

CT-2005-001

THE COMPETITION TRIBUNAL

IN THE MATTER OF THE COMPETITION ACT, R.S.C. 1985, c C-34, as amended;

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to section 74.12 of the *Competition Act*.

BETWEEN:

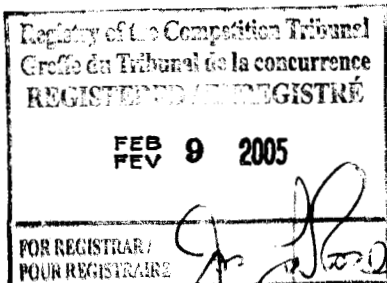
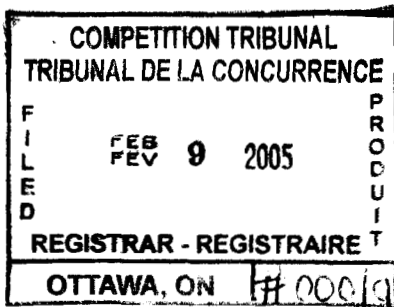
THE COMMISSIONER OF COMPETITION

Applicant

- and -

GOODLIFE FITNESS CLUBS INC.

Respondent



CONSENT AGREEMENT

WHEREAS the Commissioner of Competition (the "Commissioner") is head of the Competition Bureau and is responsible for the administration and the enforcement of the *Competition Act* (the "Act"), including the misleading advertising provisions of the Act (Part VII.1), which include the Misrepresentations to the Public provisions of the Act [74.01(1)];

AND WHEREAS GoodLife Fitness Clubs Inc. ("GoodLife") is a privately-owned fitness company which operates over 90 fitness facilities across Canada;

AND WHEREAS GoodLife regularly and actively advertises and promotes its business in various forms of media and print;

AND WHEREAS the Commissioner of Competition (the "Commissioner") has reason to believe that GoodLife, for the purpose of promoting the sale of memberships to its facilities by means of newspaper advertisements, flyers, billboards and storefront signs, made

representations to the public as to prices that were clearly specified to offer consumers substantial savings; and these representations as to the price of memberships failed to provide adequate disclosure of additional fees that consumers would need to pay in order to acquire memberships, thereby creating a false or misleading impression as to the true price of memberships, contrary to section 74.01(1)(a) of the Act;

AND UPON CONSIDERING THAT the Commissioner and the Respondent have reached an agreement which finally resolves, as of the date of implementation of this Consent Agreement (the “Agreement”), all of the Commissioner’s concerns regarding the alleged misleading advertising practices of GoodLife pursuant to 74.01(1)(a) of the Act;

AND IT BEING UNDERSTOOD THAT for greater certainty, nothing in the Agreement will be taken as an admission by GoodLife now or in the future of any facts, submissions or legal arguments, or contravention of the Act;

AND WHEREAS GoodLife is committed to compliance with the Act generally, and the misleading advertising provisions (Part VII.1) specifically;

AND WHEREAS the Commissioner and GoodLife agree that upon the signing of the Agreement, the Parties shall file the Agreement with the Competition Tribunal for immediate registration;

AND WHEREAS the Commissioner and GoodLife understand that upon registration, the Agreement shall be enforceable pursuant to section 74.12 of the Act;

1. The preamble hereof forms part of the Agreement.

THE COMMISSIONER AND GOODLIFE CONSENT TO THE REGISTRATION BY THE COMPETITION TRIBUNAL OF AN AGREEMENT THAT:

2. GoodLife shall, and shall cause any entity which it has the ability to control to, immediately cease making, causing to be made, or permitting to be made, by any means whatsoever, any representation with respect to the price of a membership that fails to adequately disclose all additional fees, including but not limited to initiation fees, card processing fees, annual registration fees, dues and/or towel fees, which must be paid by a consumer in order to obtain a membership.
3. GoodLife shall, and shall cause any entity which it has the ability to control to, ensure that the disclaimers they use, in any form of print advertisement or representation, do not contain information which materially contradicts the main text. This shall include all outdoor signage.

4. GoodLife shall, and shall cause any entity which it has the ability to control to, ensure that any fine print they use, in any form of print advertisement or representation, be large enough that it is clearly visible and readable without having to resort to unusual means.
5. GoodLife shall, and shall cause any entity which it has the ability to control to, ensure that the placement of disclaimers in any form of print advertisement or representation be readily apparent and distinguishable.
6. GoodLife shall, and shall cause any entity which it has the ability to control to, ensure that any representations they make, with respect to television advertising which use print disclaimers, be of a duration long enough to be read and comprehended in one normal viewing.
7. GoodLife shall, and shall cause any entity, which it has the ability to control to, ensure that all representations they make in promoting their enterprises conform to ss.52 and 74.01 of the Act.
8. GoodLife shall, and shall cause any entity which it has the ability to control to, provide a copy of this Agreement in its entirety to all corporate officers and club managers within thirty (30) days of the signing of the Agreement; and
 - (a) confirm in writing to the Deputy Commissioner of Competition at the address for service set out below within sixty (60) days of the date of signing of the Agreement that this has been completed; and
 - (b) indicate in the letter of confirmation the name and job title of each person who was sent a copy of the Agreement pursuant to this provision.

