

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
DIVISION

FILED

2011 FEB 28 P 1:11

FITNESS GAMING CORPORATION

Plaintiff,

v.

ICON HEALTH & FITNESS, INC., et al.

Defendants

Case No.

1:11-cv-00200-IDD  
CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Fitness Gaming Corporation (“Fitness Gaming” or “Plaintiff”) hereby alleges for its Complaint against defendant ICON Health & Fitness, Inc. (“ICON” or “Defendant”) on personal knowledge as to its own actions and on information and belief as to the actions of others, as follows:

PARTIES

1. Plaintiff Fitness Gaming is a company organized under the laws of Virginia with its principal place of business at 3236 Foxvale Dr., Oakton, Virginia 22124.
2. On information and belief, Defendant ICON is a corporation organized under the laws of Delaware with its corporate headquarters and principal place of business at 1500 South 1000 West, Logan, Utah 84321.

**JURISDICTION AND VENUE**

3. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. Personal jurisdiction and venue are proper in this Court under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). On information and belief, Defendant has a regular and established place of business in this district, has transacted business in this district, and/or has committed, contributed to, and/or induced acts of patent infringement in this district. In addition, Defendant has delivered infringing products into the stream of commerce with the expectation that those products will be purchased by consumers in Virginia.

5. On information and belief, Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Virginia Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Virginia and in this judicial district.

**FITNESS GAMING'S UNIQUE INNOVATION:  
COMBINING FITNESS EQUIPMENT WITH GAMING**

6. Ms. Kathy M. Harris is an entrepreneur who founded Fitness Gaming in order to develop her unique idea to combine exercise equipment, such as stationary bicycles, treadmills, and stair climbers, with gaming entertainment. After successfully developing and creating the products that she had envisioned, she began producing and selling her exercise equipment in 1999. She has shown her exercise products at several trade shows including the World Gaming Congress and Exposition in Las Vegas, and at the Sunset Station Hotel and Casino in Henderson,

Nevada, which held an entire media featuring Fitness Gaming products. Ms. Harris' customers include Carnival Cruise lines, hotels, and casinos.

7. Ms. Harris and Fitness Gaming have been featured in hundreds of newspaper and magazine articles including People, Better Homes and Gardens, Men's Fitness, Women's Fitness, Self, Shape, Playboy, UPI, AP, the Washington Post, the Los Angeles Times, and a full page front cover article in the Entertainment Section of the Sunday New York Times. These articles discussed Fitness Gaming's business in general, and frequently mentioned two of Fitness Gaming's products, the "Pedal 'N Play" stationary cycle, and the "Money Mill" treadmill. Ms. Harris also appeared on several nationally televised programs to discuss her invention and to market Fitness Gaming's exercise equipment, including "The Rosie O'Donnell Show" and "To Tell The Truth," where her invention was the featured topic of the show. The "Pedal 'N Play" stationary cycle was also featured on other nationally televised programs, including but not limited to: "The Donnie and Marie Show" (televised live from the MGM Grand Hotel & Casino in Las Vegas, Nevada); "CBS This Morning," and countless news broadcasts across the country.

### **COUNT I**

#### **INFRINGEMENT OF U.S. PATENT NO. 6,413,191**

8. Fitness Gaming is the owner by assignment of United States Patent No. 6,413,191 ("the '191 Patent") entitled "Exercise Equipment Connected to an Electronic Game of Chance." The '191 Patent originally issued on July 2, 2002. A true and correct copy of the '191 Patent is attached as Exhibit A.

9. Ms. Kathy M. Harris and Mr. Charles W. True, III are listed as the inventors on the '191 Patent.

10. Upon information and belief, Defendant ICON has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing (by way of inducing infringement by others, and/or contributing to the infringement by others) the '191 Patent in the State of Virginia, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling items of exercise equipment that are covered by one or more claims of the '191 Patent, to the injury of Fitness Gaming. A non-exhaustive list of examples of ICON's products that infringe the '191 Patent include the NordicTrack C4 si Bike, the ProForm 450 UR Upright Bike, the HealthRider Exerplay 300, the HealthRider H45xr, the Reebok RB 310 Recumbant Exercise Bike, and the Reebok RT 310 Bike. ICON owns the brands NordicTrack, ProForm, Healthrider, and Reebok for these products. Defendant ICON is thus liable for infringement of the '191 Patent pursuant to 35 U.S.C. § 271.

