

**THE COMPETITION TRIBUNAL**

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34 as amended;

AND IN THE MATTER of an inquiry commenced pursuant to section 10 of the *Competition Act* into allegations of deceptive marketing practices of companies operating under the names of Premier Fitness Clubs and Curzons Fitness Clubs (hereinafter, collectively, "Premier Fitness Clubs") from October 1999 to July 2004;

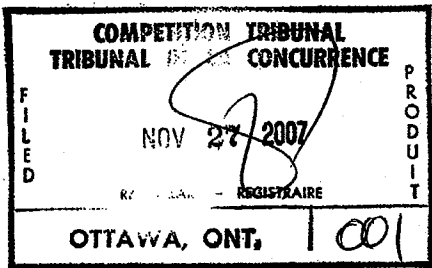
AND IN THE MATTER of the filing and registration of a Consent Agreement pursuant to section 74.12 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

-and-



PREMIER FITNESS CLUBS and JOHN CARDILLO

Respondents

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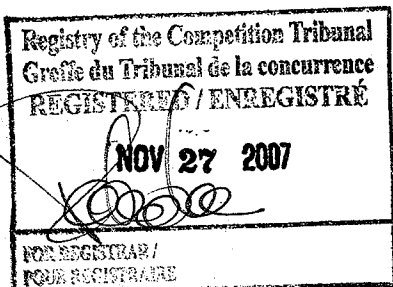
**CONSENT AGREEMENT**

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WHEREAS the Commissioner of Competition (the "Commissioner") is head of the Competition Bureau (the "Bureau") and is responsible for the administration and the enforcement of the *Competition Act* (the "Act") including subsection 74.01 (1)(a);

AND WHEREAS Premier Fitness Clubs are companies and affiliated companies which are incorporated under the laws of Ontario and operate fitness clubs in Ontario under the names of Premier Fitness Clubs and Curzons Fitness Clubs;

AND WHEREAS on June 9, 2004, the Commissioner commenced an inquiry (the "Inquiry") pursuant to section 10 of the Act into certain alleged misleading marketing practices of Premier Fitness Clubs, notably misrepresentations concerning the costs of obtaining fitness memberships;



**AND WHEREAS** the Commissioner has reason to believe that certain instances of Premier Fitness Clubs' representations to the public from October 1999 to July 2004 regarding the actual costs of obtaining memberships in their fitness clubs were misleading in a material respect, contrary to subsection 74.01 (1)(a) of the Act;

**AND UPON CONSIDERING THAT** the Commissioner and the Respondents have reached an agreement which finally resolves, as of the date of registration of this Consent Agreement (the "Agreement"), all of the Commissioner's concerns regarding the alleged misleading representations of Premier Fitness Clubs pursuant to subsection 74.01(1)(a) of the Act;

**AND WHEREAS** Premier Fitness Clubs is committed to compliance with the Act generally, and the deceptive marketing practices provisions (Part VII.1) specifically;

**AND WHEREAS** the Commissioner and Premier Fitness Clubs are satisfied that this matter can be resolved with the registration of this Agreement;

**AND WHEREAS** the Commissioner and Premier Fitness Clubs agree that upon the signing of this Agreement, the Parties shall file the Agreement with the Competition Tribunal for immediate registration;

**AND WHEREAS** the Commissioner and Premier Fitness Clubs understand that upon registration, this Agreement shall be enforceable pursuant to section 74.12 of the Act;

**AND IT BEING UNDERSTOOD THAT** while the Commissioner has come to the foregoing conclusions and while the Respondents do not agree, solely for the purposes of the Consent Agreement, the Respondents do not contest the Commissioner's conclusions.

**NOW THEREFORE** in order to resolve the Commissioner's Inquiry into certain instances of alleged misleading marketing practices of Premier Fitness Clubs, the Parties hereby agree as follows.

