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13 Attorneys for Plaintiff  
FITNESS ANYWHERE LLC

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16

17 FITNESS ANYWHERE LLC,  
18 Plaintiff,  
19 v.  
20 WOSS ENTERPRISES LLC,  
21 Defendant.  
22

Case No. 5:14-cv-01725 BLF

**FIRST AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT, FEDERAL  
TRADEMARK INFRINGEMENT,  
FEDERAL UNFAIR COMPETITION,  
AND STATE UNFAIR  
COMPETITION, AND TORTIOUS  
INTERFERENCE WITH  
PROSPECTIVE ECONOMIC  
RELATIONSHIPS**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Fitness Anywhere LLC, by and through its attorneys, alleges as follows:

2 **THE PARTIES**

3 1. Fitness Anywhere LLC (“TRX”) is a limited liability company organized under  
4 the laws of the State of Delaware with its principal place of business at 755 Sansome Street, 6th  
5 Floor, San Francisco, California 94111. TRX does business in the Northern District of  
6 California.

7 2. Upon information and belief, Woss Enterprises LLC (“WOSS”) is a corporation  
8 organized under the laws of the State of California with its principal place of business in San  
9 Carlos, California and its registered agent at 5100 Herefort Ct., Antioch, California 94531.  
10 WOSS does business in the Northern District of California.

11 **JURISDICTION AND VENUE**

12 3. This is an action for patent infringement, federal trademark infringement, federal  
13 unfair competition, state unfair competition, and tortious interference with prospective economic  
14 relationships.

15 4. This Court has original subject matter jurisdiction over this action pursuant to 28  
16 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121. This Court has supplemental jurisdiction over  
17 the pendent state law claims under 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367. These claims  
18 derive from a common nucleus of operative facts and are so related that they form part of the  
19 same case or controversy.

20 5. Venue is proper in the Northern District of California under 28 U.S.C. § 1391.

21 6. This Court has personal jurisdiction over WOSS. WOSS is located and conducts  
22 business within the State of California and within this judicial district.

23 7. WOSS, directly or through intermediaries, makes, distributes, offers for sale, sells,  
24 and advertises its products and services in the United States, the State of California, and the  
25 Northern District of California.

**INTRADISTRICT ASSIGNMENT**

1  
2 8. This is an Intellectual Property Action to be assigned on a district-wide basis  
3 pursuant to Civil Local Rule 3-2(c).

**FACTUAL ALLEGATIONS**

4  
5 9. TRX is a leading provider of fitness-related technology, equipment, workout  
6 programs, and education courses. TRX is also the exclusive owner of the brand TRX®.

7 10. United States Patent No. 7,044,896, entitled “EXERCISE DEVICE INCLUDING  
8 ADJUSTABLE, INELASTIC STRAPS” (hereafter “the ‘896 Patent”), was duly and legally  
9 issued on May 16, 2006, to Randal A. Hetrick. A true and correct copy of the ‘896 Patent is  
10 attached hereto as Exhibit A. TRX owns, by assignment, the entire right, title, and interest in and  
11 to the ‘896 Patent.

12 11. United States Patent No. 7,806,814, entitled “COMBINATION GRIP FOR AN  
13 EXERCISE DEVICE” (hereafter “the ‘814 Patent”), was duly and legally issued on October 5,  
14 2010, to Randal A. Hetrick. A true and correct copy of the ‘814 Patent is attached hereto as  
15 Exhibit B. TRX owns, by assignment, the entire right, title, and interest in and to the ‘814 Patent.

16 12. United States Patent No. 8,043,197, entitled “EXERCISE DEVICE HAVING  
17 INELASTIC STRAPS AND INTERCHANGEABLE PARTS” (hereafter “the ‘197 Patent”), was  
18 duly and legally issued on October 25, 2011, to Randal A. Hetrick. A true and correct copy of the  
19 ‘197 Patent is attached hereto as Exhibit C. TRX owns, by assignment, the entire right, title, and  
20 interest in and to the ‘197 Patent.

