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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Woodway USA, Inc.,

Plaintiff,

vs.

LifeCORE Fitness, Inc. d/b/a Assault Fitness,

Defendant.

Case No. **'22CV492 JO BLM**

COMPLAINT

Woodway USA, Inc. ("Woodway"), by and for its Complaint against Defendant LifeCORE Fitness, Inc. ("LifeCORE") d/b/a Assault Fitness (collectively, "Defendant"), alleges to the Court as follows:

THE PARTIES

1. Woodway is a company organized and existing under the laws of the State of Wisconsin, with a principal place of business located at W229 N591 Foster Court, Waukesha, Wisconsin 53186. Woodway is a family-owned company that has been a market leader in manufacturing and selling fitness, health, and rehabilitation equipment for more than 30 years.

2. Woodway is informed and believes that Defendant is a corporation organized and existing under the laws of the State of California, with a principal place of business located at 5803 Newton Drive, Suite B, Carlsbad, California 92008. Upon information and belief, Assault Fitness is a division of LifeCORE. Defendant is a competitor of Woodway.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising out of Defendant's unauthorized importing, manufacturing, using, offering for sale, and selling of certain manual treadmills, including the AssaultRunner Elite, AssaultRunner Pro, Assault AirRunner, and AssaultRunner (collectively, "the Accused Infringing Treadmills"), in violation of Woodway's patent rights. Because this is an action for infringement under the patent laws of the United States, 35 U.S.C. § 271, *et seq.*, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Defendant in that, at all times pertinent hereto, upon information and belief, Defendant resides in this District, is doing business and has systematic activities in this District, and is committing infringing acts in California and this District. Upon information and belief, Defendant also induces direct infringement in this District.

5. Venue properly lies in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because, at a minimum, Defendant resides in this District, has a regular and

established place of business in this District, and has committed acts of infringement in this District.

THE PATENTS-IN-SUIT

6. Woodway is the assignee and owner of U.S. Patent No. 9,039,580 ("the '580 patent"). The '580 patent, entitled "Manual Treadmill and Methods of Operating the Same," was duly and legally issued by the U.S. Patent and Trademark Office on May 26, 2015. A true and correct copy of the '580 patent is attached hereto as **Exhibit A**.

7. Woodway is the assignee and owner of U.S. Patent No. 10,561,884 ("the '884 patent"). The '884 patent, entitled "Manual Treadmill and Methods of Operating the Same," was duly and legally issued by the U.S. Patent and Trademark Office on February 18, 2020. A true and correct copy of the '884 patent is attached hereto as **Exhibit B**.

8. Woodway is the assignee and owner of U.S. Patent No. 10,799,745 ("the '745 patent"). The '745 patent, entitled "Manual Treadmill and Methods of Operating the Same," was duly and legally issued by the U.S. Patent and Trademark Office on October 13, 2020. A true and correct copy of the '745 patent is attached hereto as **Exhibit C**.

9. Certain of the inventions claimed in the '580, '884, and '745 patents are practiced by Woodway's revolutionary line of CURVE treadmills, which are manual treadmills that are self-propelled and allow a runner or walker to control his/her/their speed without the use of any motor. The CURVE treadmill was the first of its kind when it was introduced in 2009, and since its launch, has enjoyed significant commercial success. Since the introduction of the original CURVE treadmill more than a decade ago, Woodway has introduced and continues to offer various models and sizes of the CURVE treadmill, including, for example, the CURVE Trainer and CURVE FTG, which complement Woodway's other lines of treadmill and fitness products.

COUNT I

INFRINGEMENT OF THE '580 PATENT

10. Woodway repeats and realleges each and every allegation contained in paragraphs 1-9, inclusive, as though fully set forth herein.

11. The ’580 patent is valid and enforceable.

12. Without permission or authorization from Woodway and in violation of 35 U.S.C. § 271(a), Defendant has imported, manufactured, used, offered for sale, and sold and continues to import, manufacture, use, offer for sale, and sell – in this District and elsewhere in the United States – the Accused Infringing Treadmills that infringe at least claim 1 of the ’580 patent.

13. Without permission or authorization from Woodway and in violation of 35 U.S.C. § 271(b), Defendant is inducing the direct infringement of at least claim 1 of the ’580 patent by aiding, abetting, and encouraging its customers’ use of the Accused Infringing Treadmills with knowledge of the infringement of the ’580 patent and with the intent to cause such infringement.