1. The preamble forms part of the Agreement.

**I. Interpretation**

2. For the purpose of the Agreement, the following definitions shall apply:
  - a. "**Affiliate**" shall have the meaning ascribed to it in the Act;
  - b. "**Premier Fitness Clubs**" means companies incorporated under the laws of Ontario carrying on business under the names Premier Fitness Clubs, Curzons

Fitness Clubs, or any subsidiary corporation of Premier Fitness Clubs within the meaning of subsection 2(3) of the Act;

- c. **“John Cardillo”** means John Cardillo, CEO and/or Executive Director and/or President of Premier Fitness Clubs;
- d. **“Premier Fitness Clubs’ Personnel”** means all current and future Premier Fitness Clubs’ senior and club managers and all other Premier Fitness Clubs employees who are materially involved in the formulation and/or the implementation of advertising/marketing and/or pricing policies, or in sales;
- g. **“Premier Fitness Clubs Senior Management”** (Senior Management) means the current and future executive business managers and corporate officers of Premier Fitness Clubs;
- h. **“Parties”** means the Commissioner of Competition and Premier Fitness Clubs and John Cardillo;
- i. **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act Canada*, R.S.C. 1985, c. 19 (2<sup>nd</sup> Supp.), as amended.

## **II. Application**

- 3. The provisions of the Agreement shall apply to:
  - a. Premier Fitness Clubs and their subsidiaries, affiliates, successors and assigns, and Premier Fitness Clubs Personnel and Senior Management including all persons who act for, on behalf of or in concert with Premier Fitness Clubs including agents, representatives and associates of Premier Fitness Clubs;
  - b. John Cardillo; and
  - c. the Commissioner.

### **A. NO FALSE OR MISLEADING STATEMENTS**

- 4. Premier Fitness Clubs, Premier Fitness Clubs Personnel and Premier Fitness Clubs Senior Management shall comply with the Offences in Relation to Competition and the Deceptive Marketing Practices provisions of the Act and in particular sections 52(1), 52.1(3) and 74.01(1).

5. Premier Fitness Clubs shall not make, cause to be made, or permit to be made on its behalf, any representation whatsoever in Canada or available to consumers in Canada by any means whatsoever, including via Internet, which is false or misleading in a material respect with respect to memberships in fitness clubs, including, but without limiting the generality of the foregoing, any representation that is false or misleading in a material respect relating to the price of a membership and additional fees, including but not limited to initiation fees, fitness testing fees, card processing fees, annual registration fees, dues and towel fees, which must be paid by a consumer in order to obtain a membership.

**B. FORM AND MANNER OF ADVERTISING**

6. Premier Fitness Clubs and any related person shall ensure that:
  - a. 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;
  - b. any fine print they use, in any form of print advertisement or representation, shall be large enough that it is clearly visible and readable to the naked eye, with or without corrective lenses, and does not contradict the main text;
  - c. the placement of disclaimers in any form of print advertisement or representation shall be readily apparent and distinguishable;
  - d. any representations they make, with respect to television advertising which use print disclaimers, shall be of a duration long enough to be read and comprehended in one normal viewing;
  - e. any representations they make, with respect to radio advertising which use oral disclaimers, be clear enough and of a duration long enough to be heard and comprehended in one normal hearing;
  - f. all representations they make in promoting their enterprises conform to sections 52, 52.1 and 74.01 of the Act;
  - g. a copy of this Agreement in its entirety is given to all corporate officers and club managers within thirty (30) days of the signing of the Agreement; and
  - h. they confirm in writing to the Commissioner of Competition at the address for service set out below within sixty (60) days of the date of signing of the

Agreement that Item 6 g. above has been completed, and they 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.

**C. ADMINISTRATIVE MONETARY PENALTY**

7. Premier Fitness Clubs shall pay an administrative monetary penalty in the amount of \$200,000.00.

**D. FORM OF PAYMENT**

8. The payment referred to in paragraph 7 above shall be made forthwith, and no later than the date of registration of the Agreement and shall be in certified funds, cashier cheque or by wire transfer.