21 13. The ‘896 Patent, the ‘814 Patent, and the ‘197 Patent (collectively, the “TRX  
22 Patents”) have been in full force and effect since their issuance.

23 14. TRX sells, among other things, resistance products, including various straps and  
24 ropes, that are designed for body-weight resistance exercise, and it markets these products and  
25 services in the United States and around the world with its mark SUSPENSION TRAINING.  
26 This mark has gained wide consumer recognition and secondary meaning in the fitness industry.

1           15.     TRX owns a federal trademark registration, Reg. No. 3,255,160, issued by the  
2 United States Patent and Trademark Office on June 26, 2007, for the SUSPENSION TRAINING  
3 mark in International Class 028 for manually-operated exercise equipment. A copy of the  
4 Certificate of Registration is attached hereto as Exhibit D.

5           16.     TRX also owns a federal service mark registration, Reg. No. 3,255,161, issued by  
6 the United States Patent and Trademark Office on June 26, 2007, for the SUSPENSION  
7 TRAINING mark. A copy of the Certificate of Registration is attached hereto as Exhibit E.

8           17.     WOSS is a competitor in the industry that manufactures, distributes, and sells  
9 fitness-related technology and equipment. WOSS's fitness-related products include products sold  
10 under the names 3000 Equalizer, 3000 Stable, Military Gym Style, Military 1 in Trainer, Military  
11 1.5 in Trainer, SST Suspension Trainer, Titan 1½ in Wide Strap, and WOSS XT. WOSS sells  
12 these products through its website at <http://www.woss.com>, as well as through other online  
13 retailers such as Amazon.com and eBay.com.

14           18.     Upon information and belief, WOSS uses the terms SUSPENSION TRAINING,  
15 SUSPENSION TRAINER, and similar variations thereof in marketing its exercise equipment.  
16 Excerpts from WOSS's website showing examples of this use are attached hereto as Exhibit F.

17           19.     On March 21, 2014, TRX sent and WOSS received a cease-and-desist letter which  
18 included copies of the TRX Patents and the certificates of registration for U.S. Trademark Reg.  
19 Nos. 3,255,160 and 3,255,161. This letter stated that TRX owned the mark SUSPENSION  
20 TRAINING. A copy of this letter is attached hereto as Exhibit G.

21           20.     TRX also owns a federal mark registration, Reg. No. 2,975,844, issued by the  
22 United States Patent and Trademark Office on July 26, 2005, for the mark FITNESS  
23 ANYWHERE in International Class 028 for manually operated exercise equipment. A copy of  
24 the Certificate of Registration is attached hereto as Exhibit H.

25           21.     On November 20, 2014, WOSS filed for federal protection of the mark  
26 SUSPENSION FITNESS (collectively, with SUSPENSION TRAINING and SUSPENSION  
27 TRAINER the "Infringing Marks"). The mark was filed in International Class 028 for manually-

28

1 operated exercise equipment. As part of the actual-use filing, WOSS made a claim of first use in  
2 commerce of October 19, 2014, and a specimen was given in which the mark SUSPENSION  
3 FITNESS is used in direct association with several of the infringing products, for example the  
4 3000 Equalizer. A copy of the November 20, 2014 filing, including the specimen entered by  
5 WOSS is attached hereto as Exhibit I.

6 **COUNT I**

7 **(Patent Infringement)**

8 22. TRX hereby restates and realleges the allegations set forth in paragraphs 1 through  
9 21 above and incorporates them by reference.

10 23. TRX has provided and WOSS has received actual notice of the TRX Patents.

