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Office of the Secretary Int'l Trade Commission

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July 7, 2015

**VIA HAND DELIVERY**

The Honorable Lisa R. Barton  
Secretary  
United States International Trade Commission  
500 E Street, S.W.  
Washington, DC 20436

Re: *In the Matter of Certain Activity Tracking Devices, Systems, and Components Thereof;*  
*Inv. No. 337-TA-\_\_\_\_\_*

Dear Secretary Barton:

Enclosed for filing on behalf of Complainants AliphCom d/b/a Jawbone and BodyMedia, Inc. (collectively, "Complainants") against proposed Respondents Fitbit, Inc., Flextronics International Ltd., Flextronics International and Flextronics Sales & Marketing (A-P) Ltd. (collectively, the "Proposed Respondents") are documents in support of Complainants' request that the Commission commence an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended. A request for confidential treatment of Confidential Exhibits 48C-49C is included with this letter.

Accordingly, Complainants submit the following documents for filing:

1. An original and eight (8) copies of the verified Non-Confidential Complaint and the Public Interest Statement, one (1) CD of the accompanying Non-Confidential exhibits. (19 CFR §§ 201.6(c), 210.4(f)(2), 210.8(a)(1)(i), and 210.8(b).)
2. An original and eight (8) copies of the verified Confidential Complaint and the Public Interest Statement, one (1) CD of the accompanying Confidential Exhibits 49C-50C and 53C-55C. (19 CFR §§ 201.6(c), 210.4(f)(2), 210.8(a)(1)(i), and 210.8(b).)

3. Four (4) additional copies of both the verified Non-Confidential Complaint and the Public Interest Statement and four (4) CDs of the Non-Confidential exhibits, one (1) each for service upon each of the Proposed Respondents. (19 CFR §§ 210.8(a)(1)(iii).)
4. Four (4) additional copies of the verified Confidential Complaint and the Public Interest Statement and four (4) CDs of the Confidential Exhibits 49C-50C and 53C-55C, one (1) each for service upon each of the Proposed Respondents. (19 CFR §§ 210.8(a)(1)(iii).)
5. One (1) additional copy of the verified Non-Confidential Complaint for service upon the Embassy of Singapore (19 CFR §§ 210.8(a)(1)(iv) and 210.11(a)(1)(ii).)
6. One (1) additional copy of the verified Non-Confidential Complaint for service upon the Embassy of Mauritius (19 CFR §§ 210.8(a)(1)(iv) and 210.11(a)(1)(ii).)
7. The original certified copies of the United States Patent Nos. 8,961,413 (“the ‘413 patent”); United States Patent No. 8,073,707 (“the ‘707 patent”); United States Patent No. 8,398,546 (“the ‘546 patent”); United States Patent No. 8,446,275 (“the ‘275 patent”); United States Patent No. 8,529,811 (“the ‘811 patent”); and United States Patent No. 8,793,522 (“the 522 patent”) (collectively, the “Asserted Patents”); and a copy of the patents on CD, cited in the Complaint as Exhibits 2-7 (19 CFR §§ 210.8(a)(1)(iii) and 210.12(a)(9)(i).)
8. The original certified copies of the assignments for the Asserted Patents and copies of the assignments for the patents on CD, cited in the Complaint as Exhibits 8-14. (19 CFR §§ 210.8(a)(1)(iii) and 210.12(a)(9)(ii).)
9. The original certified copies of the prosecution histories of the Asserted Patents included in the Complaint as Appendices A, C, E, G, I, and K, and three (3) additional copies of each on separate CDs. (19 CFR § 210.12.(c)(1).)
10. Four (4) copies on separate CDs of patent and technical reference documents identified in each of the prosecution histories of the Asserted Patents, included in the Complaint as Appendices B, D, F, H, J, and L. (19 CFR § 210.12.(c)(2).)

In accordance with Commission Rules 210.6 and 210.5, 19 CFR §§ 201.01 and 210.5, Complainants request confidential treatment of the business information contained in Confidential Exhibits 49C-50C and 53C-55C. A certification is provided below pursuant to 19 C.F.R §§ 201.06 and 210.5 requesting confidential treatment of Confidential Exhibits 49C-50C and 53C-55C.

The Honorable Lisa R. Barton  
July 3, 2014  
Page 3

The information for which confidential treatment is sought is proprietary commercial information not otherwise publicly available. Specifically, Confidential Exhibits 49C-50C and 53C-55C are declarations, licenses, and security agreement documents that discuss proprietary and confidential business and technical information of Complainants and Complainants' investments in the domestic industry.

The information described above qualifies as confidential business information pursuant to Commission Rules 201.6 because:

- a. it is not available to the public;
- b. unauthorized disclosure of such information could cause substantial harm to the competitive position of Complainants; and
- c. its disclosure could impair the Commissions' ability to obtain information necessary to perform its statutory function.

Thank you for your attention to this matter. Please contact me if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Pratt', with a long horizontal line extending to the right.

Andrew F. Pratt

Enclosures

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.**

**In the Matter of**

CERTAIN ACTIVITY TRACKING  
DEVICES, SYSTEMS, AND COMPONENTS  
THEREOF

**Investigation No. \_\_\_\_\_**

**COMPLAINANTS ALIPHCOM D/B/A JAWBONE AND BODYMEDIA, INC.'S  
STATEMENT ON THE PUBLIC INTEREST**

Pursuant to 19 C.F.R. § 210.8(b), Complainants AliphCom d/b/a Jawbone and BodyMedia, Inc. (collectively, “Jawbone”) hereby provide information regarding the public interest.

**I. INTRODUCTION**

By statute, the Commission is required to issue an exclusion order upon the finding of a Section 337 violation absent a finding that the effects of one of the statutorily-enumerated public interest factors counsel otherwise. 19 U.S.C. § 1337(d)(1). The four enumerated public interest factors include: (1) the public health and welfare, (2) competitive conditions in the United States economy, (3) the production of like or directly competitive articles in the United States, and (4) United States consumers. *Id.* “[I]n assessing public interest factors when granting relief, the Commission relies on the strong public interest in enforcing intellectual property rights, and . . . has denied relief on public interest grounds only three times in the history of Section 337.” *In re Certain Baseband Processor Chips and Chipsets, Transmitter, and Receiver (Radio) Chips*, 337-TA-543, Comm’n Op. at 75.

Prior cases in which the Commission determined that the public interest prevented entry of an exclusion order involved circumstances in which “inadequate supply within the United States – by both the patentee and domestic licensees – meant that an exclusion order would

deprive the public of products necessary for some important health or welfare need: energy efficient automobiles, basic scientific research, or hospital equipment.” *Spansion, Inc. v. Int’l Trade Comm’n*, 629 F.3d 1331, 1360 (Fed. Cir. 2010) (discussing *Certain Fluidized Supporting Apparatus*, Inv. No. 337-TA-182/188, USITC Pub. 1667 (Oct. 1984); *Certain Inclined-Field Acceleration Tubes*, Inv. No. 337-TA-67, USITC Pub. 1119 (Dec. 1980); *Certain Automatic Crankpin Grinders*, Inv. No. 337-TA-60, USITC Pub. 1022 (Dec. 1979)). None of the concerns raised in those investigations apply here, such as the public interest in maintaining an adequate supply of the goods under investigation, the ability of Complainant to maintain an adequate supply of the goods, or whether domestic users can obtain a sufficient substitute. The patents asserted by Jawbone are not standards-essential patents, and not subject to any voluntary commitments to offer licenses on terms that are fair, reasonable, and non-discriminatory. Thus, this investigation would not involve public interest concerns such as those raised by the remedial order entered in *Certain Electronic Devices, Including Wireless Communication Devices, Portable Music and Data Processing Devices, and Tablet Computers*, Inv. No. 337-TA-794.

**A. The Accused Products Potentially Subject to the Exclusion Order Are Wearable Fitness and Activity Trackers**

The accused products are wearable fitness and activity tracker devices. The accused Fitbit wearable fitness and activity trackers are used by individuals to track their steps taken, stairs climbed, calories expended, and distance traveled; to track their sleep; and in some instances, to track their heart rate.

On information and belief, the accused fitness and activity trackers are designed by proposed respondent Fitbit. The fitness and activity trackers are manufactured overseas by proposed respondent Flextronics.

The requested remedies are a limited exclusion order and a cease and desist order.

**B. There Are No Public Health, Safety, or Welfare Concerns Relating to the Requested Remedy**

While such trackers are directed to improving overall health and wellness, wearable fitness and activity trackers are not necessary to public health and welfare within the meaning of 19 C.F.R. § 1337(d), (e), and (f). These requested remedies do not raise any public health, safety, or welfare concerns. The accused products are a subset of the wearable fitness and activity trackers sold domestically and are not necessary for the public's health, safety, or welfare. While, they are directed at helping individuals improve their health by moving more, burning more calories, climbing more flights of stairs, etc., the Accused Products are merely one of innumerable strategies for helping individuals to improve their healthy by increasing movement. Even if wearable fitness and activity trackers were necessary to the public health and welfare, Jawbone and third parties can provide an adequate supply of alternatives to consumers, as further explained below.

**C. Competitive Conditions in the United States Economy Would Not Be Adversely Affected by the Requested Remedy**

Competitive conditions in the United States economy would not be adversely affected by the requested remedy for several reasons. First, there are multiple suppliers to the U.S. market such that it will remain a highly competitive market. Jawbone's UP® System Trackers, including UP24, UP2, UP3, and the soon-to-be released UP4, are like articles that can be directly substituted for the Fitbit fitness and activity trackers. As a manufacturer with an on-demand supply chain for the UP® System Trackers, Jawbone is capable of quickly and fully replacing the accused fitness and activity trackers in the event of an exclusion order. Therefore, in a commercially reasonable time, Jawbone's UP® System Trackers can be substituted for the accused fitness and activity trackers. In addition, third parties' directly-competitive fitness and activity trackers, such as those available from Nike, Adidas, Garmin, TomTom, Basis, Jaybird,

Polar, Withings, Misfit, Striiv, Razer, LifeTrak, Samsung, LG, Sony, Microsoft and Apple, can replace the accused fitness and activity trackers.

Second, because of the availability of ready substitutes, the exclusion of the Accused Products is not likely to have a material impact on prices paid by consumers for such devices.

Last, in this burgeoning market, there will continue to be strong economic incentives for continuing research and development to bring additional products to the U.S. market.

**D. The Production of Like or Directly Competitive Articles in the United States Would Not be Adversely Affected by the Requested Remedy**

The production of like or directly competitive articles in the United States would not be adversely affected by the requested remedy. First, the Accused Products are manufactured overseas. Second, there are no U.S. manufacturing operations that provide components that are directly incorporated as inputs into foreign production of the Respondents' Accused Products such that an exclusion order on the Accused Products would have a negative impact on those component manufacturing operations.

**E. The Requested Remedy Would Not Adversely Impact Consumers**

Neither an exclusion order nor a cease and desist order would adversely impact consumers, because of the ability of Jawbone and third parties to meet any increase in demand. The replacement of the accused fitness and activity trackers with Jawbone's UP® System Trackers or a third-party fitness and activity tracker would result in the same overall performance from the consumer's perspective.

Dated: July 7, 2015

Respectfully submitted,

/s/ Kalpana Srinivasan

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**PUBLIC VERSION**  
**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**WASHINGTON, D.C.**

**In the Matter of**

CERTAIN ACTIVITY TRACKING  
DEVICES, SYSTEMS, AND COMPONENTS  
THEREOF

**Investigation No.** \_\_\_\_\_

**VERIFIED COMPLAINT OF ALIPHCOM D/B/A JAWBONE AND BODYMEDIA, INC.**  
**UNDER SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED**

**COMPLAINANTS**

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3766856v1/014661

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**PUBLIC VERSION**

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## PUBLIC VERSION

### TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	THE PARTIES.....	3
A.	Complainants .....	3
B.	Respondents .....	4
III.	THE PRODUCTS AT ISSUE .....	5
IV.	THE PATENTS AT ISSUE.....	6
A.	U.S. Patent No. 8,446,275.....	6
i.	Identification of the Patent and Ownership by AliphCom.....	6
ii.	Foreign Counterparts to the '275 Patent .....	7
B.	U.S. Patent No. 8,529,811.....	7
i.	Identification of the Patent and Ownership by AliphCom.....	7
ii.	Foreign Counterparts to the '811 Patent .....	8
C.	U.S. Patent No. 8,793,522.....	8
i.	Identification of the Patent and Ownership by AliphCom.....	8
ii.	Foreign Counterparts to the '522 Patent .....	9
D.	U.S. Patent No. 8,961,413.....	9
i.	Identification of the Patent and Ownership by BodyMedia.....	9
ii.	Foreign Counterparts to the '413 Patent .....	10
E.	U.S. Patent No. 8,073,707.....	10
i.	Identification of the Patent and Ownership by BodyMedia.....	10
ii.	Foreign Counterparts to the '707 Patent .....	11
F.	U.S. Patent No. 8,398,546.....	11
i.	Identification of the Patent and Ownership by BodyMedia.....	11
ii.	Foreign Counterparts to the '546 Patent .....	12

## **PUBLIC VERSION**

G.	Non-Technical Description of the Patented Inventions .....	12
H.	Licensees .....	13
V.	THE DOMESTIC INDUSTRY .....	14
A.	Complainants' Investments in the Domestic Industry .....	14
B.	Complainants' Practice of the Complainants' Patents.....	16
VI.	SPECIFIC INSTANCES OF IMPORTATION AND SALE .....	16
VII.	UNLAWFUL AND UNFAIR ACTS COMMITTED BY THE RESPONDENTS .....	17
A.	Unfair Acts of Patent Infringement.....	17
B.	Unfair Acts of Trade Secret Misappropriation .....	19
C.	Substantial Injury and Threat of Substantial Injury to Complainants' Domestic Industry .....	28
VIII.	RELATED LITIGATION .....	29
IX.	RELIEF REQUESTED.....	30

# PUBLIC VERSION

## EXHIBIT LIST

<b>Exhibit No.</b>	<b>Designation</b>	<b>Description</b>
Exhibit 1	Public	Jawbone Corporate Profile
Exhibit 2	Public	Certified Copy of United States Patent No. 8,446,275
Exhibit 3	Public	Certified Copy of United States Patent No. 8,529,811
Exhibit 4	Public	Certified Copy of United States Patent No. 8,793,522
Exhibit 5	Public	Certified Copy of United States Patent No. 8,961,413
Exhibit 6	Public	Certified Copy of United States Patent No. 8,073,707
Exhibit 7	Public	Certified Copy of United States Patent No. 8,398,546
Exhibit 8	Public	Certified Copies of the Assignment Records for United States Patent Nos. 8,446,275; 8,529,811; 8,793,522; 8,961,413; 8,073,707; 8,398,546
Exhibit 9	Public	Certified Copy of the Assignment Record for United States Patent No. 8,446,275
Exhibit 10	Public	Certified Copy of the Assignment Record for United States Patent No. 8,529,811
Exhibit 11	Public	Certified Copy of the Assignment Record for United States Patent No. 8,793,522
Exhibit 12	Public	Certified Copy of the Assignment Record for United States Patent No. 8,961,413
Exhibit 13	Public	Certified Copy of the Assignment Record for United States Patent No. 8,073,707
Exhibit 14	Public	Certified Copy of the Assignment Record for United States Patent No. 8,398,546
Exhibit 15	Public	List of foreign patents, foreign patent applications (not already issued as a patent), and each foreign patent application that has been denied, abandoned, or withdrawn corresponding to the Asserted Patents
Exhibit 16	Public	Claim Chart For the Infringement of Independent Claims 1 and 19 of Complainant's United States Patent No. 8,529,275 by Fitbit Surge
Exhibit 17	Public	Claim Chart For the Infringement of Independent Claims 1 and 19 of Complainant's United States Patent No. 8,529,275 by Fitbit Charge and ChargeHR
Exhibit 18	Public	Claim Chart For the Infringement of Independent Claims 1 and 19 of Complainant's United States Patent No. 8,529,275 by Fitbit Flex
Exhibit 19	Public	Claim Chart For the Infringement of Independent Claims 1 and 19 of Complainant's United States Patent No. 8,529,275 by Fitbit One
Exhibit 20	Public	Claim Chart For the Infringement of Independent Claims 1 and 19 of Complainant's United States Patent No. 8,529,275 by Fitbit Zip
Exhibit 21	Public	Claim Chart For the Infringement of Independent Claims 1 and 16 of Complainant's United States Patent No. 8,529,811 by Fitbit Surge