**E. CORRECTIVE NOTICE**

9. Premier Fitness Clubs shall publish a corrective notice (the "Notice") as set out in Appendix "A" of the Agreement in accordance with the terms and conditions set out in Appendices "B" through "D" of the Agreement.
10. Premier Fitness Clubs shall, upon publication, confirm in writing to the Commissioner that the Notice was published as provided in paragraph 9 of the Agreement. In addition to the written confirmation, Premier Fitness Clubs shall provide tear-sheets of the Notice from each publication referred to in Appendix "B" of the Agreement within 2 weeks of publication thereof.

**F. CORPORATE COMPLIANCE PROGRAM**

11. Premier Fitness Clubs shall establish, and thereafter maintain, a Corporate Compliance Program (the "Compliance Program"), the goal of which will be to promote the compliance of Premier Fitness Clubs Personnel with the Act generally, and specifically, without limiting the generality of the foregoing, the provisions of Part VI of the Act, which include section 52.(1) of the Act; and the provisions of Part VII.1, which include subsection 74.01(1). 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 Bureau's web site at [www.cb-bc.gc.ca](http://www.cb-bc.gc.ca) . Within ninety (90) days of the registration of this Agreement, Premier Fitness Clubs shall submit a copy of its Compliance Program to the Bureau.

12. Premier Fitness Clubs Senior Management shall fully support and enforce the Compliance Program and shall take an active and visible role in its establishment and maintenance.
13. Premier Fitness Clubs Senior Management shall acknowledge their commitment to the Compliance Program via commitment letters as provided in Appendix "E" of the Agreement.
14. The Compliance Program shall include:
  - a. the designation of a Corporate Compliance Officer within 30 days of the execution of the Agreement;
  - b. the development of a written Corporate Compliance Policy in Respect of the Advertising of Memberships (the "Compliance Policy");
  - c. a written Compliance Policy which will include, among other things:
    - (i) a statement by Senior Management stressing the company's commitment to the policies and procedures contained therein;
    - (ii) a reference to the purpose of the Act, a general description of the Act, as well as a description of those provisions of the Act that are most relevant to Premier Fitness Clubs' business, including the enforcement, penalty and remedy provisions;
    - (iii) clear examples to illustrate the specific practices that are prohibited such that Premier Fitness Clubs Personnel at all levels can easily understand the potential application of the Act to their own duties;
    - (iv) a practical code of conduct that identifies activities that are illegal or open to question;
    - (v) a statement outlining the consequences of breaching corporate policies;  
and
    - (vi) procedures that detail exactly what an employee should do when concerns arise out of certain situations, or when possible violations of the Act are suspected.

- d. the distribution of the Compliance Policy to all current Premier Fitness Clubs Personnel within 30 days of its submission to the Bureau, and to all future Premier Fitness Clubs Personnel within 30 days of the start of employment;
  - e. the inclusion of the Compliance Policy in any and all policy manuals and club operations manuals;
  - f. the placement of the Compliance Policy on the Premier Fitness Clubs intranet network;
  - g. the development of and delivery to Premier Fitness Clubs Personnel of a mandatory Compliance Program/Compliance Policy education session;
  - h. the development and delivery of an annual refresher Compliance Program/Compliance Policy education session for Premier Fitness Clubs Personnel;
  - i. the annual acknowledgment, in writing, by Premier Fitness Clubs Personnel of their awareness and comprehension of the Compliance Program and Compliance Policy as provided in Appendix "F" of the Agreement; and
  - j. training sessions to ensure that all persons, to whom this Agreement applies, understand the terms of this Agreement and the Compliance Policy.
15. The Commissioner or her/his authorized representative shall, on an annual basis, be entitled to require Premier Fitness Clubs to provide a written report of Premier Fitness Clubs' Compliance Program and Compliance Policy and their implementation. Any such report shall be submitted under oath or affirmation of an officer of Premier Fitness Clubs within (30) thirty days of the request being made.
16. For the purpose of determining or securing compliance with this Agreement, subject to any valid claim to a legally recognized privilege, and upon written request, Premier Fitness Clubs shall permit any duly authorized representative of the Commissioner:
- a. upon a minimum of 2 days notice to Premier Fitness Clubs, access during office hours of Premier Fitness Clubs to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under control of Premier Fitness Clubs relating to compliance with this Agreement; and
  - b. upon a minimum of 5 days notice to Premier Fitness Clubs, and without restraint or interference from Premier Fitness Clubs, to interview directors, officers or

