



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1265 (Rescission)]

Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same; Institution of Rescission Proceeding; Issuance of Order Rescinding Remedial Orders as to a Respondent; Termination of Rescission Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to institute a rescission proceeding, issue an order rescinding the remedial orders directed to one respondent, and then terminate the rescission proceeding.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 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: On May 19, 2021, the Commission instituted the underlying investigation based on a complaint filed on behalf of 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”). 86 FR 27106, 27106–07 (May 19, 2021). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain fitness devices, streaming

components thereof, and systems containing the same by reason of infringement of certain claims of U.S. Patent Nos. 9,407,564 (“the ’564 patent”); 10,469,554 (“the ’554 patent”); 10,469,555 (“the ’555 patent”); 10,757,156 (“the ’156 patent”); and 10,951,680 (“the ’680 patent”). *Id.* The complaint further alleged that a domestic industry exists. *Id.* The Commission’s notice of investigation named as respondents Peloton Interactive, Inc. of New York, New York (“Peloton”); iFIT Inc., f/k/a ICON Health & Fitness, Inc. of Logan, Utah; FreeMotion Fitness, Inc. of Logan, Utah; NordicTrack, Inc. of Logan, Utah (together with iFIT Inc. and FreeMotion Fitness, Inc., “iFIT”); lululemon athletica inc. of Vancouver, Canada; and Curiouser Products Inc. d/b/a MIRROR of New York, New York (together with lululemon athletica inc., “MIRROR;” and together with the other respondents, “Respondents”). *Id.*; Order No. 14 (Nov. 4, 2021), *unreviewed by* Comm’n Notice (Dec. 6, 2021), 86 FR 70532 (Dec. 10, 2021). The Office of Unfair Import Investigations (“OUII”) participated in the investigation. 86 FR at 27106–07.

Prior to the issuance of the final initial determination (“Final ID”) by the Chief Administrative Law Judge (“CALJ”), the investigation was 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. *See* Order No. 15 (Nov. 19, 2021), *unreviewed by* Comm’n Notice (Dec. 20, 2021). In addition, DISH withdrew its allegations that iFIT and Peloton infringe 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. 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).

On September 9, 2022, the CALJ issued the Final ID, which found that Respondents violated section 337.

On November 18, 2022, after considering the parties' petitions and the responses thereto, 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 and iFIT 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 an LEO and CDOs directed to Peloton and iFIT. *Id.* The Commission's final determination also terminated MIRROR from the investigation. *Id.*

On May 5, 2023, the Commission modified the remedial orders in certain respects. 88 FR 30158 (May 10, 2023).

On May 3, 2023, DISH filed a petition requesting that the Commission rescind the LEO and the CDO issued against Peloton based on settlement. DISH also filed confidential and public supplements to the petition that included confidential and public versions of the settlement agreement between DISH and Peloton. The petition asserts that rescission is warranted based on changed conditions of fact and law stemming from DISH and Peloton reaching a settlement agreement that fully resolves the dispute between DISH and Peloton concerning the subject matter of the underlying investigation. The petition does not request rescission as to Respondents other than Peloton. The petition states that Respondents do not oppose the motion.

DISH also filed a motion to terminate Peloton based on settlement; a motion to stay the proceedings and suspend the Commission's remedial orders as to Peloton; and a Notice acknowledging that the two motions will become moot upon grant of the Petition for Rescission. *See* Complainants' Motion to Terminate the Investigation as to Respondent Peloton Interactive,

Inc. Based on a Settlement Agreement (May 3, 2023); Complainants' Motion to Stay Proceedings and Suspend Remedial Orders as to Respondent Peloton Interactive, Inc., Based on a Settlement Agreement, and for Expedited Consideration of Same (May 2, 2023); Complainants' Notice to the Comm'n (May 5, 2023).

On May 8, 2023, OUII filed a response supporting DISH's petition. No other responses were received in response to the petition.

In consideration of the petition and the response thereto, the Commission has determined to institute a rescission proceeding in this investigation. Consistent with an order issued concurrently herewith, the Commission has determined to rescind the modified remedial orders issued in this investigation to the extent they apply to Peloton. The settlement agreement fully resolves the dispute between DISH and Peloton concerning the subject matter of this investigation, the settlement agreement constitutes changed circumstances warranting rescission under section 337(k), (19 U.S.C. 1337(k)), and the petition complies with the procedural requirements of Commission Rule 210.76 (19 CFR 210.76). The Commission has further determined to find the motion to terminate respondent Peloton and the motion to stay the proceedings moot. The Commission has further determined to terminate this rescission proceeding.

The Commission vote for these determinations took place on June 1, 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.

Issued: June 1, 2023.

Lisa Barton,

Secretary to the Commission.