CORPORATE COMPLIANCE

9. GoodLife shall establish and maintain a Corporate Compliance Policy Manual with respect to the Act and its application, satisfactory to the Commissioner, and submit a draft for review to the Competition Bureau within ninety (90) days following the registration of this Agreement. For greater certainty, the Compliance Program shall be framed and implemented in a manner consistent with the Commissioner's Information Bulletin on "Corporate Compliance Program" published on the Competition Bureau's website at www.cb-bc.gc.ca. The goal of this Manual will be to promote compliance with this Agreement, and the misleading advertising and deceptive marketing practices provisions of the Act in particular.

CORRECTIVE NOTICE BY GOODLIFE

- 10(1) GoodLife shall cause to have published, within thirty (30) days of the coming into force of this Agreement, a Corrective Notice (the “Notice”) that states the following:

GOODLIFE FITNESS CLUBS owns and operates over ninety (90) fitness clubs in Ontario, Quebec, New Brunswick and Alberta. The Commissioner of Competition has informed us that representations made through newspaper advertisements, flyers, billboards, and storefront signs have raised concerns under section 74.01(1)(a) of the *Competition Act*, a misleading representations provision. Those concerns relate to inadequate disclosure of additional fees that consumers would be obligated to pay in order to acquire memberships, thereby creating a false or misleading impression as to the true price of memberships.

While GOODLIFE FITNESS CLUBS does not admit any contravention of the *Act*, it is committed to providing consumers with the proper information they require to make informed purchasing decisions. We undertake to ensure that all future promotions contain all the relevant information and do not create a false or misleading general impression. This Notice has been published pursuant to the Agreement, copies of which can be found at the Competition Tribunal’s website (www.ct-tc.gc.ca).

- 10(2) The Notice shall be published in each of the following newspapers: *Windsor Star, Kitchener-Waterloo Record, Toronto Star, Kingston Whig Standard, Belleville Intelligencer, Ottawa Citizen, London Free Press, Peterborough Examiner, Sault Star, Barrie Examiner, and Montreal Gazette.*
- 10(3) The Notice shall be published twice in one week, on a Wednesday and a Saturday, and shall be in a space of no less than 6 inches x 4.5 inches in size when published in the newspapers mentioned above.
- 10(4) The text of the Notice shall appear in 10-point font unembellished print in the newspapers named above. The title of the Notice shall be capitalized and shall appear in 16-point bold font unembellished print.

- 10(5) GoodLife shall make its best efforts to have the Notice run in the first ten (10) pages of the front section of the above noted newspapers. If the Respondent's best efforts have not resulted in the Notice running in the first 10 pages of the front section, then the Notice shall run in the first five (5) pages of the business section of the above noted newspapers.
- 10(6) A French translation of the Notice as stated in section 10(1) of this Agreement shall be published in *La Presse*, to appear twice in one week, on a Wednesday and a Saturday, in the same sections referred to in paragraph 10(5) of this Agreement, and shall conform to the specifications outlined in paragraphs 10 (3) and 10(4) of this Agreement when published in the newspaper mentioned above.
- 10(7) GoodLife shall also post the Notice as stated in section 10(1) of this Agreement on the home page of its corporate website at <http://www.goodlifefitness.com/main.html> for a period of sixty (60) days. The Notice shall be accessible through a link on the menu-bar of the homepage entitled "Notice." The text of the Notice shall be displayed in a minimum font size of 8 point unembellished print. The title of the Notice shall be capitalized and shall appear in 12-point bold font unembellished print.

CORPORATE MONETARY PENALTY

11. GoodLife shall pay forthwith an administrative monetary penalty in the amount of seventy five thousand dollars (\$75,000.00).

GENERAL

12. This Agreement shall be binding upon GoodLife, any of its affiliates and any present or future person under its control or under the control of its affiliates, and shall remain in force for a period of ten (10) years from its date of registration.
13. The Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
14. A failure to comply with the terms of this Agreement by GoodLife, any of its affiliates and any present or future person under its control or under the control of its affiliates, shall be deemed to be a breach of this Agreement by GoodLife.

15. Any notice required to be given pursuant to any term of this Agreement is valid if given by facsimile transmission or registered mail to:

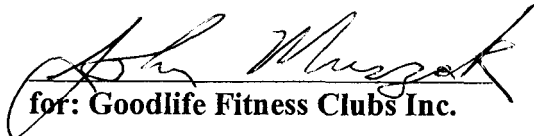
(a) For the Commissioner:

Attention: Assistant Deputy Commissioner, Ontario Region
Competition Bureau Canada
151 Yonge Street, 4th Floor
Toronto, Ontario M5C 2W7
Facsimile: (416) 954-1470


(b) For the Respondent GoodLife:

Mr. Robert E. Kwinter
Blake, Cassels & Graydon LLP
Barristers & Solicitors/Patent & Trade-Mark Agents
2800 - 199 Bay Street, Commerce Court West
Toronto, Ontario M5L 1A9
Facsimile: 416) 863-2653

DATED at Toronto, in the Province of Ontario this 5th day of January, 2005.


for: Goodlife Fitness Clubs Inc.

DATED at Gatineau, in the Province of Quebec this 31st day of January 2005.


Raymond Pierce
Deputy Commissioner of Competition

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as amended;

AND IN THE MATTER of the filing and registration of a Consent
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BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

-and-

GOODLIFE FITNESS CLUBS INC.

Respondent

CONSENT AGREEMENT

Rick Visca
Counsel, Department of Justice
Competition Bureau Ontario Region
151 Yonge Street, 4th Floor
Toronto, Ontario M5C 2W7

Telephone: (416) 954-8174
Facsimile: (416) 954-1470

Counsel to the Commissioner of Competition