11 24. WOSS has directly infringed, and/or has induced others to infringe, and/or has  
12 committed acts of contributory infringement of the claims of the TRX Patents in violation of 35  
13 U.S.C. § 271 et seq. Upon information and belief, WOSS has committed acts of infringement by  
14 making, using, selling, and/or offering to sell products within the United States, and/or importing  
15 products into the United States, including but not limited to fitness equipment under the names  
16 “3000 Equalizer,” “3000 Stable,” “Military Gym Style,” “Military 1 in Trainer,” “Military 1.5 in  
17 Trainer,” “SST Suspension Trainer,” “Titan 1½ in Wide Strap,” and “WOSS XT.”

18 25. WOSS will continue to infringe the TRX Patents unless enjoined by this Court.  
19 As a result of the infringing conduct of WOSS, TRX has suffered, and will continue to suffer,  
20 irreparable harm for which there is no adequate remedy at law. Accordingly, TRX is entitled to  
21 temporary, preliminary, and/or permanent injunctive relief against such infringement pursuant to  
22 35 U.S.C. § 283.

23 26. As a result of WOSS’s infringement of the TRX Patents, TRX has been damaged,  
24 and will be further damaged, and is entitled to be compensated for such damages pursuant to 35  
25 U.S.C. § 284 in an amount that presently cannot be ascertained but that will be determined at trial.

26 27. Because WOSS has continued its activities after receiving actual notice of the  
27 TRX Patents from TRX, WOSS’s infringement is willful. As a result, TRX is further entitled to  
28

1 trebling of damages pursuant to 35 U.S.C. § 284, and to the designation of this case as  
2 exceptional pursuant to 35 U.S.C. § 285, whereby TRX is entitled to an award of its attorneys'  
3 fees.

4 **COUNT II**

5 **(Federal Trademark Infringement)**

6 28. TRX hereby restates and realleges the allegations set forth in paragraphs 1 through  
7 27 above and incorporates them by reference.

8 29. TRX owns the registered trademark and service mark SUSPENSION TRAINING.

9 30. WOSS's use of confusingly similar imitations of TRX's federally registered marks  
10 is likely to cause confusion, deception, and mistake by creating the false and misleading  
11 impression that WOSS's goods are manufactured or distributed by TRX, or are associated with  
12 TRX, or have the sponsorship, endorsement, or approval of TRX.

13 31. WOSS has used marks confusingly similar to TRX's federally registered marks in  
14 violation of 15 U.S.C. § 1114, and WOSS's activities have caused and, unless enjoined by this  
15 Court, will continue to cause a likelihood of confusion and deception of customers and,  
16 additionally, injury to TRX's goodwill and reputation, for which TRX has no adequate remedy at  
17 law.

18 32. WOSS's actions demonstrate an intentional, willful, and malicious intent to trade  
19 on the goodwill associated with TRX's federally registered SUSPENSION TRAINING marks to  
20 TRX's great and irreparable injury.

21 33. WOSS has caused and is likely to continue causing substantial injury to the public  
22 and to TRX, and TRX is entitled to injunctive relief and to recover WOSS's profits, actual  
23 damages, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. §§  
24 1114, 1116 and 1117.

**COUNT III**

**(Federal Unfair Competition)**

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2  
3 34. TRX hereby restates and realleges the allegations set forth in paragraphs 1 through  
4 33 above and incorporates them by reference.

5 35. WOSS's use of confusingly similar imitations of TRX's SUSPENSION  
6 TRAINING marks is likely to cause confusion, deception, and mistake by creating the false and  
7 misleading impression that WOSS's goods are manufactured or distributed by TRX, or are  
8 associated with TRX, or have the sponsorship, endorsement, or approval of TRX.

9 36. WOSS has made false representations, false descriptions, and false designations of  
10 origin of its goods in violation of 15 U.S.C. § 1125(a), and WOSS's activities have caused and,  
11 unless enjoined by this Court, will continue to cause a likelihood of confusion and deception  
12 among consumers and, additionally, injury to TRX's goodwill and reputation, for which TRX has  
13 no adequate remedy at law.