employees of Premier Fitness Clubs on matters relating to compliance with this Agreement.

17. The Commissioner or her/his authorized representative may also request and Premier Fitness Clubs shall facilitate access to education sessions conducted by Premier Fitness Clubs.

**G. FAILURE TO COMPLY**

18. A failure to comply with the terms of this Agreement by Premier Fitness Clubs shall be deemed to be a breach of this Agreement by Premier Fitness Clubs, and may result in the commencement of criminal or civil proceedings pursuant to the Act and/or the *Criminal Code*.

**H. COPIES OF THE AGREEMENT**

19. Premier Fitness Clubs, and any entity for which they have *de facto* or *de jure* control, shall provide a copy of the Agreement in its entirety to all Premier Fitness Clubs Senior Management within 30 days of the execution of the Agreement, and to future Premier Fitness Clubs Senior Management within 30 days of their assumption of management responsibilities.

**I. TERM OF AGREEMENT**

20. Unless otherwise specified, this Agreement shall be binding upon the respondents for a period of ten years following the date of registration of this Agreement.

**J. NOTICE OF CHANGES TO CORPORATIONS**

21. Premier Fitness Clubs and any Senior Management must ensure the Bureau is informed of any changes in the company that may affect compliance with this Agreement, including, but not limited to, dissolution, bankruptcy, change(s) in names(s), sale or merger. In the event there is a sale of the business, this Agreement shall accompany the sale and remain in force with the new owners unless and until the Agreement is rescinded or varied upon application pursuant to section 74.13 of the Act.



### **III. Notices**

22. Notices pursuant to the Agreement shall be given to the Parties at the following addresses or facsimile numbers:

**(a) The Commissioner**

Sheridan Scott  
Commissioner of Competition  
Competition Bureau  
Place du Portage, Phase 1,  
50 Victoria Street  
Gatineau (QC) K1A 0C9

Telephone: (819) 997-3301  
Facsimile: (819) 953-5013

**With copies to:**

Director  
Competition Law Division  
Department of Justice

**(b) Premier Fitness Clubs**

5100 Dixie Road  
Mississauga, Ontario L4W 1C9  
Attn: Mr. John Cardillo

Telephone: (905) 602-9911  
Facsimile: (905) 602-9922

### **IV. General**

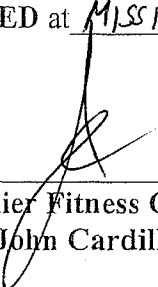
23. The Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.
24. The Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
25. For greater certainty, the Tribunal shall retain jurisdiction for the purpose of any application by the Commissioner or Premier Fitness Clubs to rescind or vary any of the provisions of

the Agreement in the event of a change of circumstances or otherwise, or with respect to any issue concerning the Agreement.

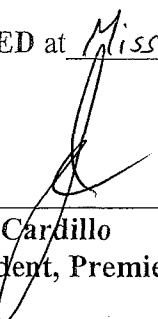
26. In the event of a dispute as to the interpretation or application of the Agreement, including any decision by the Commissioner pursuant to the Agreement or breach of the Agreement by Premier Fitness Clubs, either of the Parties shall be at liberty to apply to the Tribunal for an order interpreting any of the provisions of the Agreement.
27. In the event that an order is made by the Tribunal varying or rescinding the terms of the Agreement pursuant to section 106 of the Act, Premier Fitness Clubs or the Commissioner shall each have the right to terminate the Agreement by written notice to the other parties hereto given within ninety (90) days of the date on which such order is made.

