer and director of JNL, Inc. and JNL Worldwide, Inc.
4. “JNL Defendants” means the Corporate Defendants and Jennifer Nicole Lee, individually, collectively, or in any combination.
5. “Commerce” means as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
6. “Covered Product” means any exercise equipment, or any food, drug, or device, as the terms “food,” “drug,” and “device” are defined in Section 15 of the FTC Act, 15 U.S.C. § 55.
7. “Substantially Similar Device” means an abdominal exercise device that is substantially similar in function, appearance, and design to the Ab Circle Pro device.
8. “Document” or “Documents” 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.
9. “Endorsement” or “Testimonial” 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).
10. “Plaintiff” means the Federal Trade Commission.

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11. A requirement that any defendant “notify,” “furnish,” “submit to,” or “provide 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.).
12. The term “including” in this order shall mean “without limitation.”
13. The terms “and” and “or” in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

PROHIBITED REPRESENTATIONS

I.

THEREFORE, IT IS HEREBY ORDERED that the JNL 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 the Ab Circle Pro, any substantially similar device, or any Covered Product, in or affecting commerce, are hereby permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, directly or indirectly, expressly or by implication, that such device or product significantly contributes or contributed to any weight loss, muscle toning, or the general physical fitness of Defendant Jennifer Nicole Lee.

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II.

IT IS FURTHER ORDERED that the Defendant Jennifer Nicole Lee and her agents, servants, and employees, and other persons in active concert and participation with her 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, shall not make, or assist others in making, any endorsement for any Covered Product, unless such endorsement itself reflects Defendant Jennifer Nicole Lee's honest opinions, findings, beliefs, or experiences.

III.

EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that:

- A. The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of the following documents and sworn financial statements, along with all attachments, exhibits, schedules, forms, and statements attached thereto, submitted to the Commission by the JNL Defendants:
1. Financial Statement for Jennifer N. Lee, signed 12/27/2011;
 2. Financial Statement for JNL Worldwide Inc., signed 01/03/2012 by Jennifer Nicole Lee, President;
 3. Financial Statement for Jennifer Nicole Lee Inc., signed by Jennifer Nicole Lee, President (no date; faxed 01/03/2012);

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4. Form 1040, U.S. Individual Income Tax Return, for Edward Lee and Jennifer N. Siciliano, for calendar year 2008;
5. Form 1040, U.S. Individual Income Tax Return, for Jennifer Lee, for calendar year 2009;
6. Form 1040, U.S. Individual Income Tax Return, for Jennifer Lee, for calendar year 2010;
7. Form 1120S, U.S. Income Tax Return for an S Corporation, for JNL Worldwide Inc., for tax year beginning 07/04/2009, ending 12/31/2009;
8. Form 1120S, U.S. Income Tax Return for an S Corporation, for JNL Worldwide Inc., for calendar year 2010;
9. A Profit & Loss Statement January through November 2011 for JNL Worldwide Inc.;
10. A Balance Sheet as of November 30, 2011, for JNL Worldwide Inc.;
11. Form 1120S, U.S. Income Tax Return for an S Corporation, for Jennifer Nicole Lee, Inc., for calendar year 2008;
12. Form 1120S, U.S. Income Tax Return for an S Corporation, for Jennifer Nicole Lee Inc., for calendar year 2009;
13. Form 1120S, U.S. Income Tax Return for an S Corporation, for Jennifer Nicole Lee Inc., for calendar year 2010;
14. A Profit & Loss Statement January through November 2011 for Jennifer Nicole Lee, Inc.;

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15. A Balance Sheet as of November 30, 2011, for Jennifer Nicole Lee, Inc.;
16. A letter dated January 18, 2010, from Jennifer Nicole Lee to Edward Glennon;
17. A one-page screen shot dated January 9, 2012, of the account balance in the Jennifer Nicole Lee, Inc. bank account with account number ending 5956.

The JNL Defendants stipulate that all of the materials referenced above are truthful, accurate, and complete in all material respects as of the date of such information. These documents contain material information upon which the Commission relied in negotiating and agreeing to the terms of this Order.

- B. If, upon motion by the Commission, a Court determines that, with respect to any of the materials referenced above, any JNL Defendant made a material misrepresentation or omitted material information concerning its financial condition, a judgment in the amount of seven hundred ten thousand, four hundred eighty dollars (\$710,480), which represents the amount of royalties that the JNL Defendants received from Ab Circle Pro sales, shall be entered by the Court against the JNL Defendants and, upon entry, shall immediately become due and payable. Interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance.
- C. Any funds paid pursuant to this Order shall be deposited into an account administered by the Commission or its agents to be used for equitable relief, including, but not limited to, consumer redress, and any attendant expenses for the

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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 JNL 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 JNL Defendants shall have no right to challenge the Commission's choice of remedies under this Section. The JNL 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 JNL Defendants relinquish all dominion, control and title to any funds paid, to the fullest extent permitted by law. The JNL Defendants shall make no claim to, or demand return of the funds, directly or indirectly, through counsel or otherwise.
- E. The JNL 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 JNL Defendants further stipulate and agree that the facts alleged in the Complaint establish all

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elements necessary to sustain an action by 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 JNL 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 JNL 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 but not limited to any contempt proceedings or any other proceedings the Commission may initiate to enforce this Order.

IV.

ORDER ACKNOWLEDGMENTS

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

- A. Each JNL 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, Jennifer Nicole Lee, for any business in which she, individually or collectively with any other Defendant, is the majority

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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 JNL Defendant delivered a copy of this Order, that Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

V.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that the JNL Defendants make timely submissions to the Commission:

- A. One hundred eighty (180) days after entry of this Order, each JNL Defendant must submit a compliance report, sworn under penalty of perjury.
1. Each JNL Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with that JNL Defendant; (b) identify all of that JNL Defendant's businesses by all of their

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names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other defendant in this case (which Jennifer Nicole Lee must describe if she knows or should know due to her own involvement); (d) describe in detail whether and how that JNL Defendant is in compliance with each Section 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, Jennifer Nicole Lee must: (a) identify all telephone numbers and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which she performs services whether as an employee or otherwise and any entity in which she has any ownership interest; and (c) describe in detail her involvement in each such business, including title, role, responsibilities, participation, authority, control and any ownership.

- B. For twenty (20) years following entry of this Order, each JNL Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:

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1. Each JNL Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity of which the JNL Defendant has direct or indirect control that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
 2. Additionally, Jennifer Nicole Lee must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity in or affecting commerce, including any business for which she performs services whether as an employee or otherwise and any entity in which she has any ownership interest, and identify its name, physical address, and Internet address, if any.
- C. Each JNL 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.

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- 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.).

VI.

RECORDKEEPING

IT IS FURTHER ORDERED that JNL 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 Jennifer Nicole Lee 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;

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- 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 advertisement or other marketing material.

VII.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring the JNL Defendants' compliance with this Order, including any failure to transfer any assets as required by this Order:

- A. Within fourteen (14) days of receipt of a written request from a representative of the Commission, each JNL Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for 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 JNL Defendant. The JNL Defendants must permit representatives of the Commission to interview any employee or other person affiliated with any JNL Defendant who has agreed to such an interview. The person interviewed may have counsel present.

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- C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to the JNL Defendants or any individual or entity affiliated with the JNL 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.

VIII.

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.

DONE AN ORDERED in Miami, Florida, this 27th day of August, 2012.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE