

Fitness Co. Seeks Ban On Nautilus Elliptical Machine Imports

By **Tiffany Hu**

Law360 (April 16, 2019, 5:07 PM EDT) -- Fresh off a loss at the Fifth Circuit, Icon Health & Fitness Inc. has filed a complaint with the U.S. International Trade Commission seeking to block Nautilus Inc. from selling elliptical machines imported from China, according to a notice to be published Wednesday in the Federal Register.

The ITC said it received an April 11 complaint from Icon requesting an investigation into Nautilus' imported elliptical machines, which Icon claims infringe two of its elliptical machine patents. The complaint, which also goes after Chinese manufacturer ZheJiang Lixuan Health Technology Co. Ltd., comes on the heels of the Fifth Circuit's decision last month to deny Icon's bid to rehear a suit accusing it of infringing Nautilus' patent for a Chinese elliptical machine, with the court upholding a \$1.8 million judgment against Icon.

The commission said that it was now allowing the public to submit comments on any public interest issues stemming from the complaint, saying that the comments should explain how the requested relief would impact public health or economic conditions in the U.S.

"Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the Federal Register," the filing reads.

According to Icon's complaint, ZheJiang manufactured the allegedly infringing elliptical machines and imported them into the U.S., and Nautilus would then sell them.

Icon alleged that Nautilus has induced ZheJiang to infringe Icon's patents by telling the Chinese manufacturer to make the allegedly infringing machines and also encouraged customers to infringe the patents by instructing them how to use the machines.

Icon is now seeking a permanent ban on Nautilus, ZheJiang and their subsidiaries from importing and selling the allegedly infringing machines in the U.S.

Nautilus first sued Icon in January 2016, accusing it of breaching their licensing agreement by refusing to pay a 5% royalty on gross sales for elliptical machines that used its patents. Icon filed a counterclaim a month later, and in March 2017 Icon and Nautilus filed dueling summary judgment motions.

Nautilus won the \$1.8 million judgment in January 2018, when U.S. District Judge Royce Lamberth ruled

Icon infringed on Nautilus' Chinese patent by including an assembly instruction manual with its machines that used the patent. By including the manual, Icon had effectively manufactured the infringing products, the judge ruled.

Because it infringed the patent, Judge Lamberth ruled that Icon owed Nautilus the royalty payments. Icon appealed, and in February a Fifth Circuit panel affirmed the decision, rejecting Icon's argument that a "gap" in Chinese infringement law made its sale of the machines from China legal.

An attorney for Icon declined to comment Tuesday. A representative for Nautilus did not immediately respond to a request for comment.

Icon is represented by Daniel E. Yonan, Jonathan Tuminaro and Kristina Kelly of Sterne Kessler Goldstein & Fox PLLC and Charles S. Barquist, David R. Wright, Taylor J. Wright, Alexis K. Juergens and Tyson K. Hottinger of Maschoff Brennan.

Counsel information for the other parties was not immediately available Tuesday.

The investigation is Certain Cardio-Strength Training Magnetic-Resistance Cable Exercise Machines and Components Thereof, investigation number DN 3380, before the U.S. International Trade Commission.

--Additional reporting by Mike Curley. Editing by Adam LoBelia.