



PHILIP D. MURPHY
Governor

New Jersey Office of the Attorney General

Division of Consumer Affairs
Office of Consumer Protection
124 Halsey Street, 7th Floor, Newark, NJ 07102



GURBIR S. GREWAL
Attorney General

SHEILA Y. OLIVER
Lt. Governor

June 16, 2020

PAUL R. RODRÍGUEZ
Acting Director

Mailing Address:
P.O. Box 45025
Newark, NJ 07101
(973) 504-6200

VIA CERTIFIED AND REGULAR MAIL

TBMV LLC d/b/a Retro Fitness of Rockaway
3 Minor Court
Denville, New Jersey 07834
Attn: Michael Villani, Registered Agent

NOTICE OF VIOLATION AND OFFER OF SETTLEMENT

Dear Mr. Villani:

The New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”) is charged with the enforcement of the New Jersey Consumer Fraud Act, **N.J.S.A. 56:8-1 to -224** (“CFA”), and the Regulations Governing General Advertising Practices, **N.J.A.C. 13:45A-9.1 to -9.8** (“Advertising Regulations”). The Division conducted an investigation of TBMV LLC d/b/a Retro Fitness of Rockaway (“You” or “Your”) after receiving information that raises concerns regarding Your advertising in the midst of the current public health crisis related to the coronavirus (COVID-19) pandemic (hereinafter “Investigation”). Specifically, the Division received information that You were making false and misleading statements in connection with the sale and/or advertisement of serological tests through a third-party provider in the midst of the current public health emergency related to the Coronavirus (COVID-19) pandemic.

The World Health Organization declared COVID-19 a global health emergency on January 30, 2020 and subsequently declared COVID-19 a pandemic on March 11, 2020. On March 9, 2020, Governor Philip D. Murphy issued Executive Order No. 103 (2020), declaring both a Public Health Emergency and a State of Emergency. Shortly thereafter, a national emergency was declared in the United States on March 13, 2020. The Attorney General of New Jersey and the Division will not tolerate unfair business practices, or any other attempt to prey on or profit from consumers’ fears or concerns relating to the COVID-19 pandemic.

According to the U.S. Food and Drug Administration (“FDA”), “the terms ‘serological’ or ‘antibody’ tests are generally used to refer to tests that detect antibodies to the SARS-CoV-2 virus.” The FDA has warned that serology tests are not intended to diagnose infection as “antibodies are part of the body’s immune response to exposure and not the virus itself.” Moreover, “a serology test can yield a negative test result even in infected patients (e.g., if antibody has not yet developed in response to the virus) or may be falsely positive (e.g., if antibody to a coronavirus type other than the current pandemic novel

strain is present).” Rather, serology tests “are intended for use as an aid in identifying individuals with an adaptive immune response to SARS-CoV-2.” The FDA has explained that “[i]n the future, this may potentially be used to help determine, together with other clinical data, whether [individuals who have antibodies to SARS-CoV-2 virus] may be less susceptible to infection.” But, the FDA has cautioned, “[a]t this time, it is unknown for how long antibodies persist following infection and if the presence of antibodies confers protective immunity.” See FDA, FAQs on Testing for SARS-CoV-2, <https://www.fda.gov/medical-devices/emergency-situations-medical-devices/faqs-testing-sars-cov-2>.

Based on its review of documents and information identified in the course of the Investigation, the Division has determined that You are in violation of the CFA and the Advertising Regulations.

The CFA, specifically **N.J.S.A. 56:8-2**, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby

Without limiting the application of the CFA, the Advertising Regulations govern general advertising practices and identify unlawful advertising practices which include:

The making of false or misleading representations of facts concerning . . . the nature of an offering . . . available for sale.

[N.J.A.C. 13:45A-9.2(a)(9).]