The undersigned hereby agree to the registration of this Consent Agreement.

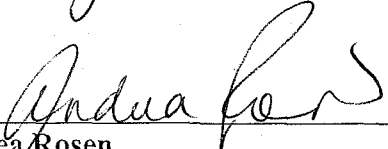
DATED at MISSISSAUGA, in the Province of Ontario, this 21<sup>st</sup> day of November, 2007.

  
\_\_\_\_\_  
Premier Fitness Clubs  
Per: John Cardillo, President

DATED at MISSISSAUGA, in the Province of Ontario this 21<sup>st</sup> day of November, 2007.

  
\_\_\_\_\_  
John Cardillo  
President, Premier Fitness Clubs

DATED at Sherbrooke, in the Province of ~~Ontario~~ Quebec this 23<sup>rd</sup> day of November, 2007.

  
\_\_\_\_\_  
Andrea Rosen  
Acting Deputy Commissioner of Competition  
Fair Business Practices Branch

Appendix "A"

**NOTICE: Fitness Club Memberships offered by Premier Fitness Clubs**

The Competition Bureau (the "Bureau") has informed Premier Fitness Clubs that some of its advertising for fitness club memberships from October 1999 to July 2004 have raised concerns under Section 74.01(1)(a) of the Competition Act. The Bureau believes that the advertisements in question did not adequately disclose additional fees that consumers would be obligated to pay in order to acquire memberships, thereby creating a misleading impression as to the true price of memberships.

To address the Bureau's concerns and to ensure that consumers receive accurate and reliable information in order to make informed purchasing decisions, the Bureau and Premier Fitness Clubs have filed a Consent Agreement with the Competition Tribunal. Pursuant to the Agreement, Premier Fitness Clubs shall:

- publish a Corrective Notice in three Ontario daily newspapers;
- post the Corrective Notice in its clubs and on its web site;
- pay an administrative monetary penalty of \$200,000.00;
- implement a new corporate compliance policy to cover their marketing practices; and
- not make false or misleading representations in future promotional material.

This Notice has been published pursuant to the terms of the Agreement, which can be viewed at the Competition Tribunal's website: ([www.ct-tc.gc.ca](http://www.ct-tc.gc.ca)).

Appendix "B"

1. The newspapers in which Premier Fitness Clubs is to publish the Notice identified in Appendix "A" of the Agreement are the following:
  - a. Toronto Star
  - b. Toronto Sun
  - c. Ottawa Citizen
2. Premier Fitness Clubs shall commence publication of the Notice within 30 days of the registration of the Agreement.
3. Premier Fitness Clubs shall publish the Notice as set out in Appendix "A" of the Agreement in the Wednesday editions of each of the newspapers named above for a period of 4 consecutive weeks. Premier Fitness Clubs shall obtain publication space in accordance with the following hierarchy of special availability, and every effort shall be made to obtain publication space in the following order of priority:
  - a. within the first 10 pages of the cover section; and
  - b. within the first 5 pages of the business section.
4. The Notice shall appear in a space no less than 6 inches x 4.5 inches in size when published in the newspapers named above.
5. The title of the Notice as set out in Appendix "A" of the Agreement shall be capitalized and shall appear in 16-point bold font unembellished print; and
6. The text of the Notice shall appear in 10-point font unembellished print in the newspapers named above.