**PUBLIC VERSION**

Exhibit 22	Public	Claim Chart For the Infringement of Independent Claims 1 and 16 of Complainant's United States Patent No. 8,529,811 by Fitbit Charge and ChargeHR
Exhibit 23	Public	Claim Chart For the Infringement of Independent Claim 2 of Complainant's United States Patent No. 8,793,522 by Fitbit Flex
Exhibit 24	Public	Claim Chart For the Infringement of Independent Claim 1 of Complainant's United States Patent No. 8,961,413 by Fitbit Flex
Exhibit 25	Public	Claim Chart For the Infringement of Independent Claim 1 of Complainant's United States Patent No. 8,961,413 by Fitbit Surge
Exhibit 26	Public	Claim Chart For the Infringement of Independent Claim 1 of Complainant's United States Patent No. 8,961,413 by Fitbit ChargeHR
Exhibit 27	Public	Claim Chart For the Infringement of Independent Claim 1 of Complainant's United States Patent No. 8,961,413 by Fitbit Charge
Exhibit 28	Public	Claim Chart For the Infringement of Independent Claim 1 of Complainant's United States Patent No. 8,961,413 by Fitbit One
Exhibit 29	Public	Claim Chart For the Infringement of Dependent Claims 19, 23, and 24 of Complainant's United States Patent No. 8,073,707 by Fitbit Surge
Exhibit 30	Public	Claim Chart For the Infringement of Dependent Claims 19, 23, and 24 of Complainant's United States Patent No. 8,073,707 by Fitbit ChargeHR
Exhibit 31	Public	Claim Chart For the Infringement of Independent Claim 1 of Complainant's United States Patent No. 8,398,546 by Fitbit Wearable Trackers One, Charge, ChargeHR, Surge
Exhibit 32	Public	Claim Chart For the Practice of Independent Claims 1 and 19 of Complainant's United States Patent No. 8,529,275 by Jawbone UP24, UP2, UP3, UP Move, UP4
Exhibit 33	Public	Claim Chart For the Practice of Independent Claims 1 and 16 of Complainant's United States Patent No. 8,529,811 by Jawbone UP2
Exhibit 34	Public	Claim Chart For the Practice of Independent Claims 1 and 16 of Complainant's United States Patent No. 8,529,811 by Jawbone UP24
Exhibit 35	Public	Claim Chart For the Practice of Independent Claims 1 and 16 of Complainant's United States Patent No. 8,529,811 by Jawbone UP3 and UP4
Exhibit 36	Public	Claim Chart For the Practice of Independent Claim 2 of Complainant's United States Patent No. 8,793,522 by Jawbone UP24, UP2, UP3, UP4
Exhibit 37	Public	Claim Chart For the Practice of Independent Claim 1 of Complainant's United States Patent No. 8,961,413 by Jawbone UP Move, UP24, UP2, UP3, UP4

**PUBLIC VERSION**

Exhibit 38	Public	Claim Chart For the Practice of Dependent Claims 19, 23, and 24 of Complainant's United States Patent No. 8,073,707 by Jawbone UP3, UP4
Exhibit 39	Public	Claim Chart For the Practice of Independent Claim 1 of Complainant's United States Patent No. 8,398,546 by Jawbone UP24, UP2, UP3, UP4
Exhibit 40	Public	Photographs of Fitbit Accused Products
Exhibit 41	Public	Amazon.com Receipt for Fitbit Accused Products
Exhibit 42	Public	Fitbit User Manual for Fitbit Surge
Exhibit 43	Public	Fitbit User Manual for Fitbit ChargeHR
Exhibit 44	Public	Fitbit User Manual for Fitbit Charge
Exhibit 45	Public	Fitbit User Manual for Fitbit Flex
Exhibit 46	Public	Fitbit User Manual for Fitbit One
Exhibit 47	Public	Fitbit User Manual for Fitbit Zip
Exhibit 48	Public	Fitbit, Inc. Form S-1 Registration Statement Under the Securities Act of 1933
Exhibit 49C	Confidential	Declaration of Michael Luna
Exhibit 50C	Confidential	Declaration of David Merenbach
Exhibit 51	Public	Jawbone Confidentiality Agreement
Exhibit 52	Public	Jawbone IT Information Security Policy
Exhibit 53C	Confidential	BodyMedia, Inc. Licensees
Exhibit 54C	Confidential	Security Agreement
Exhibit 55C	Confidential	Financial Information

Physical Exhibit No.	Description
Physical Exhibit 1	Fitbit Surge
Physical Exhibit 2	Fitbit ChargeHR
Physical Exhibit 3	Fitbit Charge
Physical Exhibit 4	Fitbit Flex
Physical Exhibit 5	Fitbit One
Physical Exhibit 6	Fitbit Zip
Physical Exhibit 7	Jawbone UP24
Physical Exhibit 8	Jawbone UP2
Physical Exhibit 9	Jawbone UP3
Physical Exhibit 10	Jawbone UP Move
Physical Exhibit 11	Jawbone UP4

Appendix	Description
Appendix A	United States Patent No. 8,529,275 Prosecution History
Appendix B	United States Patent No. 8,529,275 Technical References

## PUBLIC VERSION

Appendix C	United States Patent No. 8,529,811 Prosecution History
Appendix D	United States Patent No. 8,529,811 Technical References
Appendix E	United States Patent No. 8,793,522 Prosecution History
Appendix F	United States Patent No. 8,793,522 Technical References
Appendix G	United States Patent No. 8,961,413 Prosecution History
Appendix H	United States Patent No. 8,961,413 Technical References
Appendix I	United States Patent No. 8,073,707 Prosecution History
Appendix J	United States Patent No. 8,073,707 Technical References
Appendix K	United States Patent No. 8,398,546 Prosecution History
Appendix L	United States Patent No. 8,398,546 Technical References



## **PUBLIC VERSION**

### **I. INTRODUCTION**

1. Complainants AliphCom d/b/a Jawbone and BodyMedia, Inc. (collectively, “Jawbone” or “Complainants”) request that the United States International Trade Commission (“the Commission”) institute an investigation into violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by Fitbit, Inc. (“Fitbit”), Flextronics International Ltd. and Flextronics Sales & Marketing (A-P) Ltd. (together, “Flextronics”) (collectively, “Respondents”).

2. This Complaint is based on the Respondents’ unlawful and unauthorized importation into the United States, sale for importation, and/or sale within the United States after importation of wearable fitness and activity tracker devices.

3. Respondents’ products infringe, either literally or under the doctrine of equivalents, at least one or more claims of U.S. Patent No. 8,446,275 (“the ’275 patent”), U.S. Patent No. 8,529,811 (“the ’811 patent”), and U.S. Patent No. 8,793,522 (“the ’522 patent”) (collectively, “the AliphCom Patents”). The AliphCom Patents are valid and enforceable United States Patents, the entire right, title, and interest to which AliphCom owns by assignment.

4. Respondents’ products infringe, either literally or under the doctrine of equivalents, at least one or more claims of U.S. Patent No. 8,961,413 (“the ’413 patent”), U.S. Patent No. 8,073,707 (“the ’707 patent”), U.S. Patent No. 8,398,546 (“the ’546 patent”) (collectively, “the BodyMedia Patents”). The BodyMedia Patents are valid and enforceable United States Patents, the entire right, title, and interest to which BodyMedia, Inc. owns by assignment.

5. The AliphCom and BodyMedia Patents all relate to technology used in wearable fitness and activity tracker devices to monitor and report on health and wellness metrics.

**PUBLIC VERSION**

6. The Respondents infringe, literally or under the doctrine of equivalents, at least the patents and claims listed in the chart below.

<b><u>U.S. Patent No.</u></b>	<b><u>Asserted Claims</u></b>
8,961,413	1, 2, 3, 5, 7, 8, 9, 11, 12
8,073,707	19, 23, 24
8,398,546	1–18, 20–28
8,446,275	1, 2, 4, 5, 8, 9, 10, 13, 14, 15, 18, 19
8,529,811	1, 5, 6, 7, 16, 17
8,793,522	2

7. The Respondents' activities with respect to the importation into the United States, the sale for importation into the United States, and/or the sale within the United States after importation of certain wearable fitness and activity tracker devices, described more fully *infra*, are unlawful under 19 U.S.C. § 1337(a)(1)(B)(i) in that they constitute infringement of the valid and enforceable AliphCom and BodyMedia Patents.

8. Additionally, Respondents' have engaged in unfair competition and unfair acts by their access to Jawbone's trade secret confidential information, related to Jawbone's technology and wearable product development plans; roadmaps; and financial information related to Jawbone's wearable fitness devices. Among other things, Fitbit solicited and pursued Jawbone employees who have access to the company's highly proprietary confidential information, including related to product design and sourcing. Additionally, Flextronics, after receiving confidential information through its manufacturing and prototyping for Jawbone, utilized the same team members to manufacture Fitbit's devices and continued accessing Jawbone confidential material long after its relationship with Jawbone ended.

9. Complainants seek relief from the Commission in the form of a limited exclusion order excluding from entry into the United States activity tracking devices, systems, and components thereof that infringe the asserted patents. Complainants further seek a cease and

## **PUBLIC VERSION**

desist order halting the importation, sale, offer for sale, marketing, advertising, or soliciting of activity tracking devices, systems, and components thereof owned, held, or stored by the Respondents and their related companies that infringe the valid and enforceable AliphCom and BodyMedia Patents.