As set forth in the attached Certification of Investigator Oscar Mejia (“Investigator Mejia”), You have made representations about antibody tests to consumers through email correspondence distributed to Your members on May 1, 2020 and May 11, 2020, specifically that “it tests to see if someone has already contracted the virus and, thus, has developed the antibodies to prevent contracting it again.” Misinformation of this nature has the potential to provide false security to individuals and contribute, in the aggregate, to widespread public harm. As a result of the Division’s Investigation, You have been found to have violated the CFA and the Advertising Regulations by:

1. Making false or misleading statements in connection with the sale and/or advertisement of antibody or “serological” tests for COVID-19 through Your onsite wellness center in violation of **N.J.S.A. 56:8-2** and **N.J.A.C. 13:45A-9.2(a)(9)**;

Each of these violations constitutes a separate violation of the CFA, subjecting You to civil penalties, pursuant to **N.J.S.A. 56:8-13**.

IF YOU DO NOT CONTEST THE VIOLATIONS ALLEGED and wish to avail Yourself of this opportunity to settle the Investigation, within **fifteen (15)** days from the date of this Notice, You should sign and return the **enclosed Answering Certification** and agree to:

1. Cease and desist from engaging in any practices in violation of the CFA and/or the Advertising Regulations;
2. Cease and desist from making representations about the purpose or capabilities of serological tests offered by TBMV LLC d/b/a Retro Fitness of Rockaway's onsite wellness center, and any implications or interpretations of such test results that are not in accord with FDA guidance; and
3. Pay a civil penalty in the amount of \$2,000.00.

If the above-referenced payment is received by the Division within 15 days of the date of this Notice, along with your signed Answering Certification, You need not do anything further.

IF YOU DO NOT CONTEST THE VIOLATIONS ALLEGED, but want to present information to Division representatives about any mitigating circumstances in Your case that may persuade the Division to reduce the civil penalty, You may request an informal **Mitigation Conference**. If You request a Mitigation Conference, **You will waive Your right to an Administrative Hearing**. The Mitigation Conference will be a conference call scheduled for **July 20, 2020 at 11:00 a.m., the Conference call will be at 856-288-3130 Conference ID# 360-059-865 with Investigator Mejia, a representative of the Division. You may be accompanied by an attorney**. Should You have any questions regarding this procedure, or seek an adjournment of this date, please contact Investigator Mejia, who may be reached at **MejiaO@dca.njoag.gov**. Alternatively, **You may send written documentation to the Division** concerning any mitigating circumstances that You believe may persuade the Division to reduce the civil penalty. **I order to elect either of these options, You must return the enclosed Answering Certification within fifteen (15) days from the date of this Notice to Investigator Mejia at the email address indicated above.** The Division will then review this material and respond to You.

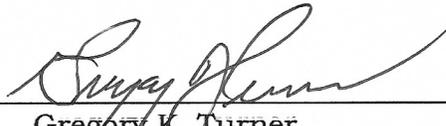
IF YOU CONTEST THE VIOLATIONS ALLEGED, and do not wish to settle the Investigation consistent with the terms set forth above, **You may request a formal Administrative Hearing by returning the enclosed Answering Certification within fifteen (15) days from the date of this Notice to Investigator Mejia at the email address indicated above.** In that event, this Notice will serve as notice of the violations against You. You should be aware that in making his final decision, the Director of the Division ("Director") may, if violations of the above-referenced statute and regulation have been proven, order civil penalties and remedies other than the settlement offer above. **Specifically, You may be ordered to: pay civil penalties in an amount up to \$10,000.00 for the first violation and up to \$20,000.00 for the second violation and each subsequent violation pursuant to N.J.S.A. 56:8-13; pay investigative costs and attorneys' fees to the Division, pursuant to N.J.S.A. 56:8-11 and 56:8-19; and cease and desist from any act or practice in violation of the CFA, pursuant to N.J.S.A. 56:8-18.**

