

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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|------------------------------|---|--------------------------------|
| ICON HEALTH & FITNESS, INC., | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | Civil Action No. 2:12-cv-00709 |
| | § | |
| JOHNSON HEALTH TECH NORTH | § | JURY TRIAL DEMANDED |
| AMERICA, INC., | § | |
| Defendant. | § | |

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, ICON Health & Fitness, Inc. (“ICON” or “Plaintiff”), files this Original Complaint for Patent Infringement against Defendant, Johnson Health Tech North America, Inc. (“JHT” or “Defendant”), and would show this Court 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. On information and belief, Defendant JHT is a corporation organized and existing under the laws of the State of Wisconsin, with its headquarters at 1600 Landmark Drive, Cottage Grove, Wisconsin 53527.

JURISDICTION AND VENUE

3. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, including 35 U.S.C. § 271.

4. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. On information and belief, this Court has personal jurisdiction over JHT because JHT does and has done substantial business in this judicial District, including: (a) committing acts of patent infringement and/or inducing acts of patent infringement by others in this judicial District and elsewhere in Texas; (b) regularly conducting business in this state and judicial District; (c) directing advertising to or soliciting business from persons residing in this state and judicial District; and (d) engaging in other persistent courses of conduct, and/or deriving revenue from products and/or services provided to persons in this judicial District and in the State of Texas.

6. On information and belief, JHT sells its products under various brand names, including LIVESTRONG, VISION, AFG, and MATRIX Fitness.

7. On information and belief, JHT advertises, markets, and sells these products at retail locations located throughout the State of Texas and the Eastern District of Texas, including at least at Dick's Sporting Goods.

8. On information and belief, JHT has operated on its behalf and controls the relevant content of the website located at livestrongfitness.com, which is available to persons within the State of Texas.

9. On information and belief, JHT has operated on its behalf and controls the relevant content of the website located at visionfitness.com, which is available to persons within the State of Texas.

10. On information and belief, JHT has operated on its behalf and controls the relevant content of the website located at afgfitness.com, which is available to persons within the State of Texas.

11. On information and belief, JHT has operated on its behalf and controls the relevant content of the website located at matrixfitness.com, which is available to persons within the State of Texas.

12. On information and belief, JHT markets, advertises, and sells its products online through various websites, including, but not limited to, www.dickssportinggoods.com, targeted to the purchasing public in the State of Texas.

13. Venue is proper in this judicial District pursuant to, at least, 28 U.S.C. §§ 1391(b) and 1400(b).

FACTUAL BACKGROUND

14. ICON is an innovator in the field of exercise equipment and markets and sells a variety of consumer products.

15. ICON has invested substantial amounts of time and energy in researching and developing innovative fitness related products. 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.

16. Many of ICON's technological innovations are protected, *inter alia*, by a portfolio of utility and design patents, including United States Patent No. 6,702,719 ("the '719 Patent") and United States Patent No. 8,298,123 ("the '123 Patent").

17. ICON is the owner by assignment of the '719 Patent and the '123 Patent.

18. ICON alleges upon information and belief that JHT imports, makes, uses, sells, and offers for sale within the United States and within the State of Texas, either directly or through established distribution channels, various exercise machines and/or systems, including treadmills, stationary bicycles, and elliptical machines which utilize JHT's "PASSPORT Device," including, but not limited to, the AFG 7.1AT treadmill, Livestrong LSPRO2 treadmill,

Vision T40 treadmill, Vision T80 treadmill, Vision TF20 treadmill, Vision TF40 treadmill, Vision X20 elliptical, Vision X40 elliptical, Vision XF40 elliptical, Vision U20 exercise bicycle, Vision U40 exercise bicycle, Vision R20 exercise bicycle, and Vision R40 exercise bicycle (cumulatively “PASSPORT Device Machines”).

19. Upon information and belief, JHT has operated on its behalf at least the websites located at the visionfitness.com, livestrongfitness.com, afgfitness.com, and passportplayer.com websites, which promote the PASSPORT Device in connection with the PASSPORT Device Machines. Through at least the aforementioned websites, JHT provides information or downloadable PASSPORT Device content to consumers for use in connection with PASSPORT Device Machines. The PASSPORT Device Machines in connection with the PASSPORT Device infringe the '719 Patent.

20. ICON alleges upon information and belief that JHT imports, makes, uses, sells, and offers for sale within the United States and within the State of Texas, either directly or through established distribution channels, various exercise machines and/or systems, including treadmills, stationary bicycles, and elliptical machines which utilize JHT's “LIVETRACK Interactive Technology,” including, but not limited to, the Livestrong LS 8.0T treadmill, Livestrong LS 13.0T treadmill, Livestrong LSPRO1 treadmill, Livestrong LS 13.0E elliptical, and (cumulatively, “LIVETRACK Interactive Technology Machines”).

21. Upon information and belief, JHT has operated on its behalf at least the website located at livestrongfitness.com, which promotes the LIVETRACK Interactive Technology in connection with Livestrong LIVETRACK Interactive Technology Machines. Through at least the aforementioned website, JHT provides information and downloadable LIVETRACK Interactive Technology exercise plans to consumers for use in connection with LIVETRACK

Interactive Technology Machines. The LIVETRACK Interactive Technology Machines when sold and/or used in connection with the LIVETRACK Interactive Technology infringe the '123 Patent.

22. On information and belief, as a competitor of ICON and due, in part, to prior patent infringement litigation between ICON and JHT, ICON avers that JHT, at all relevant times hereto, had actual knowledge of the '719 Patent and '123 Patent.