10. Complainants also seek relief from the Commission in the form of a limited exclusion order excluding from entry into the United States Respondents' activity tracking devices, systems, and components thereof that are designed, made, sourced, promoted, imported, and sold using Complainants' trade secrets. Complainants further seek a cease and desist order halting the importation, sale, offer for sale, marketing, advertising, or soliciting of activity tracking devices, systems, and components thereof owned, held, or stored by the Respondents and their related companies that are designed, made, sourced, promoted, imported, and sold using Complainants' trade secrets.

## **II. THE PARTIES**

### **A. Complainants**

11. Complainant AliphCom d/b/a Jawbone is a California corporation having its headquarters at 99 Rhode Island Street, 3rd Floor, San Francisco, CA 94103.

12. Complainant BodyMedia, Inc. is a Delaware corporation having its headquarters at Union Trust Building, 501 Grant Street, Suite 1075, Pittsburgh, PA 15219.

13. Jawbone is a world leader in the field of wearable technology. Jawbone's UP system – in connection with its UP trackers, including the UP Move, UP24, UP2, UP3, and UP4 – collects and provides personalized data about how consumers sleep, move and eat.

14. In April 2013, AliphCom acquired BodyMedia for over \$100 million and obtained the rights to BodyMedia's expansive patent portfolio in the field of wearable technology.

## PUBLIC VERSION

15. BodyMedia helped pioneer the development of wearable body monitors that collect physiological data for use in improving health, wellness and fitness. Founded in 1999, BodyMedia patented widely in the field of wearable technology.

16. Together, BodyMedia and Jawbone have almost three decades worth of technology, science and intellectual property around wearable trackers that allow consumers to measure their activity and set wellness goals.

17. Jawbone employs about 400 people, spread across Jawbone's San Francisco, Sunnyvale, Pittsburgh, Seattle, and New York facilities as well as overseas. Jawbone's operations include BodyMedia employees and research operations.

18. A presentation on the company profile of AliphCom d/b/a Jawbone is attached as Exhibit 1.

### **B. Respondents**

19. Complainants are informed and believe, and on that basis allege, that Respondent Fitbit, Inc. ("Fitbit") is a Delaware corporation with its headquarters at 405 Howard Street, San Francisco, CA 94105.

20. Fitbit is in the business of developing, manufacturing and selling wearable fitness and activity tracker devices. Fitbit markets the wearable fitness and activity tracker devices to consumers in the United States through major distribution chains like Best Buy, Wal-Mart, and various online resellers. *See* Exhibit 40 (Fitbit product photographs). Fitbit imports into the United States, sells for importation, and/or sells within the United States after importation certain wearable fitness and activity tracker devices that infringe the AliphCom and BodyMedia Patents.

21. Additional corporate information regarding Fitbit is attached as Exhibit 48 (Fitbit, Inc. Form S-1 Registration Statement).

## **PUBLIC VERSION**

22. Complainants are informed and believe, and on that basis allege, that Respondent Flextronics International Ltd. (“Flextronics International”) is a company organized under the laws of Republic of Singapore, having an address in the United States of 6201 America Center Drive, San Jose, CA 95002 and an address in Singapore of 2 Changi South Lane, Singapore 486123.

23. Complainants are informed and believe, and on that basis allege, that Respondent Flextronics Sales & Marketing (A-P) Ltd. (“Flextronics Sales”) is a company organized under the laws of Mauritius, having an address of Suite 802, St. James Court, St. Denis Street Port Louis, Mauritius.

24. Flextronics is a worldwide electronics design, fabrication, assembly, and test company, whose services include printed circuit board, metal, and plastics fabrication. Flextronics manufactures the Fitbit wearable fitness and activity trackers in at least its facility in Doumen, China.

### **III. THE PRODUCTS AT ISSUE**

25. Fitbit’s infringing products include the following wearable fitness and activity tracking devices and activity tracking device systems: (1) Fitbit Zip, (2) Fitbit One, (3) Fitbit Flex, (4) Fitbit Charge, (5) Fitbit Charge HR, (6) Fitbit Surge (collectively, the “Fitbit Infringing Products”). See Exhibits 42–47 (product manuals for the Fitbit Infringing Products). Fitbit’s Infringing Products are the kind of tracking devices sold in the market which can gather data on movement activity, sleep and other parameters. The infringing products—including the tracking devices, their associated systems, and components thereof—are further described in Exhibits 16-31 (infringement charts).

## PUBLIC VERSION

26. The Fitbit Infringing Products are imported into and sold within the United States by or on behalf of Fitbit. On information and belief, commercially significant volumes of the infringing products are maintained in inventory by Fitbit in the United States.

### IV. THE PATENTS AT ISSUE

#### A. U.S. Patent No. 8,446,275

##### i. Identification of the Patent and Ownership by AliphCom

27. AliphCom owns by assignment the entire right, title, and interest in the '275 patent entitled "General Health And Wellness Management And Apparatus For A Wellness Application Using Data From A Data-Capable Band," which issued on May 21, 2013. A certified copy of the '275 patent is attached as Exhibit 2.

28. Pursuant to Commission Rule 210.12(a)(9)(ii), a certified copy of the recorded assignment of the '275 patent to AliphCom is attached as Exhibit 9, and certified copies of all other recorded assignments of the asserted patents are attached as Exhibit 8. The recorded assignments attached as Exhibit 8 pertain to recording and releases of various security interests in the asserted patents, reflecting that all but one of the security interests have been released. The remaining unreleased security interest that bears on interests in the asserted patents is a security agreement attached as Exhibit 54C. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29. Pursuant to Commission Rule 210.12(c), a certified copy and three additional copies of the prosecution histories of the '275 patent, as well as four copies of the applicable pages from each technical reference cited in the prosecution history, are attached as Appendices A and B, respectively.

**PUBLIC VERSION**

**ii. Foreign Counterparts to the '275 Patent**

30. Pursuant to Commission Rule 210.12(a)(9)(v), Complainants submit the attached list of foreign patents, foreign patent applications (not already issued as a patent), and each foreign patent application that has been denied, abandoned, or withdrawn corresponding to the '275 patent. *See* Exhibit 15.

**B. U.S. Patent No. 8,529,811**

**i. Identification of the Patent and Ownership by AliphCom**

31. AliphCom owns by assignment the entire right, title, and interest in the '811 patent entitled "Component Protective Overmolding Using Protective External Coatings," which issued on September 10, 2013. A certified copy of the '811 patent is attached as Exhibit 3.

32. Pursuant to Commission Rule 210.12(a)(9)(ii), a certified copy of the recorded assignment of the '811 patent to AliphCom is attached as Exhibit 10, and certified copies of all other recorded assignments of the asserted patents are attached as Exhibit 8. The recorded assignments attached as Exhibit 8 pertain to recording and releases of various security interests in the asserted patents, reflecting that all but one of the security interests have been released. The remaining unreleased security interest that bears on interests in the asserted patents is a security agreement attached as Exhibit 54C. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

33. Pursuant to Commission Rule 210.12(c), a certified copy and three additional copies of the prosecution histories of the '811 patent, as well as four copies of the applicable pages from each technical reference cited in the prosecution history, are attached as Appendices C and D, respectively.

**PUBLIC VERSION**

**ii. Foreign Counterparts to the '811 Patent**

34. Pursuant to Commission Rule 210.12(a)(9)(v), Complainants submit the attached list of foreign patents, foreign patent applications (not already issued as a patent), and each foreign patent application that has been denied, abandoned, or withdrawn corresponding to the '811 patent. *See* Exhibit 15.

**C. U.S. Patent No. 8,793,522**

**i. Identification of the Patent and Ownership by AliphCom**

35. AliphCom owns by assignment the entire right, title, and interest in the '522 patent entitled "Power Management In A Data-Capable Strapband," which issued on July 29, 2014. A certified copy of the '522 patent is attached as Exhibit 4.

36. Pursuant to Commission Rule 210.12(a)(9)(ii), a certified copy of the recorded assignment of the '522 patent to AliphCom is attached as Exhibit 11, and certified copies of all other recorded assignments of the asserted patents are attached as Exhibit 8. The recorded assignments attached as Exhibit 8 pertain to recording and releases of various security interests in the asserted patents, reflecting that all but one of the security interests have been released. The remaining unreleased security interest that bears on interests in the asserted patents is a security agreement attached as Exhibit 54C. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37. Pursuant to Commission Rule 210.12(c), a certified copy and three additional copies of the prosecution histories of the '522 patent, as well as four copies of the applicable pages from each technical reference cited in the prosecution history, are attached as Appendices E and F, respectively.



**PUBLIC VERSION**

**ii. Foreign Counterparts to the '522 Patent**

38. Pursuant to Commission Rule 210.12(a)(9)(v), Complainants submit the attached list of foreign patents, foreign patent applications (not already issued as a patent), and each foreign patent application that has been denied, abandoned, or withdrawn corresponding to the '522 patent. *See* Exhibit 15.