11. Defendant's infringement of the '191 Patent is and has been willful. On information and belief, Defendant ICON has been aware of Fitness Gaming and the invention of the '191 Patent since Fitness Gaming first introduced its products to the market and received a large amount of publicity and press coverage.

12. Additional facts show that Defendant ICON's infringement of the '191 Patent is and has been willful. This includes a series of communications from Fitness Gaming to Defendant ICON regarding ICON's infringement of the '191 Patent, to which ICON never provided a substantive response. On October 29, 2009, counsel for Fitness Gaming sent a letter to ICON, attaching a copy of the '191 Patent and advising that ICON's products infringe the patent. ICON did not respond to that letter. Counsel for Fitness Gaming sent follow-up letters to

ICON on March 3, 2010 and July 26, 2010, and an email on September 27, 2010. ICON never provided a substantive response to any of Fitness Gaming's infringement allegations.

13. Despite its refusal to respond to Fitness Gaming's communications regarding ICON's infringement of the '191 Patent, Defendant ICON has represented to the public that ICON – not Fitness Gaming – was the first to come up with the idea of combining exercise equipment with gaming. ICON has persisted with these false representations even after Fitness Gaming informed ICON of its patent infringement. For example, ICON, through its ProForm brand, falsely claims that it was the first company to create exercise equipment that included gaming entertainment. In a 2006 press release, ICON claims that “ProForm created the first ever fitness equipment to fully integrate exercise with game play,” and that ICON “pioneered” the concept of combining exercise equipment with game play. This press release is still currently available on ICON's website, under links for “ICON Innovation.”

14. Defendant ICON has also copied Fitness Gaming's descriptive words and phrasing, and has applied these terms to its infringing products. For example, in a 2006 press release describing its infringing products, Defendant ICON states “you have to ‘pedal to play,’” a term ICON took directly from Fitness Gaming's widely-publicized “Pedal ‘N Play” stationary bicycle. Similarly, for the HealthRider Exerplay 300 stationary bicycle, in order to select, for example, the BlackJack game or the Texas Hold ‘Em game to play while exercising, the user must first select an item on the screen labeled, “FITNESS GAMES.” In addition, the written instructions for the HealthRider Exerplay 300 direct the user to “pedal and play” the BlackJack game or the Texas Hold ‘Em game. These and other facts show that ICON's infringement of the '191 patent has been willful.

15. Fitness Gaming has complied with the marking requirements of 35 U.S.C. § 287.

16. As a result of Defendant's infringement of the '191 Patent, Fitness Gaming has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

17. Unless a permanent injunction is issued enjoining Defendant and its agents, servants, employees, attorneys, representatives, affiliates, and all others acting on their behalf from infringing the '191 Patent, Fitness Gaming will be greatly and irreparably harmed.

WHEREFORE, Fitness Gaming respectfully requests that this Court enter:

1. A judgment in favor of Fitness Gaming that Defendant has infringed, directly, jointly, and/or indirectly (by way of inducing and/or contributing to the infringement) the '191 Patent;

2. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity, with any of them, from infringing, directly, jointly, and/or indirectly (by way of inducing and/or contributing to the infringement) the '191 Patent;

3. A judgment and order requiring Defendant to pay Fitness Gaming its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '191 Patent as provided under 35 U.S.C. § 284;

4. A judgment and order finding that Defendant willfully infringed the '191 Patent, and trebling damages under 35 U.S.C. § 284;

5. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285, and awarding to Fitness Gaming its reasonable attorney fees; and

6. Any and all other relief to which Fitness Gaming may show itself to be entitled.

**DEMAND FOR JURY TRIAL**

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: February 23, 2011

Respectfully submitted,

By: /s/ James C. Otteson

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