Appendix "C"

1. Premier Fitness Clubs is to publish the Notice, as it appears in Appendix "A" of the Agreement, on the following web site:  
  

<http://www.premierfitness.ca/>
2. Publication of the Notice on the web site shall occur within 5 days of the registration of the Agreement.
3. The Notice shall remain on the web site for a period of 60 consecutive days.
4. The Notice shall be accessible through a link on the menu-bar of the website homepage entitled 'Notice'.
5. The Notice shall have a link to the Competition Tribunal web site at [www.ct-tc.gc.ca](http://www.ct-tc.gc.ca) and to the Competition Bureau web site at [www.cb-bc.gc.ca](http://www.cb-bc.gc.ca).
6. The Notice shall take up a full screen size of the linked page.
7. The title of the Notice, as set out in Appendix "A" of the Agreement, shall be capitalized and appear in no less than 16-point bold font unembellished print; and
8. The text of the Notice shall appear in no less than 12-point font unembellished print.

Appendix "D"

1. Premier Fitness Clubs shall display the Notice, as set out in Appendix "A" of the Agreement, for a period of 6 consecutive weeks in all of the clubs which they operate or exert control over.
2. Display of the notice shall begin within 30 days of the registration of the Agreement.
3. The Notice shall be displayed in plain view at the club entrances or in a conspicuous location near the club entrances. In addition, the Notice shall be displayed at any cash register stations in a manner that is legible and visible to all customers. Where a club has cash exits on multiple levels, the Notice shall be displayed at the cash register station on each such club level.
4. The Notice shall be no less than 8 ½ inches x 11 inches in size.
5. The title of the Notice, as set out in Appendix "A" of the Agreement, shall be capitalized and shall appear in 16-point bold font unembellished print.
6. The text of the Notice shall appear in 12-point font unembellished print.

Appendix "E"

Premier Fitness Clubs letterhead

DATE

CONFIDENTIAL

Sheridan Scott  
Commissioner of Competition  
Competition Bureau  
Place du Portage I  
50 Victoria Street  
Gatineau (Québec)

Dear Ms. Scott:

**RE: Commitment to Establishment and Maintenance of Compliance Programs**

Further to paragraph 13 of the Consent Agreement between the Commissioner of Competition (the "Commissioner") and Premier Fitness Clubs Inc. and Curzons Management Associates Inc., registered before the Competition Tribunal on [date], I hereby commit to the successful implementation of Premier Fitness Clubs Inc. and Curzons Management Associates Inc.'s Corporate Compliance Program and Compliance Policy towards promoting compliance with the *Competition Act*, R.S.C. 1985 c. C-34 (as amended) (the "Act") generally and the deceptive marketing practices provisions (Part VII. 1), and Section 74.01(1)(a) specifically, and will take an active and visible role in their establishment and maintenance.

Sincerely,

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Appendix "F"

I, \_\_\_\_\_ of the City of \_\_\_\_\_, am employed by [Premier Fitness Clubs Inc., Curzons Management Associates Inc. (as appropriate) ] in the capacity of \_\_\_\_\_. In this capacity, I am materially involved in the formulation and/or the implementation of [Premier Fitness Clubs Inc., Curzons Management Associates Inc. (as appropriate) ] advertising/marketing and/or pricing policies, or in sales. I acknowledge that I am subject to and am required to comply with [Premier Fitness Clubs Inc., Curzons Management Associates Inc., (as appropriate) ] Corporate Compliance Program with respect to the *Competition Act*, R.S.C. 1985 c. C-34 (as amended) (the "Act").

This is to advise that:

- (a) I have read and understand [Premier Fitness Clubs Inc., Curzons Management Associates Inc.'s (as appropriate) ] Compliance Policy, the goal of which is to promote compliance with the Act generally, and with subsection 74.01(1)(a) specifically; and
- (b) I have read and understand [Premier Fitness Clubs Inc., Curzons Management Associates Inc.'s (as appropriate)] Compliance Policy with respect to the Act.

Date: \_\_\_/\_\_\_/\_\_\_

Signature: \_\_\_\_\_