**D. U.S. Patent No. 8,961,413**

**i. Identification of the Patent and Ownership by BodyMedia**

39. BodyMedia owns by assignment the entire right, title, and interest in the '413 patent entitled "Wireless Communications Device And Personal Monitor," which issued on February 24, 2015. A certified copy of the '413 patent is attached as Exhibit 5.

40. Pursuant to Commission Rule 210.12(a)(9)(ii), a certified copy of the recorded assignment of the '413 patent to BodyMedia is attached as Exhibit 12, and certified copies of all other recorded assignments of the asserted patents are attached as Exhibit 8. The recorded assignments attached as Exhibit 8 pertain to recording and releases of various security interests in the asserted patents, reflecting that all but one of the security interests have been released. The remaining unreleased security interest that bears on interests in the asserted patents is a security agreement attached as Exhibit 54C. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

41. Pursuant to Commission Rule 210.12(c), a certified copy and three additional copies of the prosecution histories of the '413 patent, as well as four copies of the applicable pages from each technical reference cited in the prosecution history, are attached as Appendices G and H, respectively.

## PUBLIC VERSION

### ii. Foreign Counterparts to the '413 Patent

42. Pursuant to Commission Rule 210.12(a)(9)(v), Complainants submit the attached list of foreign patents, foreign patent applications (not already issued as a patent), and each foreign patent application that has been denied, abandoned, or withdrawn corresponding to the '413 patent. *See* Exhibit 15.

### E. U.S. Patent No. 8,073,707

#### i. Identification of the Patent and Ownership by BodyMedia

43. BodyMedia owns by assignment the entire right, title, and interest in the '707 patent entitled "System For Detecting, Monitoring, And Reporting An Individual's Physiological Or Contextual Status," which issued on December 6, 2011. A certified copy of the '707 patent is attached as Exhibit 6.

44. Pursuant to Commission Rule 210.12(a)(9)(ii), a certified copy of the recorded assignment of the '707 patent to BodyMedia is attached as Exhibit 13, and certified copies of all other recorded assignments of the asserted patents are attached as Exhibit 8. The recorded assignments attached as Exhibit 8 pertain to recording and releases of various security interests in the asserted patents, reflecting that all but one of the security interests have been released. The remaining unreleased security interest that bears on interests in the asserted patents is a security agreement attached as Exhibit 54C. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

45. Pursuant to Commission Rule 210.12(c), a certified copy and three additional copies of the prosecution histories of the '707 patent, as well as four copies of the applicable

**PUBLIC VERSION**

pages from each technical reference cited in the prosecution history, are attached as Appendices I and J, respectively.

**ii. Foreign Counterparts to the '707 Patent**

46. Pursuant to Commission Rule 210.12(a)(9)(v), Complainants submit the attached list of foreign patents, foreign patent applications (not already issued as a patent), and each foreign patent application that has been denied, abandoned, or withdrawn corresponding to the '707 patent. *See* Exhibit 15.

**F. U.S. Patent No. 8,398,546**

**i. Identification of the Patent and Ownership by BodyMedia**

47. BodyMedia owns by assignment the entire right, title, and interest in the '546 patent entitled "System For Monitoring And Managing Body Weight And Other Physiological Conditions Including Iterative And Personalized Planning, Intervention And Reporting Capability," which issued on March 19, 2013. A certified copy of the '546 patent is attached as Exhibit 7.

48. Pursuant to Commission Rule 210.12(a)(9)(ii), a certified copy of the recorded assignment of the '546 patent to BodyMedia is attached as Exhibit 14, and certified copies of all other recorded assignments of the asserted patents are attached as Exhibit 8. The recorded assignments attached as Exhibit 8 pertain to recording and releases of various security interests in the asserted patents, reflecting that all but one of the security interests have been released. The remaining unreleased security interest that bears on interests in the asserted patents is a security agreement attached as Exhibit 54C. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## PUBLIC VERSION

49. Pursuant to Commission Rule 210.12(c), a certified copy and three additional copies of the prosecution histories of the '546 patent, as well as four copies of the applicable pages from each technical reference cited in the prosecution history, are attached as Appendices K and L, respectively.

### ii. Foreign Counterparts to the '546 Patent

50. Pursuant to Commission Rule 210.12(a)(9)(v), Complainants submit the attached list of foreign patents, foreign patent applications (not already issued as a patent), and each foreign patent application that has been denied, abandoned, or withdrawn corresponding to the '546 patent. *See* Exhibit 15.

### G. Non-Technical Description of the Patented Inventions<sup>1</sup>

51. The '413 patent, which was filed on May 16, 2006, and claims priority to a provisional application filed on June 16, 2000, relates to a system for tracking a user's sleep state, including sleep onset and wake information. The invention describes a wearable tracker with multiple sensors for collecting physiological and contextual data of the user. Based on the data collected by the tracker's sensors, the system determines the user's sleep-related information with a processing unit. This sleep-related information can then be communicated to another device using a transceiver.

52. The '707 patent, which was filed on October 11, 2005, and claims priority to a provisional application filed on June 16, 2000, relates to a system for detecting, monitoring and reporting physiological information about the user. The invention describes a tracker with multiple sensors for detecting a user's physiological data. This sensed data is then processed to

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<sup>1</sup> This section does not, and is not intended to, construe or limit the scope or meaning of the AliphCom and BodyMedia Patents or their claims.

## PUBLIC VERSION

determine physiological information about the user which can be reported to the user or third parties.

53. The '546 patent, which was filed on September 13, 2004, and claims priority to a provisional application filed on June 16, 2000, relates to a weight-loss system for nutrition and activity management. The system utilizes a wearable tracker with sensors for detecting the physiological and contextual data of the user. The user establishes a weight-loss goal and the system provides suggestions to the user for activities in which she or he should engage to achieve the goals set. The suggestions are based on the physiological and contextual data sensed by the wearable tracker. Data from the wearable tracker is also used to determine whether the user has complied with suggestions and make additional suggestions if needed.

54. The '275 patent, which was filed on April 23, 2012, and claims priority to a provisional application filed on April 3, 2011, relates to using a wearable tracker with sensors for detecting various data of the user to generate recommendations for health and wellness based on a target score derived from sensed characteristics.

55. The '811 patent, which was filed on March 22, 2012, and claims priority to a provisional application filed on June 10, 2011, relates to techniques for applying protective layers of external moldings on the electronic components of a wearable device.

56. The '522 patent, which was filed on July 11, 2011, and claims priority to a provisional application filed on June 11, 2011, relates to power consumption management for wearable devices. Specifically, the invention describes a power manager configured to control power consumption of a wearable device in different modes of operation.

### **H. Licensees**

57. Complainants are not relying upon any license to establish standing or satisfy the domestic injury requirement.

## **PUBLIC VERSION**

58. BodyMedia, Inc. granted a license to one or more of the asserted patents as further set out in Exhibit 53C.

### **V. THE DOMESTIC INDUSTRY**

59. There is a domestic industry as defined under 19 U.S.C. § 1337(a)(3)(A), (B), and/or (C), comprising continuing significant investments in plant and equipment, employment of labor and capital, and substantial investment in exploitation of the AliphCom and BodyMedia Patents.

#### **A. Complainants' Investments in the Domestic Industry**

60. Complainants engage in a broad range of qualifying domestic industry activities in the United States directed to articles protected by the AliphCom and BodyMedia Patents. These articles include the UP24, UP2, UP3, UP Move, and UP4 products (the "Domestic Industry Products"). As discussed below, the Domestic Industry Products each practice at least one valid claim of each Asserted Patent.

61. Complainants have made and continue to make significant and substantial investments in plant and equipment with respect to the Domestic Industry Products that practice the AliphCom and BodyMedia Patents. Those investments are dedicated to research, design, development, engineering, product support, manufacturing support, software and firmware development, testing, and various customer support activities focused on the Domestic Industry Products.

62. Complainants have made and continue to make significant and substantial investments in labor and capital with respect to the Domestic Industry Products. Those investments in labor and capital are dedicated to research, development, design, engineering, product support, manufacturing support, software and firmware development, testing, and various customer support activities focused on the Domestic Industry Products.

## PUBLIC VERSION

63. Complainants further engage in exploitation of the AliphCom and BodyMedia Patents through their substantial domestic investments in engineering and research and development activities directed to the Domestic Industry Products that practice the AliphCom and BodyMedia Patents. These activities include, *inter alia*, engineering, research and development, and design tied to the claimed technology implemented in hardware, software, and firmware in the Domestic Industry Products. These activities have occurred in the past and are ongoing with respect to future versions of Complainants' products currently under development.

