UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN FITNESS DEVICES, STREAMING COMPONENTS THEREOF, AND SYSTEMS CONTAINING SAME**	**Investigation No. 337-TA-1265**

NOTICE OF THE COMMISSION'S FINAL DETERMINATION FINDING A VIOLATION OF SECTION 337; ISSUANCE OF A LIMITED EXCLUSION ORDER AND CEASE AND DESIST ORDERS; TERMINATION OF THE INVESTIGATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in the above-captioned investigation. The Commission has determined to issue: (1) a limited exclusion order ("LEO") prohibiting the unlicensed entry of fitness devices, streaming components thereof, and systems containing same infringing certain claims of U.S. Patent Nos. 10,469,554 ("the '554 patent"); 10,469,555 ("the '555 patent"); and 10,757,156 ("the '156 patent") that are manufactured by or on behalf of, or imported by or on behalf of, respondents ICON Health & Fitness, Inc. of Logan, Utah ("ICON" or "iFIT Inc."); FreeMotion Fitness, Inc. of Logan, Utah ("FreeMotion"); NordicTrack Inc. of Logan, Utah ("NordicTrack," and together with ICON and FreeMotion, "iFit"); and Peloton Interactive, Inc. of New York, New York ("Peloton"), or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; and (2) cease and desist orders ("CDOs") directed against iFit and Peloton, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission has also determined to grant a joint motion filed by complainants DISH DBS Corporation of Englewood, Colorado; DISH Technologies, L.L.C., of Englewood, Colorado; and Sling TV L.L.C., of Englewood, Colorado (collectively, "DISH") and respondents lululemon athletica inc., of Vancouver, Canada ("lululemon"); and Curiouser Products Inc. d/b/a MIRROR of New York, New York (together with lululemon, "MIRROR") that sought to terminate the investigation as to MIRROR on the basis of a settlement agreement. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at

https://edis.usitc.gov. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on May 19, 2021, based on a complaint filed by DISH. 86 FR 27106–07 (May 19, 2021). The complaint alleged a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain fitness devices, streaming components thereof, and systems containing same by reason of infringement of certain claims of U.S. Patent Nos. 9,407,564 ("the '564 patent"); 10,951,680 ("the '680 patent"); the '554 patent; the '555 patent; and the '156 patent . *Id.* at 27106. The notice of investigation named as respondents iFit, MIRROR, and Peloton (collectively, "Respondents"). *Id.*; Order No. 14 (Nov. 4, 2021), *unreviewed by* Comm'n Notice (Dec. 6, 2021), 86 FR 70532 (Dec. 10, 2021). The Commission's Office of Unfair Import Investigations ("OUII") also was named as a party in this investigation. 86 FR at 27106.

Prior to the issuance of the Final ID, the complaint and notice of investigation were amended to change the name of ICON to iFIT Inc. Order No. 14 (Nov. 4, 2021), *unreviewed by* Comm'n Notice (Dec. 6, 2021), 86 FR at 70532. The investigation was also terminated in part as to claims 6, 11, and 12 of the '156 patent, claim 22 of the '554 patent, and claim 17 of the '555 patent. Order No. 15 (Nov. 19, 2021), *unreviewed by* Comm'n Notice (Dec. 20, 2021). Moreover, claims 9 and 12 of the '156 patent, claim 19 of the '554 patent, claims 12 and 13 of the '555 patent, and claim 6 of the '564 patent are no longer asserted against iFit and Peloton. *Id*. The investigation was further terminated as to claims 6–8, 10, and 13–15 of the '564 patent, claims 3 and 6–12 of the '156 patent, claims 18, 19, 21–25, and 30 of the '554 patent, claims 12, 13, 16, 17, 26, and 27 of the '555 patent, and all asserted claims of the '680 patent. Order No. 21 (Mar. 3, 2022), *unreviewed by* Comm'n Notice (Mar. 23, 2022).

At the time of the Final ID, DISH asserted the following claims against MIRROR and iFit: claims 1, 3, and 5 of the '564 patent; claims 16, 17 and 20 of the '554 patent; claims 10, 11, 14, and 15 of the '555 patent; and claims 1, 4, and 5 of the '156 patent. DISH also asserted the following claims against Peloton: claims 1 and 3–5 of the '564 patent; claims 16, 17, and 20 of the '554 patent; claims 10, 11, 14, and 15 of the '555 patent; and claims 1, 2, 4, and 5 of the '156 patent.