Before a determination is made with regard to whether an **Administrative Hearing** will be conducted before the Director of the Division or referred to the Office of Administrative Law, a **Pre-Hearing Conference** will be held. If You request an **Administrative Hearing**, your **Pre-Hearing Conference** will be via conference call and held **on July 20, 2020 at 11:00 a.m., the Conference call will be at 856-288-3130 Conference ID# 360-059-865 with Investigator Mejia, a representative of the Division. You may be accompanied by an attorney.** Should You have any questions regarding this procedure, or seek an adjournment of this date, please contact **Investigator Mejia**, who may be reached at **MejiaO@dca.njoag.gov**. **Your attendance at this Pre-Hearing Conference is mandatory.** Any failure to appear without a satisfactory explanation may result in an order barring You from raising certain defenses at the **Administrative Hearing**, pursuant to **N.J.A.C. 1:1-14.4**. The purpose of this **Pre-Hearing Conference** is to discuss the issues in this matter and the defenses which You may wish to raise. You should be prepared to discuss the evidence You will propose to offer at the **Administrative Hearing**. It may be helpful if You bring to the **Pre-Hearing Conference** a copy of any documentation that supports Your position. If the Director of the Division determines that there are no material facts in dispute, You will have an opportunity to submit legal arguments and any documentation that may be relevant to the ultimate disposition of this matter. If there are material facts in dispute, an **Administrative Hearing** will be scheduled. During the **Administrative Hearing**, You, either personally or with the assistance of an attorney, will have an opportunity to respond to the alleged violations and submit evidence and present testimony as may be necessary for the Director to make a final determination. **Pursuant to N.J.A.C. 1:1-5.1, and except as provided in N.J.A.C. 1:1-5.4, a corporation must be represented by an attorney.**

IF YOU FAIL TO RESPOND to this Notice within fifteen (15) days of the date of this Notice, the settlement offer will be withdrawn and You will be deemed in default and the allegations against You will be deemed uncontested. Thereafter, this **Notice** and the underlying proofs may be reviewed by the Director, and a **Final Decision and Order on Default (“Order”)** will be issued, and **You may be ordered to: pay civil penalties in an amount up to \$10,000.00 for the first violation and up to \$20,000.00 for the second violation and each subsequent violation pursuant to N.J.S.A. 56:8-13; pay investigative costs and attorneys’ fees to the Division pursuant to N.J.S.A. 56:8-11 and 56:8-19; and cease and desist from any act or practice in violation of the CFA, pursuant to N.J.S.A. 56:8-18. You will receive no further notice from the Division prior to issuance of an Order.** Once an **Order** has been entered, Your failure to pay any civil penalties, attorneys’ fees, and investigative costs within the time allowed will result in the filing of a **Certificate of Debt. Any subsequent violation of an Order with a cease and desist provision may subject You to a civil penalty of up to \$25,000.00 per violation pursuant to N.J.S.A. 56:8-18.** Service of an **Order** will be deemed effective if sent by first-class mail and certified mail, return receipt requested, to Your last known mailing address.

Should You have any questions, please contact **Investigator Mejia** at **MejiaO@dca.njoag.gov**.

New Jersey Division of Consumer Affairs
Office of Consumer Protection

By: 

Gregory K. Turner
Assistant Deputy of Enforcement

ANSWERING CERTIFICATION
TBMV LLC d/b/a Retro Fitness of Rockaway

I, _____, hereby acknowledge that I have read and reviewed the Notice, regarding alleged violations of the **CFA, N.J.S.A. 56:8-1 to -224**, and **the Advertising Regulations, N.J.A.C. 13:45A-9.1 to -9.8**.

PLEASE CHECK ONE OF THE OPTIONS BELOW:

(OPTION 1):

_____ **I DO NOT CONTEST THE VIOLATIONS ALLEGED** and acknowledge the conduct that has been alleged and **agree** to:

1. Cease and desist from engaging in any practices in violation of the CFA and/or the Advertising Regulations;
2. Cease and desist from making representations about the purpose or capabilities of serological tests offered by TBMV LLC d/b/a Retro Fitness of Rockaway’s onsite wellness center, and any implications or interpretations of such test results that are not in accord with FDA guidance; and
3. Pay a civil penalty in the amount of \$2,000.00.

I understand that if the above-referenced payment is received by the Division within 15 days of the date of this Notice, along with my signed Answering Certification, I need not do anything further.