14 37. WOSS's actions demonstrate an intentional, willful, and malicious intent to trade  
15 on the goodwill associated with TRX's federally registered SUSPENSION TRAINING marks to  
16 TRX's great and irreparable injury.

17 38. WOSS has caused and is likely to continue causing substantial injury to the public  
18 and to TRX, and TRX is entitled to injunctive relief and to recover WOSS's profits, actual  
19 damages, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. §§  
20 1125(a), 1116 and 1117.

**COUNT IV**

**(Unfair Competition – California Business and Professions Code § 17200)**

21  
22  
23 39. TRX hereby restates and realleges the allegations set forth in paragraphs 1 through  
24 38 above and incorporates them by reference.

25 40. WOSS's actions discussed herein constitute unfair competition within the meaning  
26 of California Business and Professions Code § 17200.

1           41. Pursuant to California Business and Professions Code § 17203, TRX is entitled to  
 2 preliminary and permanent injunctive relief ordering WOSS to cease this unfair competition, as  
 3 well as disgorgement of all WOSS’s profits associated with this unfair competition.

4   **COUNT V**

5   **(Tortious Interference with Prospective Economic Relationships)**

6           42. TRX hereby restates and realleges the allegations set forth in paragraphs 1 through  
 7 41 above and incorporates them by reference.

8           43. There is an economic relationship between TRX and purchasers of exercise  
 9 equipment, and there exists a probability of future economic benefit to TRX from these  
 10 purchasers.

11           44. WOSS has knowledge of this relationship.

12           45. WOSS intentionally engaged in acts that were designed to and which did disrupt  
 13 this relationship, and TRX has been harmed as a result.

14           46. WOSS’s acts were beyond those of a mere competitor securing business for itself  
 15 and, as discussed herein, were independently unlawful or illegitimate.

16           47. WOSS’s actions were wilful, wanton, malicious, oppressive, and undertaken with  
 17 intent to harm TRX, and such actions justify the award of exemplary and punitive damages.

18   **COUNT VI**

19   **(Federal Trademark Infringement)**

20           48. TRX hereby restates and realleges the allegations set forth in paragraphs 1 through  
 21 47 above and incorporates them by reference.

22           49. TRX owns both the registered trademark SUSPENSION TRAINING and  
 23 FITNESS ANYWHERE in International Class 028 for manually operated exercise equipment.  
 24 These marks issued as U.S. Reg. No. 3,255,160 and 2,975,844 have been used continuously in  
 25 commerce for at least five years and are incontestable. They are used in connection with the  
 26 goods of TRX, namely its strap-based trainers.



1 50. Since at least October 19, 2014, WOSS sells infringing products in direct  
2 competition with the TRX trainers sold under the mark SUSPENSION FITNESS.

3 51. Customers of these competing goods are highly confused as they can acquire the  
4 products either under SUSPENSION FITNESS, SUSPENSION TRAINING and/or FITNESS  
5 ANYWHERE marks for the same goods.

6 52. WOSS's use of confusingly similar imitations of TRX's federally registered marks  
7 is likely to cause confusion, deception, and mistake by creating the false and misleading  
8 impression that WOSS's goods are manufactured or distributed by TRX, or are associated with  
9 TRX, or have the sponsorship, endorsement, or approval of TRX.

10 53. WOSS has used marks confusingly similar to TRX's federally registered marks in  
11 violation of 15 U.S.C. § 1114, and WOSS's activities have caused and, unless enjoined by this  
12 Court, will continue to cause a likelihood of confusion and deception of customers and,  
13 additionally, injury to TRX's goodwill and reputation, for which TRX has no adequate remedy at  
14 law.

15 54. Since this mark was selected and filed after the commencement of this action for  
16 trademark and patent infringement, having actual notice of TRX's mark SUSPENSION  
17 TRAINING, WOSS's actions demonstrate an intentional, willful, and malicious intent to trade on  
18 the goodwill associated with TRX's federally registered SUSPENSION TRAINING marks to  
19 TRX's great and irreparable injury.

