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Attorneys for Plaintiff ICON HEALTH & FITNESS, INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

ICON HEALTH & FITNESS, INC., a Delaware corporation, Plaintiff, v. INTERNETFITNESS.COM, INC., a Pennsylvania corporation, Defendant.	Civil Action No. 1:10-cv-00192-TC COMPLAINT Jury Demanded Honorable Judge Tena Campbell
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Plaintiff ICON HEALTH & FITNESS, INC. (“ICON” or “Plaintiff”) hereby complains against defendant INTERNETFITNESS.COM, INC. (“Internetfitness.com” or “Defendant”) for the causes of action alleged as follows:

THE PARTIES

1. ICON is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business located at 1500 South 1000 West, Logan, Utah 84321.

2. ICON alleges on information and belief that defendant Internetfitness.com is a Pennsylvania corporation with its 780 Fifth Avenue, Suite 200, King of Prussia, Pennsylvania, 19406.

JURISDICTION AND VENUE

3. This is a civil action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. §§ 271 et seq., which gives rise to the remedies specified under 35 U.S.C. §§ 281, and 283–85.

4. This court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a). This Court has related claim jurisdiction over state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

5. ICON further alleges on information and belief that Internetfitness.com has sold or contracted for the sale of infringing goods within the State of Utah, to ICON's injury, which relates to the claims asserted by ICON, and out of which ICON's claims, in part, arise.

6. On information and belief, Internetfitness.com manufactures and imports into the United States exercise machines, including treadmills.

7. On information and belief, Internetfitness.com sells its products under the brand names Smooth Fitness and Smooth, among others.

8. On information and belief, Internetfitness.com is the owner of the websites located at www.internetfitness.com and www.smoothfitness.com, which are available to persons within the State of Utah.

9. On information and belief, Internetfitness.com advertises, markets, and sells its products through its interactive website, www.smoothfitness.com, which advertising, marketing, and selling are available to the purchasing public in the State of Utah.

10. This Court's exercise of personal jurisdiction over Internetfitness.com is consistent with the Constitutions of the United States and the State of Utah.

11. Venue is proper in this judicial district pursuant to, at least, 28 U.S.C. §§ 1391(b)(2), 1391(b)(3), 1391(c), and 1400(b).

FACTUAL BACKGROUND

12. ICON is an award-winning innovator in the field of exercise equipment and markets and sells a variety of consumer products.

13. ICON came to its position of technological leadership through an innovative spirit and substantial investment in research and development. As a result of its endeavors, many of the technological innovations created and owned by ICON are protected by a valuable and diverse intellectual property portfolio that includes patents, trademarks, trade dress, and copyrights.

14. Many of ICON's technological innovations are protected, *inter alia*, by a portfolio of utility and design patents, including United States Patent No. 5,772,560 ("the '560 Patent"), a true and correct copy of which is attached hereto as Exhibit A.

15. ICON is the owner by assignment of the '560 Patent.

16. ICON has not licensed Internetfitness.com to practice the '560 Patent, and Internetfitness.com does not have any right or authority to license others to practice the '560 Patent.

17. ICON alleges upon information and belief that Internetfitness.com imports, makes, uses, sells, and offers for sale within the United States and within the State of Utah, either directly or through established distribution channels, treadmills, including treadmills designated as, *inter alia*, the Smooth 5.65 Treadmill.

18. On information and belief, Internetfitness.com has sold products that infringe the '560 Patent, including, for example, the Smooth 5.65 Treadmill.

**FIRST CAUSE OF ACTION
(Patent Infringement of the '560 Patent)**

19. By this reference ICON realleges and incorporates the foregoing paragraphs as though fully set forth herein.

20. ICON alleges on information and belief that Internetfitness.com has infringed one or more claims of the '560 Patent by making, using, selling, offering for sale within the United States, or importing into the United States systems and products that embody one or more of the claims of the '560 Patent, or by contributing to infringement, inducing others to infringe the '560 Patent, or carrying out acts constituting infringement under 35 U.S.C. § 271.