64. Complainants' technical activities directed to the Domestic Industry Products take place at several locations in the United States, principally San Francisco and Sunnyvale, California, but also Seattle, Washington, New York, New York, and Pittsburgh, Pennsylvania.

65. Complainants' investments and activities are significant and substantial both in absolute terms and relative to Complainants' overall operations, taking into account the nature of such expenditures in the wearable fitness and activity tracker devices industry in general.

66. Complainants' investments and activities are important to the protected articles and represent significant domestic added value, particularly where the protected articles are substantially designed and developed domestically. Moreover, Complainants' investments and activities are significant and substantial in the context of comparable products, the company's overall investments, and the relevant marketplace.

67. Complainants' foreign product-related investments and activities related to the Domestic Industry Products are relatively small compared to Complainants' domestic activities.

68. The activities described above are explained in detail in the Declaration of Michael Luna, attached as Exhibit 49C (Confidential). The investments described above are set forth in the Declaration of David Merenbach, attached as Exhibit 50C (Confidential).

## **PUBLIC VERSION**

### **B. Complainants' Practice of the Complainants' Patents**

69. Complainants' products practice many of the claims of the '413, '707, '546, '275, '811, and '522 patents. Claim charts showing at least one representative claim of each patent practiced by at least one Domestic Industry Product are attached as Exhibits 32 through 39.

### **VI. SPECIFIC INSTANCES OF IMPORTATION AND SALE**

70. Respondents import, sell for importation, and/or sell within the United States after importation infringing wearable fitness and activity tracker devices. The specific instances of importation of infringing wearable fitness and activity tracker devices set forth below are illustrative and non-exhaustive examples of the Respondents' unlawful importation of infringing products.

71. Photographs of exemplary Fitbit Products offered for sale by and purchased from retailers in the United States are attached as Exhibit 40.

72. The Infringing Products are manufactured outside the United States by Respondent Flextronics in at least its facility in Doumen, China. The Infringing Products are then imported into the United States by or on behalf of, sold for importation into the United States by or on behalf of, and/or sold within the United States after importation by or on behalf of Respondents.

73. An exemplary Fitbit Surge, Charge, ChargeHR, Flex, One, Zip were sold in the United States on May 26, 2015, as shown on Exhibit 41 (Amazon.com Receipt). According to their product packaging and labels, these exemplary Fitbit products were all manufactured in China. *See* Exhibit 40.

74. Complainants believe that the Fitbit Infringing Products fall under one or more of the following classifications of the Harmonized Tariff Schedule ("HTS") of the United States: Heading Nos. 9029.20.3890, 9031.80.8085. These HTS identifications are illustrative and not



## **PUBLIC VERSION**

exhaustive. The identifications are not intended to limit the scope of the Investigation, nor are they intended to restrict the scope of any exclusion order or other remedy ordered by the Commission.

### **VII. UNLAWFUL AND UNFAIR ACTS COMMITTED BY THE RESPONDENTS**

#### **A. Unfair Acts of Patent Infringement**

75. The Respondents unlawfully sell for importation, import, and/or sell after importation into the United States certain wearable fitness and activity tracker devices and systems that infringe the AliphCom and BodyMedia Patents. Based on information discovered through investigation, the Respondents infringe, literally or under the doctrine of equivalents, at least: claims 1, 2, 3, 5, 7, 8, 9, 11, 12 of the '413 patent; claims 19, 23, 24 of the '707 patent; claims 1–18, 20–28 of the '546 patent; claims 1, 2, 4, 5, 8, 9, 10, 13, 14, 15, 18 of the '275 patent; claims 1, 5, 6, 7, 16, 17 of the '811 patent; and claim 2 of the '522 patent. Attached as Exhibits 16 through 31 are claim charts that show how exemplary Fitbit Infringing Products infringe exemplary claims of the AliphCom and BodyMedia Patents.

76. The Respondents infringe the AliphCom and BodyMedia Patents pursuant to 35 U.S.C. § 271(a), (b), (c), and (g). Fitbit Infringing Products infringe upon importation into the United States. The Respondents directly infringe the AliphCom and BodyMedia Patents through the operation, development, and/or testing, and/or by offering for sale and/or selling the infringing articles in the United States.

77. The Respondents have had actual notice of their infringement of the AliphCom and BodyMedia Patents prior to the filing of this Complaint and in no event, later than the service of this Complaint.

## PUBLIC VERSION

78. Respondent Fitbit became aware of the '707, '275 and '546 patents on June 10, 2015, when Complainants filed suit in the United States District Court for the Northern District of California, as further described in paragraph 118 below, alleging infringement of U.S. Patent Nos. 8,446,275, 8,073,707, and 8,398,546. Respondents are continuing to import Fitbit Infringing Products since June 10, 2015.

79. Respondent Fitbit became aware of the '413, '811 and '522 patents on July 3, 2015, when Complainants filed a First Amended Complaint in the United States District Court for the Northern District of California, alleging infringement of U.S. Patent Nos. 8,961,413, 8,529,811, and 8,793,522. Respondents are continuing to import the Fitbit Infringing Products since July 3, 2015.

80. The Respondents knowingly induce others in the United States to use products covered by the AliphCom and BodyMedia Patents and to perform methods covered by certain claims of the AliphCom and BodyMedia Patents. For example, Fitbit markets its products to consumers online and in other materials. Fitbit includes instructions for users on its website and its dashboard application. Consumers directly infringe after being induced by Respondents to do so.

81. With knowledge and intent to induce direct infringement of the AliphCom and BodyMedia Patents, the Respondents have and will aid and abet infringement by instructing the purchaser or user of an accused device to use that device in an infringing manner.

82. The Respondents also contributorily infringe the AliphCom and BodyMedia Patents. The Respondents sell or offer to sell within the United States or import into the United States devices that constitute a component and material part of the invention claimed by the AliphCom and BodyMedia Patents. The Respondents know such devices to be especially made

## PUBLIC VERSION

or especially adapted for uses that infringe the AliphCom and BodyMedia Patents. These infringing articles are not staple articles or commodities of commerce suitable for substantial noninfringing use.

83. The devices that infringe pursuant to 35 U.S.C. § 271(b) or (c), directly infringe upon importation. Acts of direct infringement occur prior to importation through, for example, testing or evaluation of the device, such that the device is infringing upon importation.

84. Attached as Exhibit 42–47 are the Fitbit user manuals for the Infringing Products. Fitbit also publishes help articles and answers to frequently asked questions on its website at <https://help.fitbit.com>. Fitbit also publishes the “Fitbit API” on its website at <https://wiki.fitbit.com/display/API/Fitbit+API>, which is a set of protocols that can be used to read and write data for a user’s tracker collections, profile data, social resources, fetch status of devices and statistical data. These materials induce infringement of the AliphCom and BodyMedia Patents.

### **B. Unfair Acts of Trade Secret Misappropriation**

85. Respondents have engaged unfair methods of competition and unfair acts of trade secret misappropriation by gaining confidential information of Jawbone through the acquisition of Jawbone employees and by engaging in work for Jawbone.

86. Fitbit pursued and poached employees from Jawbone – who have confidential knowledge of the company’s wearable device business – in an effort to solicit trade secret information from them.

87. Beginning in early 2015, Fitbit recruiters contacted an estimated 30 percent of Jawbone’s workforce – a campaign intended by Fitbit to short circuit conducting its own research and investing in its own development of new wearable technology. Fitbit succeeded in luring five Jawbone employees, who brought with them highly valuable confidential information

## PUBLIC VERSION

about among other things: Jawbone's current and projected business plans, products and technology with respect to wearable devices; the positioning of Jawbone's current and future technologies and products to the anticipated path of the market; Jawbone's supply chain, gross margins, product lineup (both current and future), product target costs, vendor contacts, product analysis, market trends and predictions.

88. Jawbone took and continues to take reasonable steps to safeguard the confidentiality of its trade secret proprietary information. Jawbone employees are subject to Confidentiality Agreements that require them to hold in strictest confidence, and not use, except for the benefit of the company:

[C]onfidential information, proprietary information, technical data, trade secrets or knowhow, including, but not limited to, information related to research, product plans, products, services, customers, customer lists and other customer data (including, but not limited to, information concerning customers on whom I called or with whom I became acquainted during my employment), markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, personnel, business plans, strategic plans, or other business information disclosed to me by the Company, either directly or indirectly in writing, orally or by drawings or observation of parts or equipment, or developed by me, solely or jointly with others.

Exhibit 51 (Confidentiality Agreement) at 1.

89. Additionally, Jawbone employees agree that they will "not copy, delete, or alter any information contained" in their Company computer or Company equipment before returning it to Company.