I am also aware that the action taken against TBMV LLC d/b/a Retro Fitness of Rockaway by the Division herein is a matter of public record and that the Division’s **Notice** and this **Answering Certification** are public documents. I am enclosing herewith a certified check, cashier’s check or money order in the sum of **\$2,000.00** made payable to the “New Jersey Division of Consumer Affairs,” which I am mailing or delivering to: Case Initiation and Tracking Unit, New Jersey Department of Law and Public Safety, Division of Consumer Affairs, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101, ATTN: Van Mallett, Lead Investigator.

Dated: _____

By: _____
SIGN NAME

Name: _____
PRINT NAME

(OPTION 2)

_____ **I DO NOT CONTEST THE VIOLATIONS ALLEGED** and hereby waive any rights I may have to an **Administrative Hearing** in this matter to defend TBMV LLC d/b/a Retro Fitness of Rockaway against any alleged violations, **BUT** I ask the Division to consider mitigating circumstances before rendering its final decision.

____ I request a **Mitigation Conference** to present information to Division representatives; I understand that the Mitigation Conference **will be a conference call scheduled for July 20, 2020 at 11:00 a.m. (please call 856-288-3130 Conference ID# 360-059-865 at the scheduled time). I am aware that I may be represented by an attorney at the Mitigation Conference.**

____ I am submitting **written documentation concerning mitigating circumstances**; I understand that the Division will consider this material before rendering a final decision.

I understand that, if, after considering the mitigation evidence presented, the Division is not persuaded that any reduction in the amounts set forth above and in the **Notice** is warranted or that any of the other terms or conditions should be modified, the following terms may be ordered and TBMV LLC d/b/a Retro Fitness of Rockaway will be obligated to:

1. Cease and desist from engaging in any practices in violation of the CFA and/or the Advertising Regulations;
2. Cease and desist from making representations about the purpose or capabilities of serological tests offered by TBMV LLC d/b/a Retro Fitness of Rockaway's onsite wellness center, and any implications or interpretations of such test results that are not in accord with FDA guidance; and
3. Pay a civil penalty in the amount of \$2,000.00.

If a modification in these terms is accepted by the Division, I will be notified of the amounts that I must pay. I am also aware that the action taken against TBMV LLC d/b/a Retro Fitness of Rockaway by the Division herein is a matter of public record and that the Division's **Notice** and this Answering Certification are public documents. I am further aware that failure to comply may subject TBMV LLC d/b/a Retro Fitness of Rockaway to further enforcement proceedings and any failure to make a required payment will result in the filing of a **Certificate of Debt**.

Dated: _____

By: _____

SIGN NAME

Name: _____

PRINT NAME

(OPTION 3)

_____ **I CONTEST THE VIOLATIONS ALLEGED** and **request a formal Administrative Hearing**. I understand that I am required to attend a **Pre-Hearing Conference will be a conference call scheduled for July 20, 2020 at 11:00 a.m. (please call 856-288-3130 Conference ID# 360-059-865 at the scheduled time)** at which the issues in this matter and the possibility of settlement will be discussed. **I am aware that I may be represented by an attorney at the Pre-Hearing Conference.**

If the Division and I agree upon any essential settlement terms at the **Pre-Hearing Conference**, I understand that:

1. These terms will be included in a document ("Pre-Hearing Settlement Sheet");
2. The Division representative and I will sign the Pre-Hearing Settlement Sheet and TBMV LLC d/b/a Retro Fitness of Rockaway will be bound by it; and
3. The Division will send me a **Consent Order**, which will include all settlement terms. I also understand that **I must sign and return the Consent Order and any required payment to the Division within thirty (30) days** of the date that the Division sends it to me.