14. **Exhibit AA**, attached hereto, describes how a representative Accused Infringing Treadmill meets each and every claim limitation of claim 1 of the ’580 patent. Woodway reserves the right to modify its infringement theories as discovery progresses in this case; it shall not be estopped for infringement contention or claim construction purposes by the information contained in **Exhibit AA**. The chart provided in **Exhibit AA** is intended to satisfy the notice requirements of Rule 8(a)(2) of the Federal Rules of Civil Procedure; it does not represent Woodway’s preliminary or final infringement contentions or preliminary or final claim construction positions.

15. To the extent that any marking or notice is required by 35 U.S.C. § 287, Woodway has complied with the requirements of that statute by providing actual and/or constructive notice to Defendant of its infringement of the ’580 patent.

16. Defendant’s infringement of the ’580 patent has been and continues to be willful, wanton, and deliberate thus rendering this case “exceptional” within the meaning of U.S.C. § 285 and entitling Woodway to its reasonable attorneys’ fees and litigation expenses.

17. Defendant’s conduct has caused and will continue to cause Woodway substantial damages, including irreparable harm, for which Woodway has no adequate

remedy at law, unless and until Defendant is enjoined from infringing the ’580 patent.

COUNT II

INFRINGEMENT OF THE ’884 PATENT

18. Woodway repeats and realleges each and every allegation contained in paragraphs 1-9, inclusive, as though fully set forth herein.

19. The ’884 patent is valid and enforceable.

20. Without permission or authorization from Woodway and in violation of 35 U.S.C. § 271(a), Defendant has imported, manufactured, used, offered for sale, and sold and continues to import, manufacture, use, offer for sale, and sell – in this District and elsewhere in the United States – the Accused Infringing Treadmills that infringe at least claim 50 of the ’884 patent.

21. Without permission or authorization from Woodway and in violation of 35 U.S.C. § 271(b), Defendant is inducing the direct infringement of at least claim 50 of the ’884 patent by aiding, abetting, and encouraging its customers’ use of the Accused Infringing Treadmills with knowledge of the infringement of the ’884 patent and with the intent to cause such infringement.

22. **Exhibit BB**, attached hereto, describes how a representative Accused Infringing Treadmill meets each and every claim limitation of claim 50 of the ’884 patent. Woodway reserves the right to modify its infringement theories as discovery progresses in this case; it shall not be estopped for infringement contention or claim construction purposes by the information contained in **Exhibit BB**. The chart provided in **Exhibit BB** is intended to satisfy the notice requirements of Rule 8(a)(2) of the Federal Rules of Civil Procedure; it does not represent Woodway’s preliminary or final infringement contentions or preliminary or final claim construction positions.

23. To the extent that any marking or notice is required by 35 U.S.C. § 287, Woodway has complied with the requirements of that statute by providing actual and/or constructive notice to Defendant of its infringement of the ’884 patent.

24. Defendant’s infringement of the ’884 patent has been and continues to be

willful, wanton, and deliberate thus rendering this case "exceptional" within the meaning of U.S.C. § 285 and entitling Woodway to its reasonable attorneys' fees and litigation expenses.

25. Defendant's conduct has caused and will continue to cause Woodway substantial damages, including irreparable harm, for which Woodway has no adequate remedy at law, unless and until Defendant is enjoined from infringing the '884 patent.

COUNT III

INFRINGEMENT OF THE '745 PATENT

26. Woodway repeats and realleges each and every allegation contained in paragraphs 1-9, inclusive, as though fully set forth herein.

27. The '745 patent is valid and enforceable.

28. Without permission or authorization from Woodway and in violation of 35 U.S.C. § 271(a), Defendant has imported, manufactured, used, offered for sale, and sold and continues to import, manufacture, use, offer for sale, and sell – in this District and elsewhere in the United States – the Accused Infringing Treadmills that infringe at least claim 1 of the '745 patent.

29. Without permission or authorization from Woodway and in violation of 35 U.S.C. § 271(b), Defendant is inducing the direct infringement of at least claim 1 of the '745 patent by aiding, abetting, and encouraging its customers' use of the Accused Infringing Treadmills with knowledge of the infringement of the '745 patent and with the intent to cause such infringement.

30. **Exhibit CC**, attached hereto, describes how a representative Accused Infringing Treadmill meets each and every claim limitation of claim 1 of the '745 patent. Woodway reserves the right to modify its infringement theories as discovery progresses in this case; it shall not be estopped for infringement contention or claim construction purposes by the information contained in **Exhibit CC**. The chart provided in **Exhibit CC** is intended to satisfy the notice requirements of Rule 8(a)(2) of the Federal Rules of Civil Procedure; it does not represent Woodway's preliminary or final infringement contentions

or preliminary or final claim construction positions.