90. Jawbone has detailed confidentiality policies that are set forth in its Employee Handbook. The Employee Handbook provides that:

The security of the Company's property is of vital importance. The Company's property includes not only tangible property, like desks and computers, but also intangible property such as source code

## PUBLIC VERSION

and all other intellectual property. All employees are responsible for ensuring that proper security is maintained at all times. Proprietary information includes all information relating in any manner to the business of the Company and its affiliates, consultants, users and business associates that is produced or obtained by Company.

...

Protecting our Company's information is the responsibility of every employee, and we all share a common interest in making sure information is not improperly or accidentally disclosed. Do not discuss the company's confidential business or proprietary business matters, or share confidential, personal employee information with anyone who does not work for us such as friends, family members, members of the media, or other business entities.

(Employee Handbook at 10, 16.)

91. The Employee Handbook specifically notes that “[e]mployees must not copy, use, or transfer proprietary materials of the Company or others without appropriate authorization.”  
(*Id.* at 14-15.)

92. In addition, Jawbone established an IT Information Security Policy, which among other things, instructed employees not to send work-related emails on non-Jawbone email accounts. Exhibit 52 (IT Information Security Policy) at 1.

93. Jawbone took extensive steps to maintain its trade secret and proprietary information. Nonetheless, the employees poached by Fitbit acted against the interests of Jawbone and their obligations to maintain confidential trade secret information.

94. For example, Patricio Romano, had served as a Product Design Engineer and worked at Jawbone since 2013. His position provided him access to the mechanical and industrial design of Jawbone's fitness trackers; its product pipeline; prototypes; the prices and relative merits of component parts; and strategic design considerations. Mr. Romano had virtually unfettered access to confidential information at Jawbone including, but not limited to, the designs and production methods for Jawbone's fitness tracker, headset and audio products;

## **PUBLIC VERSION**

Jawbone's product pipeline, prototypes, the prices and relative merits of component parts; and strategic design considerations and decisions that would chart the course of Jawbone's business.

95. On or around March 17, 2015, Mr. Romano went to work for Fitbit. After already accepting a position at Fitbit, but before giving notice of his decision to leave Jawbone, Mr. Romano accessed his Jawbone computer and used a portable USB storage device to remove word processing documents, spreadsheets and other media from Jawbone's premises. Mr. Romano used a forensic wiping tool called CCleaner on his work computer, and on his last day of employment with Jawbone, Mr. Romano manually deleted certain automatically generated file logs that would otherwise indicate what kind of activity Mr. Romano had conducted on his work computer, and manually altered the system's date and time to facilitate the concealment of his illicit activities.

96. In violation of his confidentiality and computer use obligations, Mr. Romano routinely sent confidential information from his Jawbone email account to his own personal email account while he was employed at the company.

97. Mr. Romano had detailed knowledge of at least the following trade secrets which he brought with him to Fitbit: details of Jawbone's manufacturing process and capabilities; design files for the UP Move, UP2, UP3 and UP4 wearable devices; component lists for the UP Move, UP2, UP3 and UP4 wearable devices; manufacturing methods for the UP Move, UP2, UP3 and UP4 wearable devices; costs for development and production of the UP Move, UP2, UP3 and UP4 wearable devices; technical specifications for the UP Move, UP2, UP3 and UP4 wearable devices; design files for Jawbone's potential future products; release schedule for Jawbone's potential future products; features and specifications being considered for inclusion in

## PUBLIC VERSION

Jawbone's new wearable product; manufacturing partners and processes under consideration for Jawbone's new wearable product.

98. Two other employees at issue played integral roles in assessing research and intellectual property relating to consumer experiences in the fitness tracker industry. Katherine Mogal began working for Jawbone on or around August 5, 2013, as the Director of Market and Customer Experience Insights and was involved with every aspect of Jawbone's business, ranging from product development to customer service to Jawbone's corporate wellness program. Similarly, Ana Rosario began working for Jawbone on or around May 19, 2014, in Design & User Researcher/Customer Experience. Both Ms. Mogal and Ms. Rosario had access to valuable confidential information including, but not limited to, studies commissioned by Jawbone, customer perceptions of Jawbone as compared to Fitbit, pricing information and analyses, Jawbone's financial health, Jawbone's product development pipeline and product strategy over the next several years, and senior executive and management decisions regarding key aspects of Jawbone's business.

99. Fitbit hired Ms. Mogal on March 16, 2015, to become Head of User Experience Research — a newly created position at Fitbit — which was intended to compete directly with Jawbone's parallel position. Shortly after, on April 22, 2015, Ms. Rosario gave notice to Jawbone that she intended to leave to work under Ms. Mogal at Fitbit as a Senior User Experience Researcher, despite Ms. Mogal signing a confidentiality agreement that for twelve months following her departure from Jawbone, she would not "solicit, induce, recruit or encourage, or attempt to solicit, induce, recruit or encourage any Company employee or consultant to terminate his, her or its employment or consulting relationship with the Company." See Exhibit 51 (Confidentiality Agreement) at 4.

## PUBLIC VERSION

100. Prior to her departure, Ms. Rosario asked for a one-on-one meeting with Jawbone's Senior Director of Product Management — wherein she pressed for several hours for a detailed roadmap regarding Jawbone's future plans, products, projections and understanding of the future of the wearables market. During the meeting, Ms. Rosario also secured access to a highly confidential "Market Trends & Opportunities" presentation, which set forth this information in detail, and she then impermissibly downloaded it to her personal computer in clear violation of company policy.

101. Ms. Mogal and Ms. Rosario had detailed knowledge of at least the following trade secrets which they brought with them to Fitbit: demographic studies regarding buyers of Jawbone products; the details and structure of Jawbone's corporate wellness program; customer feedback regarding Jawbone's corporate wellness programs; customer complaints; the number of active users of Jawbone's products; detailed information regarding how shoppers view wearable devices and what factors make them buy such devices; the results of studies regarding Jawbone's competitive standing, including customer perceptions and evaluations of Jawbone's products; development timelines and other details for new device interaction options in Jawbone products; development timelines and other details for Jawbone's potential future products; future capabilities of Jawbone's sensor technology; plans for the evolution of Jawbone's proprietary software; Jawbone's plan to compete directly with Fitbit by creating new platforms for user engagement; Jawbone's proprietary methods for testing its products, collecting user information and analyzing user information; the results of studies comparing consumer perceptions of Jawbone and Fitbit software applications; the results of studies about how users perceived the differences between Jawbone's and Fitbit's physical products.



## PUBLIC VERSION

102. Fitbit recruited Rong “Audrey” Zhang on April 2, 2015. Ms. Zhang had joined Jawbone in August 2012 as a Cost Accounting Manager, and became a Senior Supply Chain Manager on October 2013. In those capacities, Ms. Zhang had access to Jawbone’s confidential information relating to the company’s supply chain, including Jawbone’s manufacturing capabilities, vendor relationships, product development strategy, component pricing information, cost of goods sold, distribution, inventory, and supply chain liability. Before her departure, Ms. Zhang had downloaded confidential information from Jawbone’s premises to her personal USB device.

103. Ms. Zhang had detailed knowledge of at least the following trade secrets which she brought with her to Fitbit: Costing structure for each of Jawbone’s products; Jawbone’s cost reduction strategies for existing and future products; the pricing and terms Jawbone offers its distribution channels; Jawbone’s account receivable balances; Jawbone’s liabilities to vendors; Jawbone’s inventory; Jawbone’s vendor relationships; Jawbone’s product development strategy; and development timelines for Jawbone products.

104. Jawbone’s confidential and trade secret information included substantial amounts of data about how Jawbone could competitively position itself relative to the rest of the market, and Fitbit and Jawbone are direct competitors. Because the poached employees are now working for Fitbit in job capacities that implicate the use of the confidential information they obtained working for Jawbone, the poached employees have misappropriated Jawbone’s trade secret information and threaten to continue to do so as long as they remain employed by Fitbit.

105. In addition, because the poached employees removed confidential and trade secret information when they left Jawbone, they are in a position to disclose that confidential and trade secret information to Fitbit whenever expedient to the performance of their job functions.

## PUBLIC VERSION

106. Taken in total, Fitbit's conduct in soliciting and recruiting Jawbone's employees – who left the company with confidential information related to Jawbone's wearable business – constitutes unfair methods of competition in connection with Fitbit's imported wearable line.

107. Fitbit's efforts to absorb the knowhow and skill of its competitor's employees underscore the valuable investment Jawbone has made in its domestic industry, specifically its ongoing research and development related to wearable fitness trackers.

108. Flextronics – the manufacturer of the Fitbit Infringing Products – engaged in additional unfair acts designed to utilize Jawbone's trade secret information for the benefit of Fitbit.