I further understand that if I fail to do so, the Division will present this matter to the Director based upon this **Notice**, and a **Final Decision and Order After NOV ("Order")** will be issued. **I will receive no further notice from the Division prior to issuance of an Order.**

If the Division and I do not agree upon settlement terms at the **Pre-Hearing Conference**, I will thereafter be advised of the time, date and place for the **Administrative Hearing** if a determination has been made that there are material facts in dispute. **I am aware that I may be represented by an attorney at the Administrative Hearing**. I am also aware that at the time of the **Administrative Hearing**, I may offer testimony, documentation and legal argument relevant to the alleged violations. **I understand that in making a final decision, the Director may, if violations of the above-referenced statutes and regulations have been proven, order payment of civil penalties, attorneys' fees and investigative costs and/or issue a cease and desist order exceeding the settlement offer in the Notice**, and may order such other remedies as deemed appropriate. I am also aware that this proceeding is a matter of public record and that the Division's **Notice** and this **Answering Certification** are public documents.

Dated: _____

By: _____
SIGN NAME

Name: _____
PRINT NAME

**TBMV LLC d/b/a Retro Fitness of Rockaway
3 Minor Court, Denville, New Jersey
Attn: Michael Villani, Registered Agent**

INVESTIGATIVE CERTIFICATION

I, Oscar Mejia, being of full age, do hereby certify as follows:

1. I am employed as an Investigator by the Office of the Attorney General, Division of Consumer Affairs, Office of Consumer Protection (“Division”), located at 124 Halsey Street, Newark, New Jersey 07101, and have held that position at all times relevant to this Certification.
2. I submit this Certification in connection with the Division’s investigation of TBMV LLC d/b/a Retro Fitness of Rockaway, 295 Rt. 46 West, Rockaway, New Jersey 07866 (“Retro Fitness”).
3. On May 1, 2020, the Division commenced an Investigation with respect to Retro Fitness. Specifically, the Division received information from the New Jersey Department of Health regarding false advertising by Retro Fitness through email correspondence.
4. On May 8, 2020, I obtained information from the health club registration database which indicated that Retro Fitness registered as a health club on February 19, 2020 under the corporation name TBMV LLC, with principals Michael Villani and Thomas Boorujy. (DataEase record attached as **Exhibit A.**)
5. On May 8, 2020, I printed the New Jersey Department of Treasury, Division of Commercial Recording (“DCR”) search result for TBMV LLC. The DCR printout indicates that Michael Villani is the Registered Agent for TBMV LLC. (DCR printout attached as **Exhibit B.**)
6. On May 26, 2020, I received a copy of email correspondence sent by Retro Fitness of Rockaway NJ campaigns@campaigns.club-os.com on May 1, 2020, with the subject “ANTIBODY TESTS FOR COVID-19 AVAILABLE FOR ROCKAWAY RETRO FITNESS MEMBERS.” The reply-to email address is listed as rockawaynj@retrofitness.net, and the message is signed by the Retro Fitness General Manager. (“May 1, 2020 Retro Fitness email” attached as **Exhibit C.**)
7. Upon review of the May 1, 2020 Retro Fitness email, I found Retro Fitness to have advertised the sale of antibody tests by Retro Fitness’ onsite wellness center. I also found Retro Fitness to have represented in its email that “it tests to see if someone has already contracted the virus and, thus, has developed the antibodies to prevent contracting it again.” (See **Exhibit C.**)
8. On May 26, 2020, I also received a copy of email correspondence sent by Retro Fitness of Rockaway NJ campaigns@campaigns.club-os.com on May 11, 2020, with the subject “ANTIBODY TESTS FOR COVID-19 AVAILABLE

FOR ROCKAWAY RETRO FITNESS MEMBERS.” The reply-to email address is listed as rockawaynj@retrofitness.net, and the message is signed by the Retro Fitness General Manager. (“May 11, 2020 Retro Fitness email” attached as **Exhibit D.**)

9. Upon review of the May 11, 2020 Retro Fitness email, I found the contents to be identical to that within the May 1, 2020 Retro Fitness email. I also found Retro Fitness to have once again represented in its email that “it tests to see if someone has already contracted the virus and, thus, has developed the antibodies to prevent contracting it again.” (See **Exhibit D.**)
10. Certain of the above-referenced exhibits contain personal identifying information. That information has been redacted.
11. The documents submitted with this Certification are true copies of the documents in possession of the Division, with the redactions specified above.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



OSCAR MEJIA

Dated: June 16, 2020
Newark, New Jersey