

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ACTIVITY TRACKING
DEVICES, SYSTEMS, AND
COMPONENTS THEREOF**

Inv. No. 337-TA-963

NOTICE OF INSTITUTION OF INVESTIGATION

Institution of investigation pursuant to 19 U.S.C. § 1337

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 7, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of AliphCom d/b/a Jawbone of San Francisco, California and BodyMedia, Inc. of Pittsburgh, Pennsylvania. A supplement was filed on July 24, 2015. The complaint as supplemented alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain activity tracking devices, systems, and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,073,707 (“the ’707 patent”); U.S. Patent No. 8,398,546 (“the ’546 patent”); U.S. Patent No. 8,446,275 (“the ’275 patent”); U.S. Patent No. 8,529,811 (“the ’811 patent”); U.S. Patent No. 8,793,522 (“the ’522 patent”); and U.S. Patent No. 8,961,413 (“the ’413 patent”), and that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint further alleges misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.10 (2015).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on August 17, 2015, **ORDERED THAT** –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain activity tracking devices, systems, and components thereof by reason of infringement of one or more of claims 19, 23, and 24 of the '707 patent; claims 1-18 and 20-28 of the '546 patent; claims 1, 2, 4, 5, 8-10, 13-15, 18, and 19 of the '275 patent; claims 1, 5-7, 16, and 17 of the '811 patent; claim 2 of the '522 patent; and claims 1-3, 5, 7-9, 11, and 12 of the '413 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(b) whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain activity tracking devices, systems, and components thereof by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

AliphCom d/b/a Jawbone
99 Rhode Island Street
3rd Floor
San Francisco, CA 94103

BodyMedia, Inc.
Union Trust Building
501 Grant Street, Suite 1075
Pittsburgh, PA 15219

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Fitbit, Inc.
405 Howard Street
San Francisco, CA 94105

Flextronics International Ltd.
6201 America Center Drive
San Jose, CA 95002

Flextronics Sales & Marketing (A-P) Ltd.
Suite 802, St. James Court, St. Denis Street
Port Louis, Mauritius

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Suite 401, Washington, D.C. 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.13. Pursuant to 19 C.F.R. §§ 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: August 18, 2015