109. Flextronics previously served as the manufacturer for Jawbone devices. Specifically, Flextronics manufactured a version of the original Jawbone UP product following a 2013 agreement between Flextronics and Jawbone. In early 2014, Jawbone commissioned Flextronics to build the prototypes for Jawbone's UP2 and UP3 products utilizing Jawbone's trade secrets and confidential proprietary information. However, Jawbone did not select Flextronics as the ultimate manufacturer for those products.

110. In the course of its relationship with Jawbone, Flextronics received trade secret information regarding Jawbone's products related to among other things the mechanical structure of Jawbone's products; product design specifications and layout documentation of Jawbone devices; component parts and suppliers; fabrication processes; design and product validation; manufacturing techniques; and component procurement and purchasing.

111. Jawbone took reasonable steps to maintain the confidentiality of its trade secrets, including by requiring Flextronics to execute several Non-Disclosure Agreements. Pursuant to those NDAs, Flextronics was required to "take all precautions to protect such Confidential

## PUBLIC VERSION

Information as the Recipient employs with respect to its most confidential materials” and was specifically prohibited from sharing such information with third parties. Additionally, Flextronics was required under its Non-Disclosure Agreements to return or destroy Jawbone confidential information.

112. Jawbone shared highly valuable information with Flextronics for the limited purpose of manufacturing devices and building prototypes. Among other things, Jawbone provided Flextronics with design specifications and access to a database of confidential documents. Flextronics had a duty to keep that information confidential.

113. Although Flextronics stopped making products for Jawbone after its prototyping in the first half of 2014, Flextronics employees continued to access Jawbone’s database of confidential documents as late as March 27, 2015. In fact, Jawbone’s records reflect that Flextronics employees accessed the Jawbone database on numerous occasions in 2015 – long after Flextronics’ relationship with Jawbone ended. Flextronics had no legitimate business purpose for accessing Jawbone’s information.

114. Jawbone’s records reveal that one of the Flextronics employees who accessed the Jawbone database five times in the first quarter of this year was a Technical Program Manager who, according to his own publicly available profile, had responsibility for leading engineering teams in the development of Jawbone *and* Fitbit wearable products.

115. Flextronics’ decision to utilize the same technical program manager and teams for Jawbone and Fitbit manufacturing, along with its access of Jawbone confidential information long after there could be any legitimate purpose for doing so, further demonstrate that Jawbone’s trade secrets have been improperly misappropriated.

PUBLIC VERSION

**C. Substantial Injury and Threat of Substantial Injury to Complainants' Domestic Industry**

116. Respondents' access to Complainants' trade secrets will provide Fitbit with significant competitive advantages, and substantially irreparably injure and threaten Complainants' domestic industry pursuant to Section 337(a)(1)(A)(i) at least as follows:

- (i) Diminished secrecy and confidentiality of Complainants' trade secrets, and by extension diminished competitive advantage over Respondent Fitbit formerly enjoyed by Complainants.
- (ii) Loss to a key competitor of strategic information about Complainants' current and future technologies and products, and valuable and confidential information regarding anticipated paths to market; gross margins, product lineup, pricing, product target costs, vendor contacts, product analysis, and market trends and predictions.
- (iii) Loss to a key competitor of valuable and confidential technical information, including mechanical and industrial design information, product pipelines, prototyping, tradeoffs, and strategic design considerations.
- (iv) Loss to a key competitor of Complainants' valuable and confidential information relating to every aspect of Complainants' supply chain, including Complainants' manufacturing capabilities, vendor relationships, product development strategy, component pricing information, cost of goods sold, distribution, inventory, and supply chain liability.
- (v) Corresponding follow-on damage to Complainants' competitive position as Respondent Fitbit continues to unlawfully use the misappropriated

## **PUBLIC VERSION**

information, including price suppression and erosion, loss of market share, damage to Complainants' reputation, loss of first mover advantage for products under development about which Fitbit now knows through its unfair acquisition of Complainants' key employees, and likely other damage that will become clear the longer that Respondent Fitbit possesses and uses Complainants' confidential and valuable trade secret information.

117. Complainants further submit the following materials per 19 C.F.R. sec. 210.12(a)(8) to supports their allegations concerning the existence of a threat and effect to destroy or substantially injure their domestic industry:

- (a) Declaration of Michael Luna, attached as Exhibit 49C;
- (b) Declaration of David Merenbach, attached as Exhibit 50C;
- (c) Exhibit 55C, which includes financial information about quarterly unit sales, revenues, average sales prices, and product mix percentages for the Complainants' domestic industry and other products during the 2014 calendar year.

### **VIII. RELATED LITIGATION**

118. All of the asserted AliphCom and BodyMedia Patents are currently the subject of patent litigation in the United States District Court for the Northern District of California. Complainants filed suit against Fitbit on June 10, 2015, alleging that Fitbit is liable for infringement of the AliphCom and BodyMedia Patents pursuant to 35 U.S.C. § 271. The case number is 3:15-cv-02579-HSG. An Amended Complaint was filed on July 3, 2015.

119. Certain of Jawbone's allegations of trade secret misappropriation are currently the subject of litigation in California Superior Court, San Francisco County (San Francisco). Jawbone sued Fitbit on May 27, 2015, alleging that Fitbit systematically plundered confidential

## **PUBLIC VERSION**

information by hiring Jawbone employees who improperly downloaded sensitive materials shortly before leaving. The claims of misappropriation of trade secrets and unfair competition are brought under California law. The case number is CGC15-546004.

120. The 8,073,707 patent was subject to reexamination proceedings in the Patent and Trade Mark Office as to claims 1-18, 20-22 and 25-43. All original claims subject to reexamination (1-18, 20-22) and all new claim 25-43 stand rejected and are the subject of an appeal before the Court of Appeals for the Federal Circuit. The asserted claims of the '707 were not part of the reexamination proceeding.

121. There is no other litigation or administrative proceedings related to the subject matter of this complaint.

### **IX. RELIEF REQUESTED**

WHEREFORE, by reason of the foregoing, Complainants respectfully requests that the United States International Trade Commission:

- (a) institute an immediate investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to the Respondents' violations of that section based on the importation into the United States, sale for importation, and/or the sale within the United States after importation of Respondents' products that infringe the asserted patents and/or are designed, sourced, made, promoted, imported, and sold using Complainants' trade secrets;
- (b) set a target date of no more than fifteen months;
- (c) schedule and conduct a hearing on permanent relief pursuant to 19 U.S.C. § 1337(c) for the purposes of receiving evidence and hearing argument concerning whether there has been a violation of Section 337, and following the hearing, to determine that there has been a violation of Section 337;

**PUBLIC VERSION**

- (d) issue a limited exclusion order, pursuant to 19 U.S.C. § 1337(d) forbidding entry into the United States of Respondents' activity tracking devices, systems, and components thereof that infringe one or more claims of United States Patent Nos. 8,961,413, 8,073,707, 8,398,546, 8,446,275, 8,529,811, and 8,793,522, and/or are designed, sourced, made, promoted, imported, and sold using Complainants' trade secrets;
- (e) issue a cease and desist order, pursuant to 19 U.S.C. § 1337(f), prohibiting the Respondents and their related companies from engaging in the importation, sale for importation, marketing, distribution, offering for sale, the sale after importation of, or otherwise transferring within the United States of Respondents' activity tracking devices, systems, and components thereof that infringe one or more claims of United States Patent Nos. 8,961,413, 8,073,707, 8,398,546, 8,446,275, 8,529,811, and 8,793,522, and/or are designed, source, made, promoted, imported, and sold using Complainants' trade secrets;
- (f) issue such other and further relief as the Commission deems just and proper under the law, based upon the facts determined by the investigation and the authority of the Commission.

Dated: July 7, 2015

Respectfully submitted,



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**PUBLIC VERSION**

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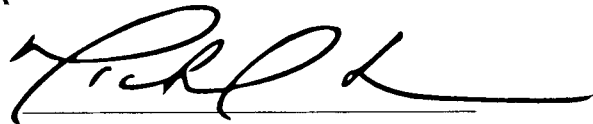
### VERIFICATION OF COMPLAINT

I, Michael Luna, declare, in accordance with 19 C.F.R. §§ 210.4 and 210.12(a), under penalty of perjury that the following statements are true:

1. I am the Chief Technology Officer at Aliphcom d/b/a Jawbone, and am duly authorized to sign this complaint on behalf of Complainant;
2. I have read the complaint and am aware of its contents;
3. The complaint is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the investigation or related proceedings;
4. To the best of my knowledge, information and belief founded upon reasonable inquiry, the claims and legal contentions of this complaint are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
5. The allegations and other factual contentions in the complaint have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **July 6, 2015 at San Francisco, CA**

A handwritten signature in black ink, appearing to read 'Michael Luna', written over a horizontal line.

Michael Luna  
Chief Technology Officer  
Aliphcom d/b/a Jawbone