23. In October of 2012 ICON, via letter correspondence, gave notice to JHT of JHT's infringement of the '719 Patent and '123 Patent.

**FIRST CAUSE OF ACTION
(Patent Infringement of the '719 Patent)**

24. By this reference ICON realleges and incorporates the foregoing paragraphs 1–23 as though fully set forth herein.

25. Upon information and belief, JHT has infringed and is currently infringing the '719 Patent by making, using offering for sale, selling and/or importing within this judicial District and the State of Texas, in violation of ICON's intellectual property rights, PASSPORT Device Machines utilizing JHT's PASSPORT Device which practice the method of at least claim 1 of the '719 Patent.

26. On information and belief, JHT with actual knowledge of the '719 Patent, has and continues to actively induce third parties to infringe at least claim 1 of the '719 Patent by teaching consumers how to operate the PASSPORT Device in conjunction with the PASSPORT Device Machines and how to download PASSPORT Device content and utilize such content in connection with PASSPORT Device Machines, through at least the visionfitness.com, livestrongfitness.com, afgfitness.com and passportplayer.com websites and PASSPORT Device Machines' owner's manuals.

27. JHT knew that its conduct, as described above, would result in the infringement of at least claim 1 of the '719 Patent.

28. As a consequence of JHT's infringement, ICON has sustained damages and will continue to sustain damages as a result of JHT's aforesaid acts of infringement.

29. ICON is entitled to recover damages sustained as a result of JHT's wrongful acts in an amount to be proven at trial, but in no event less than a reasonable royalty.

30. JHT's infringement of ICON's rights under the '719 Patent will continue to damage ICON's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.

31. JHT had full knowledge of the '719 Patent before initiation of the present action and, therefore, its infringement is both willful and deliberate thereby entitling ICON to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

**SECOND CAUSE OF ACTION
(Patent Infringement of the '123 Patent)**

32. By this reference ICON realleges and incorporates the foregoing paragraphs 1–23 as though fully set forth herein.

33. Upon information and belief, JHT has infringed and is currently infringing the '123 Patent by making, using offering for sale, selling and/or importing within this judicial District and the State of Texas, in violation of ICON's intellectual property rights, LIVETRACK Interactive Technology Machines utilizing JHT's LIVETRACK Interactive Technology, in violation of at least claim 1 of the '123 Patent.

34. On information and belief, JHT with actual knowledge of the '123 Patent, has and continues to actively induce third parties to infringe at least claim 1 of the '123 Patent by

teaching consumers how to operate the LIVETRACK Interactive Technology in conjunction with the LIVETRACK Interactive Technology Machines and how to utilize such technology and machines in connection, through at least the livestrongfitness.com website and LIVETRACK Interactive Technology Machines' owner's manuals.

35. JHT knew that its conduct, as described above, would result in the infringement of at least claim 1 of the '123 Patent.

36. As a consequence of JHT's infringement, ICON has sustained damages and will continue to sustain damages as a result of JHT's aforesaid acts of infringement.

37. ICON is entitled to recover damages sustained as a result of JHT's wrongful acts in an amount to be proven at trial, but in no event less than a reasonable royalty.

38. JHT's infringement of ICON's rights under the '123 Patent will continue to damage ICON's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.

39. On information and belief, JHT had full knowledge of the '123 Patent before initiation of the present action and, therefore, its infringement is both willful and deliberate thereby entitling ICON to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, ICON prays for judgment as follows:

- A. A judgment finding JHT liable for direct infringement of the '719 Patent and '123 Patent;
- B. A judgment finding JHT liable for the active inducement of infringement of the '719 Patent and '123 Patent;

- C. For injunctive relief enjoining JHT, its officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with them as follows:
- (1) from manufacturing any products or providing any services falling within the scope of the claims of the '719 Patent and '123 Patent;
 - (2) from using any product or method or providing services falling within the scope of any of the claims of the '719 Patent and '123 Patent;
 - (3) from selling, offering to sell, licensing or purporting to license any product or method or offering services falling within the scope of any of the claims of the '719 Patent and '123 Patent;
 - (4) from actively inducing others to infringe any of the claims of the '719 Patent and '123 Patent; and
 - (5) from all other acts of infringement of any of the claims of the '719 Patent and '123 Patent;
- D. That JHT 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 '719 Patent and '123 Patent, in an amount to be proven at trial, including treble damages, costs, and other damages allowed by 35 U.S.C. § 284;
- F. A declaration that this is an exceptional case and that ICON be awarded its attorney fees and expenses, pursuant to at least 35 U.S.C. § 285; and
- G. For all 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 9, 2012

Respectfully submitted,

/s/ James N. Willi

Larry R. Laycock (Lead Attorney)

llaycock@mgiiip.com

David R. Wright

dwright@mgiiip.com

Kirk R. Harris

kharris@mgiiip.com

Maschoff Gilmore & Israelson

1441 W. Ute Blvd., Ste. 100

Park City, UT 84098

Tel. (435) 252-1360

Fax (435) 252-1361

James N. Willi

Texas Bar No. 00795719

jwilli@willi.com

Tracy J. Willi

Texas Bar No. 00784633

twilli@willi.com

Willi Law Firm, P.C.

100 Congress Ave., Ste. 1530

Austin, TX 78701-2717

Tel. (512) 288-3200

Fax (512) 288-3202

ATTORNEYS FOR PLAINTIFF,
ICON HEALTH & FITNESS, INC.