



CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 25-C0002]

Proposed Settlement Agreement, Stipulation, Order and Judgement, etc.; Fitbit, LLC

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission publishes in the *Federal Register* any settlement that it provisionally accepts under the Consumer Product Safety Act. Published below is a provisionally accepted Settlement Agreement with Fitbit, LLC, containing a civil penalty in the amount of \$12,250,000 subject to the terms and conditions of the Settlement Agreement. The Commission voted unanimously (5-0) to provisionally accept the proposed Settlement Agreement and Order pertaining to Fitbit, LLC.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by **February 11, 2025**.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 25-C0002, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (240) 863-8938 (mobile), (301) 504-7479 (office); email: cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Mark Raffman, Senior Trial Attorney, Division of Enforcement and Litigation, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; mraffman@cpsc.gov; 301- 504-5906 (office).

SUPPLEMENTARY INFORMATION: The text of the Settlement Agreement and Order appear below.

Dated: January 22, 2025.

Brianna Bell,

Paralegal Specialist.

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of:)
)
)
FITBIT LLC) CPSC Docket No.: 25-0002
)
)
)

SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (“CPSA”), and 16 C.F.R. § 1118.20, Fitbit LLC (“Fitbit” or “the Firm”), and the United States Consumer Product Safety Commission (“Commission” or “CPSC”), through its staff, hereby enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order resolve staff’s charges set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Fitbit is a corporation, organized and existing under the laws of the state of Delaware, with its principal place of business in San Francisco, California.

STAFF CHARGES

4. Between 2017 and 2021, Fitbit imported and distributed in the United States approximately 1.02 million Fitbit Ionic smartwatches (collectively, the “Subject Products”).

5. The Subject Products are “consumer products” that were “manufactured” and “import[ed]” and “distribut[ed] in commerce,” as those terms are defined or used in sections 3(a)(5), (8), and (9) of the CPSA, 15 U.S.C. § 2052(a)(5), (8), and (9). Fitbit is a “manufacturer”

and “distributor” of the Subject Products, as such terms are defined in sections 3(a)(8) and (11) of the CPSA, 15 U.S.C. § 2052(a)(8) and (11).

Violation of CPSA Section 19(a)(4)

6. The Subject Products contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury because the batteries in the Subject Products can overheat, posing a serious burn hazard to consumers.

7. During 2018 and 2019 and continuing into 2020, Fitbit received numerous reports of the Subject Products overheating while being worn by consumers, causing some consumers to sustain burns including second-degree and third-degree burns on their arms or wrists.

8. In early 2020, Fitbit initiated a firmware update to mitigate the potential for battery overheating; however, Fitbit continued to receive reports of consumers suffering burns due to the product overheating.

9. Despite possessing information that reasonably supported the conclusion that the Subject Products contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury, Fitbit did not immediately report to the Commission.

10. The Commission and Fitbit jointly announced a recall of the Subject Products on March 2, 2022. The press release announcing the recall stated that the Firm had received at least 115 reports in the United States of the battery in the smartwatch overheating, with 78 reports of burn injuries in the United States including two reports of third-degree burns and four reports of second-degree burns.

Failure to Timely Report

11. Despite having information reasonably supporting the conclusion that the Subject Products contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, Fitbit did not notify the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3), (4), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

12. Because the information in Fitbit's possession about the Subject Products constituted actual and presumed knowledge, Fitbit knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

13. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Fitbit is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

RESPONSE OF FITBIT

14. This Agreement does not constitute an admission by Fitbit to the staff's charges as set forth in paragraphs 4 through 13 above, including without limitation that the Subject Products contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death; that Fitbit failed to notify the Commission in a timely matter in accordance with section 15(b) of the CPSA, 15 U.S.C. 2064(b); and that Fitbit knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

15. Fitbit notified the Commission under Section 15(b) of the CPSA and conducted a voluntary Fast Track recall of the Subject Products, which was announced on March 2, 2022.

16. Fitbit enters into this Agreement to settle this matter and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings. Fitbit does not admit that it violated the CPSA or any other law, and Fitbit's willingness to enter into this Agreement and Order does not constitute, nor is it evidence of, an admission by Fitbit of liability, or violation of any law.

AGREEMENT OF THE PARTIES

17. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products and over Fitbit.

18. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Fitbit or a determination by the Commission that Fitbit violated the CPSA.

19. In settlement of staff's charges, Fitbit shall pay a civil penalty in the amount of twelve million, two-hundred-fifty thousand dollars (\$12,250,000). The \$12,250,000 Payment shall be paid within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via <http://www.pay.gov>, for allocation to, and credit against, the payment obligations of Fitbit under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

20. The Commission or the United States may seek enforcement for any breach of, or any failure to comply with, any provision of this Agreement and Order in United States District Court, to seek relief including, but not limited to, collecting amounts due.

21. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Fitbit to the United States, and interest shall accrue and be paid by Fitbit at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter "Default Payment Amount" and "Default Interest Balance"). Fitbit shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and Fitbit agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. Fitbit shall pay the United States all reasonable costs of

collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

22. After staff receives this Agreement executed on behalf of Fitbit, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

23. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) the Commission's final acceptance of this Agreement and service of the accepted Agreement upon Fitbit, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

24. Effective upon the later of: (1) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Fitbit and (2) and the date of issuance of the final Order, for good and valuable consideration, Fitbit hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement:

- (i) an administrative or judicial hearing;
- (ii) judicial review or other challenge or contest of the Commission's actions;
- (iii) a determination by the Commission of whether Fitbit failed to comply with the CPSA and the underlying regulations;
- (iv) a statement of findings of fact and conclusions of law; and
- (v) any claims under the Equal Access to Justice Act.