20 55. WOSS has caused and is likely to continue causing substantial injury to the public  
21 and to TRX, and TRX is entitled to injunctive relief and to recover WOSS's profits, actual  
22 damages, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. §§  
23 1114, 1116 and 1117.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, TRX prays that the Court enter an Order:

26 A. That WOSS has infringed the TRX Patents under 35 U.S.C. §§ 271 et seq.;

1           B.     That WOSS has infringed TRX's SUSPENSION TRAINING and FITNESS  
2 ANYWHERE trademarks and service marks;

3           C.     Preliminarily and permanently enjoining WOSS and all persons or entities acting  
4 in concert or participation with WOSS from directly or indirectly:

5                 1.     directly or indirectly infringing, or inducing or contributing to the  
6 infringement by others of, the TRX Patents;

7                 2.     using the SUSPENSION TRAINING and SUSPENSION FITNESS marks  
8 on or in connection with WOSS's goods or services;

9                 3.     using any trademark, service mark, name, logo, or source designation of  
10 any kind on or in connection with WOSS's goods or services that is a copy, reproduction,  
11 colorable imitation, or simulation of, or confusingly similar to, the trademarks or service  
12 marks of TRX;

13                4.     using any trademark, service mark, name, logo, or source designation of  
14 any kind on or in connection with WOSS's goods or services that is likely to cause  
15 confusion, mistake, deception, or public misunderstanding that such goods or services are  
16 produced or provided by TRX, are sponsored or authorized by TRX, or are in any way  
17 connected or related to TRX;

18                5.     cancel U.S. Trademark Application No. 86/459,850 for the mark  
19 SUSPENSION FITNESS with the USPTO;

20                6.     using any trademark, service mark, name, logo, or source designation of  
21 any kind on or in connection with WOSS's goods or services that dilutes or is likely to  
22 dilute the distinctiveness of the trademarks or service marks of TRX; and

23                7.     passing off, or assisting in passing off, WOSS's goods or services as those  
24 of TRX, or otherwise continuing any and all acts of unfair competition as alleged in this  
25 Complaint;

1 D. Directing WOSS to destroy all marketing material under WOSS's control that is  
2 found to adopt, to infringe, or to dilute any of TRX's trademarks or service marks, that unfairly  
3 compete with TRX, or that market any product infringing the TRX Patents;

4 E. Directing WOSS to account to TRX for any and all profits derived by WOSS  
5 from the sale or distribution of goods as described in this Complaint, including prejudgment  
6 interest thereon;

7 F. Awarding TRX all damages caused by the acts forming the basis of this  
8 Complaint, together with interest thereon;

9 G. Based on WOSS's knowing and intentional use of confusingly similar imitations  
10 of TRX's trademarks and service marks, ordering that the damages award be trebled and  
11 enhanced as provided for by 15 U.S.C. § 117(a);

12 H. Based on WOSS's willful infringement of the TRX Patents, ordering that TRX be  
13 awarded treble damages pursuant to 35 U.S.C. § 284;

14 I. Ordering WOSS to pay TRX the costs of this action and TRX's reasonable  
15 attorneys' fees pursuant to the statutes cited herein;

16 J. Based on WOSS's willful and deliberate conduct, and to deter such conduct in the  
17 future, awarding punitive damages; and

18 K. Granting any such further relief in TRX's favor as the Court deems just and  
19 appropriate.

20 **JURY DEMAND**

21 TRX hereby demands a trial by jury on all issues so triable.

22 Dated: January 21, 2015

VEDDER PRICE (CA), LLP

24 By: /s/ Heather M. Sager

25 Heather M. Sager  
Ayse Kuzucuoglu

26 Attorneys for Plaintiff  
27 FITNESS ANYWHERE LLC