31. To the extent that any marking or notice is required by 35 U.S.C. § 287, Woodway has complied with the requirements of that statute by providing actual and/or constructive notice to Defendant of its infringement of the ’745 patent.

32. Defendant’s infringement of the ’745 patent has been and continues to be willful, wanton, and deliberate thus rendering this case “exceptional” within the meaning of U.S.C. § 285 and entitling Woodway to its reasonable attorneys’ fees and litigation expenses.

33. Defendant’s conduct has caused and will continue to cause Woodway substantial damages, including irreparable harm, for which Woodway has no adequate remedy at law, unless and until Defendant is enjoined from infringing the ’745 patent.

PRAYER FOR RELIEF

Wherefore, Woodway respectfully prays for entry of a judgment that:

A. Defendant has infringed one or more claims of the ’580, ’884, and ’745 patents;

B. Defendant and its respective agents, servants, officers, directors, employees and all persons in privity or active concert or participation with Defendant, directly or indirectly, are preliminarily and permanently enjoined from infringing, inducing others to infringe, or contributing to the infringement of the ’580, ’884, and ’745 patents;

C. Orders Defendant to account for and pay to Woodway damages adequate to compensate for Defendant’s infringement of the ’580, ’884, and ’745 patents, including lost profits but in no event less than a reasonable royalty, together with interest and costs as fixed by the Court, and trebled for willful infringement as provided by 35 U.S.C. § 284;

D. Orders a post-judgment equitable accounting of damages for the period of infringement of the ’580, ’844, and ’745 patents following the period of damages established by Woodway at trial;

E. Orders this case to be an exceptional case under 35 U.S.C. § 285, and that Woodway be awarded its costs, expenses, and disbursements incurred in this action, including reasonable attorneys' fees as available by law to be paid by Defendant;

F. Orders an award of pre-judgment interest, post-judgment interest, and costs in this action; and

G. Provides for such other relief to Woodway as this Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Woodway demands a trial by jury on all issues so triable.

Dated: April 11, 2022

FOLEY & LARDNER LLP

/s/ Ashley M. Koley

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Attorneys for Plaintiff Woodway USA, Inc.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

Southern District of California

Woodway USA, Inc.,
Plaintiff

v.

LifeCORE Fitness, Inc. d/b/a Assault Fitness,
Defendant

Civil Action No. 3:22-cv-00492-JO-BLM

WAIVER OF THE SERVICE OF SUMMONS

To: Ashley M. Koley
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 04/12/2022, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: April 13, 2022

Signature of the attorney or unrepresented party

LifeCORE Fitness, Inc. d/b/a Assault Fitness
Printed name of party waiving service of summons

J. Christopher Jaczko
Printed name

Procopio
12544 High Bluff Drive, Suite 400
San Diego, CA 92130
Address

chris.jaczko@procopio.com
E-mail address

619.906.5748
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to this action; my current business address is 555 South Flower Street, Suite 3300, Los Angeles, CA 90071-2418.

On April 13, 2022, I served the foregoing document(s) described as: **WAIVER OF THE SERVICE OF SUMMONS** on the interested parties in this action as follows:

J. Christopher Jaczko
PROCOPIO
12544 High Bluff Drive, Suite 400
San Diego, California 92130

Attorneys for Defendant, LifeCORE, Inc., d/b/a Assault Fitness

Telephone: (619) 906-5748
Facsimile: (619) 744-5418
Email: chris.jaczko@procopio.com

___ BY MAIL
___ I placed the envelope(s) with postage thereon fully prepaid in the United States mail, at Los Angeles, California.

___ I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service; the firm deposits the collected correspondence with the United States Postal Service that same day, in the ordinary course of business, with postage thereon fully prepaid, at Los Angeles, California. I placed the envelope(s) for collection and mailing on the above date following ordinary business practices.

X BY E-MAIL
X Pursuant to CCP 1010.6, et seq., I served the foregoing document via e-mail to the addressees above at the e-mail addresses listed therein.

___ BY HAND DELIVERY. I delivered the envelope(s) by hand to addressee(s).

___ Executed on April 13, 2022, at Los Angeles, California.

___ I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

___ I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Sara Villamarin
Sara K. Villamarin