21. The conduct of Internetfitness.com as set forth hereinabove gives rise to a cause of action for infringement of the '560 Patent, pursuant to at least 35 U.S.C. §§ 271 and 281.

22. To the extent that Internetfitness.com has sold infringing products, including, for example, the Smooth 5.65 Treadmill, subsequent to receiving notice of ICON's assertions of infringement and despite an objectively high likelihood that its continued actions constitute infringement, Internetfitness.com's actions have been both willful and deliberate.

23. By reason of the foregoing, ICON is entitled to monetary relief against Internetfitness.com, pursuant to 35 U.S.C. §§ 284–85, as more fully set forth herein below.

SECOND CAUSE OF ACTION
(State Law Trademark Infringement and Unfair Competition)

24. By this reference ICON realleges and incorporates the forgoing paragraphs as though fully set forth herein.

25. Internetfitness.com, by its actions set forth hereinabove, has engaged in intentional business acts or practices that are unlawful, unfair, and/or fraudulent and that have caused a material diminution in the value of the '560 Patent, in violation of, *inter alia*, Utah Code Ann. § 13-5a-102(4).

26. Internetfitness.com's conduct as set forth hereinabove gives rise to a cause of action for unfair competition and related wrongs under the statutory and common law of the State of Utah and other states, including at least Utah Code Ann. § 13-5a-101, *et seq.*

27. By reason of the foregoing, ICON has suffered damages and irreparable harm.

28. By reason of the foregoing, ICON is entitled to actual and punitive damages from Internetfitness.com, along with its attorneys' fees and costs pursuant to at least Utah Code Ann. § 13-5a-103(1)(b) as more fully set forth hereinbelow.

PRAYER FOR RELIEF

WHEREFORE, ICON prays for judgment as follows:

- A. A judgment finding Internetfitness.com liable for infringement of the '560 Patent;
- B. An order of this Court temporarily, preliminarily, and permanently enjoining Internetfitness.com, its agents, servants, and any and all parties acting in concert with any of them, from directly or indirectly infringing in any manner or contributing in any manner to the infringement of the '560 Patent, pursuant to at least 35 U.S.C. § 283;

C. For injunctive relief enjoining Internetfitness.com, its officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with them as follows:

- a. from manufacturing any products or providing any services falling within the scope of the claims of the '560 patent;
- b. from using any product, method or providing services falling within the scope of any of the claims of the '560 patent;
- c. from selling, offering to sell, licensing or purporting to license any product, method or offering services falling within the scope of any of the claims of the '560 patent;
- d. from importing any product into the United States which falls within the scope of the claims of the '560 patent;
- e. from actively inducing others to infringe any of the claims of the '560 patent;
- f. from engaging in acts constituting contributory infringement of any of the claims of the '560 patent; and
- g. from all other acts of infringement of any of the claims of the '560 patent;

D. That Internetfitness.com be ordered to deliver up for destruction all infringing products in its possession;

E. An award of damages adequate to compensate ICON for infringement of the '560 Patent, in an amount to be proven at trial, including treble damages and other damages allowed by 35 U.S.C. § 284;

F. An award of actual and punitive damages pursuant to Utah Code Ann. § 13-5a-103(b);

G. An award of ICON's costs in bringing this action, pursuant to at least 35 U.S.C. § 284; and applicable state statutory and common law, including at least Utah Code Ann. §§ 13-5a-103(1)(b)(ii);

H. An award of ICON's attorneys' fees, pursuant to applicable state statutory and common law, including at least Utah Code Ann. §§ 13-5a-103(1)(b)(ii);

I. A declaration that this is an exceptional case and that ICON be awarded its attorneys' fees and expenses, pursuant to at least 35 U.S.C. § 285; and

J. For such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

ICON demands trial by jury on all claims and issues so triable.

DATED November 19, 2010.

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By: /s/ David R. Wright
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Attorneys for Plaintiff
ICON HEALTH & FITNESS, INC.