

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 A COMMISSION DETERMINATION TO RECONSIDER THE
ORIGINAL REMEDIAL ORDERS AND TO ISSUE ORDERS MODIFYING THOSE
REMEDIAL ORDERS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to reconsider the original remedial orders issued in this investigation and to issue orders modifying those remedial orders.

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 DBS Corporation of Englewood, Colorado; DISH Technologies L.L.C. of Englewood, Colorado; and Sling TV L.L.C. of Englewood, Colorado (collectively, “DISH” or “Complainants”). 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”); 10,469,554 (“the ’554 patent”); 10,469,555 (“the ’555 patent”); and 10,757,156 (“the ’156 patent”). *Id.* at 27106. The notice of investigation named as respondents ICON Health & Fitness, Inc., of Logan, Utah (“ICON” or “iFIT Inc.”); FreeMotion Fitness, Inc., of Logan, Utah (“FreeMotion”);

NordicTrack, Inc., of Logan, Utah (collectively with ICON and FreeMotion, “the iFit Respondents”); lululemon athletica inc., of Vancouver, Canada (“lululemon”); Curiouser Products Inc. d/b/a MIRROR, of New York, New York (collectively with lululemon, “MIRROR”); and Peloton Interactive, Inc., of New York, New York (“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 initial determination (“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 were no longer asserted against the iFit Respondents 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 the iFit Respondents: 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 issued the Final ID, which found that Respondents violated section 337.

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 November 18, 2022, the Commission determined to review the Final ID in part. 87 FR 72510, 72510–12 (Nov. 25, 2022).

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.

On March 8, 2023, the Commission issued its final determination, finding respondents Peloton, iFIT Inc., FreeMotion, and NordicTrack in violation of section 337 as to the asserted claims of the ’156, ’554, and ’555 patents, but not as to the asserted claims of the ’564 patent. 88

FR 15736-38 (Mar. 14, 2023). As a remedy for that violation, the Commission issued a limited exclusion order and cease and desist orders directed to Peloton, iFIT Inc., FreeMotion, and NordicTrack. The remedial orders included repair and replacement exemptions, which included an exemption for parts necessary to service and repair covered products purchased by consumers prior to the date of the orders, and an exemption for covered products that are replacements for covered products purchased by consumers prior to the date of the orders, provided that replacement is pursuant to a warranty for the replaced article. The Commission imposed a bond of zero (0%) (*i.e.*, no bond). *Id.* at 15738. The Commission’s final determination also granted the motion to terminate the investigation as to MIRROR. *Id.* at 15737.

On March 22, 2023, Peloton filed a petition for reconsideration of the limited exclusion order and its cease and desist order and requested expedited consideration of the same (the “Petition”). Peloton’s Petition asks the Commission to modify the remedial orders so that the repair and replacement exemptions apply to products purchased prior to the expiration of the 60-day period of Presidential review.

On March 27, 2023, OUII filed a response supporting the Petition. On March 29, 2023, DISH filed a response opposing the Petition.

On April 7, 2023, the iFit Respondents filed a Notice of Joinder, asking to join in the relief requested by Respondent Peloton’s Petition. On April 12, 2023, Complainants filed a motion for leave to respond to Respondents’ Notice of Joinder and their Response to Respondents’ Notice of Joinder, opposing joinder.

Having reviewed the parties’ submissions, it has come to the Commission’s attention that the mitigation of harm to U.S. consumers underlying the service and repair exemptions in the remedial orders in this investigation did not extend to U.S. consumers who have purchased or may purchase covered products during the Presidential review period. Accordingly, the Commission has determined *sua sponte* to reconsider the remedial orders originally issued in this investigation and to issue orders modifying those remedial orders to reduce their impact on those U.S. consumers as well.^{1,2} 19 CFR 210.47. In light of the Commission’s decision, the

¹ Commissioner Schmidlein agrees with the majority determination *sua sponte* to reconsider the remedial orders originally issued in this investigation and to issue orders modifying those remedial orders to reduce their impact on U.S. consumers. In addition, consistent with her previously expressed views, she would also extend the exemption for replacement of the whole article in this case to include those that are not currently under warranty. *See* Comm’n Op. at 91 n.53 (Mar. 23, 2023) (Public Version).

² Commissioner Kearns does not join in the decision to reconsider and modify the remedial orders. At the time of the Commission’s final determination in this investigation, he found that the appropriate way to mitigate harm to U.S. consumers was through an exemption for repair/replacement of products purchased by consumers prior to the date of the Commission’s determination of violation and issuance of the orders. Having made that determination, based on

Commission has determined that Peloton's Petition; the iFit Respondents' Notice of Joinder; and Complainants' motion for leave to respond to Respondents' Notice of Joinder are moot.³ The Commission's Orders are issued concurrently herewith.

The Commission vote for this determination took place on May 5, 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: May 5, 2023

the record and parties' arguments, he sees no reason to reconsider it. He notes that, in some prior investigations, the Commission has similarly granted a repair exemption that covered only products purchased by the date of the order. *See, e.g., Certain Variable Speed Wind Turbine Generators and Components Thereof*, Inv. No. 337-TA-1218, Limited Exclusion Order at 2 (Jan. 18, 2022); *Certain Magnetic Data Storage Tapes and Cartridges Containing the Same*, Inv. No. 337-TA-1012, Limited Exclusion Order at 2 (Mar. 8, 2018). Finally, he notes that he does not view the Petition as meeting the requirements set forth in Commission Rule 210.47 (19 CFR 210.47).

³ Commissioner Karpel would deny Peloton's Petition for failure to meet the standard set forth in Rule 210.47 of the Commission's Rules of Practice and Procedure. 19 CFR 210.47 (requiring petitions for reconsideration to be "confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the petitioner had no opportunity to submit arguments"). Commissioner Karpel joins the Commission's decision to *sua sponte* reconsider the original remedial orders issued in this investigation and to issue orders modifying the remedial orders previously issued in this investigation to reduce their impact on those U.S. consumers. However, consistent with her views stated in the Commission Opinion, Commissioner Karpel would modify the remedial orders by extending the service and repair exemption to permit Respondents to import and use component parts for service and repair of damaged fitness devices that are or have been purchased by U.S. consumers during the Presidential review period, but would not permit Respondents to supply as a replacement the identical fitness device purchased by the consumer during this period for the reasons she stated in the Commission Opinion. *See Comm'n Op.* at 89 n.51 (Mar. 8, 2023).