25. Fitbit shall maintain a compliance program (“Compliance Program”) designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by Fitbit in the United States, which shall contain the following elements:

- (i) written standards, policies, and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury has been reported;
- (ii) procedures and systems for tracking and reviewing claims, including warranty claims, and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified;
- (iii) procedures requiring that information required to be disclosed by Fitbit to the Commission is recorded, processed, and reported in accordance with applicable law;
- (iv) procedures requiring that all reporting made to the Commission is timely, truthful, complete, accurate, and in accordance with applicable law;
- (v) procedures requiring that prompt disclosure is made to Fitbit management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, Fitbit’s ability to record, process and report to the Commission in accordance with applicable law;
- (vi) mechanisms to effectively communicate to all applicable Fitbit employees, through training programs or other means, compliance-related company policies and procedures to prevent violations of the CPSA;

- (vii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
- (viii) Fitbit's senior management responsibility for, and general board oversight of, CPSA compliance, including the implementation of steps to ensure that incident and injury data is reviewed and analyzed for purposes of CPSA Section 15(b) reporting;
- (ix) for one (1) year, an internal audit of the Compliance Program that evaluates opportunities for improvement, deficiencies or weaknesses, and the Firm's overall culture of compliance; and
- (x) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to CPSC staff upon request.

26. Fitbit shall submit a report under CPSA Section 16(b), sworn to under penalty of perjury:

- (i) describing in detail its compliance program and internal controls and the actions Fitbit has taken to comply with each subparagraph of paragraph 25;
- (ii) affirming that during the reporting period, Fitbit has reviewed its compliance program and internal controls, including the actions referenced in subparagraph (i) of this paragraph, for effectiveness, and that it complies with each subparagraph of paragraph 25, or describing in detail any non-compliance with any such subparagraph; and
- (iii) identifying the results of the internal audit referenced in paragraph 25(ix) and any changes or modifications made during the reporting period to Fitbit's compliance program or internal controls to ensure compliance

with the terms of the CPSA and, in particular, the requirements of CPSA Section 15 related to timely reporting.

Such report shall be submitted to the Director, Office of Compliance, Division of Enforcement and Litigation, 30 days after the close of the 12-month reporting period, which begins on the date of the Commission's Final Order of Acceptance of the Agreement. Without limitation, Fitbit acknowledges and agrees that failure to make such timely and accurate reports, as required by this Agreement and Order, may constitute a violation of Section 19(a)(3) of the CPSA, 15 U.S.C. § 2068(a)(3), and may subject Fitbit to enforcement under Section 22 of the CPSA, 15 U.S.C. § 2071.

27. Notwithstanding and in addition to the above, during the one-year reporting period, Fitbit shall promptly provide written documentation of any changes or modifications to its compliance program or internal controls and procedures, including the effective dates of the changes or modifications thereto. Fitbit shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials and personnel deemed necessary by staff to evaluate Fitbit's compliance with the terms of the Agreement.

28. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

29. Fitbit represents that the Agreement:

- (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever;
- (ii) has been duly authorized; and
- (iii) constitutes the valid and binding obligation of Fitbit, enforceable against Fitbit in accordance with its terms. The individuals signing the Agreement on behalf of Fitbit represent and warrant that they are duly authorized by Fitbit to execute the Agreement.

30. The signatories represent that they are authorized to execute this Agreement.

31. The Agreement is governed by the laws of the United States.
32. The Agreement and the Order shall apply to, and be binding upon, Fitbit and each of its parents, successors, transferees, and assigns; and a violation of the Agreement or Order may subject Fitbit, and each of its parents, successors, transferees, and assigns, to appropriate legal action.
33. The Agreement, any attachments, and the Order constitute the complete agreement between the parties on the subject matter contained therein.
34. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.
35. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.
36. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Fitbit agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

(Signatures on next page)

FITBIT LLC

Dated: 1/6/2025

By: /s/
Kenneth H. Yi
Fitbit LLC
Authorized Signatory

Dated: 1/6/2025

By: /s/
Matthew Howsare
Cooley LLP
Counsel to Fitbit LLC

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Leah W. Ippolito, Supervisory Attorney

Dated: 1/21/2025

By: /s/
Mark S. Raffman
Senior Trial Attorney

Division of Enforcement and Litigation
Office of Compliance and Field Operations

CONSUMER PRODUCT SAFETY COMMISSION

_____)	
In the Matter of:)	
)	
)	
FITBIT LLC)	CPSC Docket No.: 25-0002
)	
)	
_____)	

ORDER

Upon consideration of the Settlement Agreement entered into between Fitbit LLC (“Fitbit”) and the U.S. Consumer Product Safety Commission (“Commission” or “CPSC”), and the Commission having jurisdiction over the subject matter and over Fitbit, and it appearing that the Settlement Agreement is in the public interest, the Settlement Agreement is incorporated by reference and it is:

Provisionally accepted and this Order issued on the 22nd day of January, 2025.

BY ORDER OF THE COMMISSION:

 /s/
 Alberta E. Mills, Secretary
 U.S. Consumer Product Safety Commission

[FR Doc. 2025-01753 Filed: 1/24/2025 8:45 am; Publication Date: 1/27/2025]