

Honorable James L. Robart

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

PRECOR INCORPORATED, a Delaware corporation; and LARRY D. MILLER, an individual,

Plaintiffs,

v.

INTERNETFITNESS.COM, INC., a Delaware corporation,

Defendant.

No. C07-0971 JLR

FIRST AMENDED COMPLAINT

Plaintiff Precor Incorporated ("Precor") and Plaintiff Larry Miller ("Miller"), by their attorneys, complain of InternetFitness.com, Inc. ("InternetFitness") as follows:

**PARTIES**

1. Plaintiff Precor is a corporation organized and existing under the laws of the State of Delaware. Precor maintains a principal place of business at 20031 142<sup>nd</sup> Ave. NE, P.O. Box 7202, Woodinville, WA 98072-4002.

2. Plaintiff Miller is an individual residing in Michigan. Miller joins Precor in the allegations asserted in this action.

3. Upon information an belief, InternetFitness is a corporation organized and existing under the laws of the State of Delaware. InternetFitness has a principal place of business at 112 Gaither Dr., Mt. Laurel, NJ 08054.

**JURISDICTION AND VENUE**

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5. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101 *et. seq.* Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338(a) and (b). Defendant has and continues to import or manufacture, offer for sale, and/or sell products which infringe Precor's and Miller's patent rights in the State of Washington and elsewhere throughout the United States.

**BACKGROUND**

6. On January 24, 1995, the United States Patent and Trademark Office granted U.S. Patent No. 5,383,829 entitled "Stationary Exercise Device" (the "'829 Patent") to inventor Larry D. Miller. A copy of the '829 Patent is attached as Exhibit A. The '829 Patent encompasses proprietary technology hereinafter referred to as the "elliptical cross-trainer." The patent is both valid and enforceable.

7. Precor is the exclusive licensee of the '829 Patent and all of the elliptical cross-trainer technology it encompasses. Precor has the right to manufacture, use, offer for sale and sell products that incorporate the technology of the '829 Patent.

8. On or about May 15, 1998, the first of five reexamination requests of the '829 Patent were filed in the United States Patent and Trademark Office pursuant to 37 C.F.R. §1.510.

9. Despite the five reexamination proceedings, the United States Patent and Trademark Office upheld the validity of the '829 Patent in light of both the art considered during the original prosecution and the art cited by Precor's competitors.

10. The United States Patent and Trademark Office issued a Reexamination Certificate for U.S. Patent No. 5,383,829 on March 5, 2002, which is attached as Exhibit B. The Reexamination Certificate states that: "The patentability of claims 1-6 is confirmed. Claim 7 is determined to be patentable as amended. New claims 8-75 are added and determined to be patentable." The Reexamined '829 Patent remains both valid and enforceable.

1 **PATENT INFRINGEMENT**

2 11. Upon information and belief, Defendant currently manufactures, causes to be  
3 manufactured, imports, offers for sale and/or sells elliptical cross-trainer products, including  
4 but not limited to the Smooth Fitness<sup>TM</sup> CE 7.4 Elliptical Trainer that infringe at least Claims  
5 17, 18, 19, 20, 21, 22, and 23 of the '829 Patent under 35 U.S.C. § 271. A representative  
6 picture of the representative accused device is attached as Exhibit C.

7 12. Upon information and belief, Defendant was at all relevant times aware of the  
8 '829 Patent and Precor's proprietary "elliptical cross-trainer" technology. Defendant has no  
9 license from Precor or Miller, but has nevertheless deliberately and willfully infringed and  
10 continue to infringe the '829 Patent, thereby causing irreparable harm and damage to Precor  
11 and Miller.

12 **JURY TRIAL**

13 13. Precor and Miller respectfully request a jury trial on the merits.

14 **REQUESTED RELIEF**

15 Wherefore, Precor and Miller jointly request the following relief:

16 (A) That the Court preliminarily and permanently enjoin defendant, its officers,  
17 agents, servants, employees and attorneys, and all persons in active concert or participation  
18 with any of them from any act of infringement, inducement of infringement, or contributory  
19 infringement of the '829 Patent, pursuant to 35 U.S.C. § 283.

20 (B) That the Court order Defendant to deliver up for destruction any and all of  
21 their products that infringe any claim of the '829 Patent, pursuant to 35 U.S.C. § 283.

22 (C) That the Court order Defendant to compensate Precor and Miller for all  
23 damages suffered as a result of the infringement of the '829 Patent, including direct and  
24 consequential damages and all other damages, to the fullest extent of the law, pursuant to  
25 35 U.S.C. § 284.

1 (D) That the Court find this is an exceptional case, and award Precor and Miller  
2 their attorneys' fees, costs and expenses in bringing and prosecuting this lawsuit, pursuant to  
3 35 U.S.C. § 285.

4 (E) That the Court award Precor and Miller treble damages pursuant to 35 U.S.C.  
5 § 284.

6 (F) That Precor and Miller have such further and other relief as this Court may  
7 deem just.

8 Dated this 8<sup>th</sup> day of November, 2007.

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11 FOX LAW FIRM

12 /s/ Bradley T. Fox  
13 Bradley T. Fox, WSBA #30,697  
14 Attorney for Precor Incorporated  
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17 Facsimile: (970) 349-0774  
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**CERTIFICATE OF SERVICE**

1  
2 I hereby certify that on November 8, 2007, I served the foregoing First Amended Complaint  
3 on Defendant through its Attorneys Ballard Spahr Andrews & Ingersoll, LLP via electronic  
4 mail.

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6 Dated this November 8, 2007.

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9 **FOX LAW FIRM**

10 /s/ Bradley T. Fox  
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