On September 9, 2022, the Chief Administrative Law Judge ("CALJ") issued the Final ID, which found that Respondents violated section 337.

The CALJ's recommendation on remedy and bonding (the "RD") recommended that, if the Commission finds a violation of section 337, the Commission should issue an LEO and a CDO directed to each of the Respondents. The RD further recommended that the Commission impose a zero percent (0%) bond during the period of Presidential Review. The Commission did not direct the CALJ to make findings and a recommendation on the statutory public interest factors.

On September 23, 2022, Respondents and OUII filed petitions for review of the Final ID. On October 3, 2022, DISH and OUII filed responses to the petitions.

On October 11, 2022, DISH and Respondents filed their public interest comments pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)).

On November 18, 2022, the Commission determined to review the Final ID in part. 87 FR 72510, 72510–12 (Nov. 25, 2022). In particular, the Commission reviewed the following:

(1) whether DISH satisfied the technical prong of the domestic industry requirement as to all Asserted Patents;

(2) whether claims 16, 17, and 20 of the '554 patent and claims 14 and 15 of the '555 patent are entitled to claim priority to U.S. App. No. 60/566,831;

(3) whether claims 16, 17, and 20 of the '554 patent and claims 14 and 15 of the '555 patent are invalid as anticipated over the prior public use of the Move Media Player;

(4) whether the asserted claims of the '555 patent are invalid for misjoinder of Mr. Brueck; and

(5) whether the preamble of claim 10 of the '555 patent is limiting.

Id. The Commission requested briefing on certain issues under review and on remedy, the public interest, and bonding. *See id.*

On December 2, 2022, the parties filed their written submissions on the issues under review and on remedy, public interest, and bonding, and on December 9, 2022, the parties filed their reply submissions. The Commission did not receive comments on the public interest from non-parties.

On February 13, 2023, MIRROR and DISH filed a joint, unopposed motion to partially terminate the investigation as to MIRROR based on a settlement agreement between DISH and MIRROR. The Commission has determined to grant the motion.

On review, and consistent with the simultaneously-issued Commission opinion, the Commission affirms-in-part and reverses-in-part, on other grounds, the Final ID's finding that DISH's domestic industry products practice the asserted claims of the Asserted Patents. The Commission also resolves in the first instance the claim construction dispute amongst the parties regarding whether the asserted claims require a display. The Commission concludes that the asserted claims of the '156, '554, and '555 patents do not require a display, but the asserted claims of the '564 patent do require a display. Accordingly, the Commission further finds that DISH has satisfied the technical prong of the domestic industry requirement as to the '156, '554,

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and ’555 patents, but not as to’564 patent. The Commission also affirms with modifications the Final ID’s findings that the asserted claims of the ’554 and ’555 patents can properly claim priority to U.S. App. No. 60/566,831 and affirms the Final ID’s findings that those claims are not invalid over the prior public use of the Move Media Player. The Commission additionally finds that the respondents did not show that the asserted claims of the ’555 patent are invalid for misjoinder of inventorship.

The Commission has determined that the appropriate form of relief is an LEO prohibiting (1) the unlicensed entry of infringing fitness devices, streaming components thereof, and systems containing same manufactured by or on behalf of iFit, Peloton, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission has also determined to issue CDOs against iFit and Peloton. The Commission has determined to include an exemption to the remedial orders for repair or, under warranty terms, replacement of products purchased by consumers prior to the date of the remedial orders.

The Commission has further determined that the public interest factors enumerated in subsections (d)(l) and (f)(1) (19 U.S.C. 1337(d)(l), (f)(1)) do not preclude issuance of the above-referenced remedial orders. Additionally, the Commission has determined to impose a bond of zero (0%) (*i.e.*, no bond) of entered value of the covered products during the period of Presidential review (19 U.S.C. 1337(j)). This investigation is terminated.

The Commission vote for this determination took place on March 8, 2023.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: March 8, 2023