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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding.	91241672
Applicant	Defendant Peloton Interactive, Inc.
Other Party	Plaintiff Move Press, LLC
Have the parties held their discovery conference as required under Trademark Rules 2.120(a)(1) and (a)(2)?	No

### **Motion for Suspension in View of Civil Proceeding With Consent**

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, Peloton Interactive, Inc. hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Peloton Interactive, Inc. has secured the express consent of all other parties to this proceeding for the suspension and resetting of dates requested herein.

Peloton Interactive, Inc. has provided an email address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address of record by Email on this date.

Respectfully submitted,

/Eric Ball/

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06/26/2018

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 7

8 **UNITED STATES DISTRICT COURT**  
 9 **CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION**

10 No. 2:18-cv-1686

11 Move Press, LLC, a Delaware lim-  
 12 ited liability company,

13 Plaintiff,

14 v.

15 Peloton Interactive, Inc., a Delaware  
 16 corporation,

17 Defendant.

Complaint for Damages and Equitable Relief  
 for (1) Infringement of a Registered Trade-  
 mark (15 U.S.C. § 1114); (2) Unfair Compe-  
 tition (15 U.S.C. § 1125(a)); (3) Unfair Com-  
 petition under California Law (Cal. Bus. &  
 Prof. Code, §§ 17200 et seq.); (4) California  
 False Advertising Law (Bus. & Prof. Code,  
 §§ 17500 et seq.); and (5) Cancellation of  
 Defendant’s Trademark Registrations

Jury Trial Demanded

18 Plaintiff Move Press, LLC for its complaint against Peloton Interactive, Inc. al-  
 19 leges:

20 **FIRST CLAIM FOR RELIEF**

21 **INFRINGEMENT OF FEDERALLY REGISTERED TRADEMARK**

22 **A. Subject Matter Jurisdiction**

- 23 1. This claim for relief arises under the Lanham Act, 15 U.S.C. §§ 1051-1127.  
 24 2. This court has subject matter jurisdiction over this claim for relief under 28  
 25 U.S.C. § 1338, 15 U.S.C. § 1121(a) and other federal statutes.  
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1 **B. The Parties, Personal Jurisdiction and Venue**

2 3. Plaintiff Move Press, LLC (“Move Press”) is a Delaware limited liability  
3 company with its principal place of business at 416 Bryant Circle, Ojai, CA 93023 in  
4 this district.

5 4. Defendant Peloton Interactive, Inc. (“Defendant”) is a Delaware corpora-  
6 tion with its principal place of business at 125 West 25th Street, New York, New  
7 York.

8 5. Defendant sells exercise bikes and offers online, live and on-demand bicy-  
9 cle exercise classes. Defendant offers those goods and services throughout the United  
10 States and in this district through its websites at <http://www.pelotoncycle.com/> and  
11 <https://www.onepeloton.com/>. Defendant also has showrooms in Los Angeles and Or-  
12 ange counties, California. It also advertises in various national media and directs the  
13 advertising to California.

14 6. This court has personal jurisdiction over Defendant because it does business  
15 in California in this district

16 7. Venue is proper in this district under to 28 U.S.C. §§ 1391(b) and (c)) be-  
17 cause it is a corporate defendant doing business in California and the district.

18 8. Move Press owns United States Trademark Registration No. 4,839,443 (Oc-  
19 tober 27, 2015) for the trademark PELOTON for “Magazines featuring cycling, racing,  
20 food, travel, clothing, shoes, sports equipment, sports apparel, health, nutrition, film,  
21 and photography,” and “providing on-line magazines in the field of cycling, racing,  
22 food, travel, clothing, shoes, sports equipment, sports apparel, health, nutrition, film,  
23 and photography” and United States Trademark Registration No. 3,999,969 (July 19,  
24 2011) for the trademark PELOTON for “magazines in the field of bicycles.”

25 9. Move Press has been using the trademark PELOTON for those magazines  
26 since August 2010. Since then, the magazines have been distributed in print and digi-  
27 tally throughout the United States including in New York, and worldwide.  
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1 10. Move Press's PELOTON magazine contains articles about bicycles, bicycle  
2 riding, cycling equipment, races, new cycling technology, training, nutrition, inter-  
3 views with cyclists, and cycling apparel, amongst other topics.

4 11. Since Move Press's introduction of its PELOTON magazine, the magazine  
5 has grown in national and international popularity and scope.

6 12. Move Press sells promotional apparel and goods with the mark PELOTON,  
7 including but not limited to outerwear, hats, exercise apparel, and mugs.

8 13. Move Press has an online TV channel and a digital magazine with the mark  
9 PELOTON.

10 14. Move Press owns the following domain names that currently use or will use  
11 the mark PELOTON: Getpeloton.pro, peloton-e.com, Peloton.tv, Pelotonaustralia.com,  
12 Pelotonaustralia.pro, Pelotondirect.pro, Pelotondirect.com, Pelotonmagazine.com, Pel-  
13 otonmagazine.pro, Pelotonmagazine.tv, Pelotonpresents.com, Pelotonproducts.pro,  
14 Pelotonrenew.com, Pelotonshop.com, Pelotonshop.pro, Pelotonstore.com, Peloton-  
15 store.pro, Pelotonsubscribe.com, Pelotonsubscribe.pro, Pelotontv.com, Visitpelo-  
16 ton.com

17 15. Defendant operates its business using the identical mark PELOTON.

18 16. Defendant owns United States trademark registration No. 4,580,888 for the  
19 mark PELOTON for the following goods and services. The date Defendant claims it  
20 first used the mark for each class of goods or services follows the description of the  
21 goods:

22 Computers and downloadable software for monitoring and analyzing  
23 various parameters associated with the operation of a bicycle or exercise  
24 cycle and for fitness training; ear phones; digital media, namely, down-  
25 loadable audio and audiovisual recordings, all in the field of exercise, fit-  
26 ness, wellness and personal development; downloadable software in the  
27 nature of an application for use by individuals participating in exercise  
28 classes, physical training, and exercise instruction for detecting, storing

1 and reporting daily human energy expenditure and physical activity level,  
2 for developing and monitoring personal activity and exercise plans, train-  
3 ing goals and giving feedback on the achieved results. April 25, 2014.

4 Stationary exercise bicycles and component parts thereof, namely, bi-  
5 cycle seats and bicycle pedals; exercise weights; stationary bicycles  
6 equipped with interactive computer systems, video players, and body bars.  
7 January 22, 2014.

8 Streaming of audio and video materials on the Internet featuring phys-  
9 ical fitness classes, training, and instruction. May 13, 2014.

10 Providing classes, workshops and seminars in the fields of fitness and  
11 exercise; providing fitness and exercise facilities; physical fitness instruc-  
12 tion and consultation; physical fitness conditioning classes; physical fit-  
13 ness training services providing a website featuring information on exer-  
14 cise and physical fitness accessible through a global computer network and  
15 mobile devices. May 1, 2014

16 17. Defendant also applied for or registered the mark PELOTON or marks includ-  
17 ing “Peloton” for the following goods and services:

18 a. PELOTON FITNESS, pending application number: 86827542, Filed No-  
19 vember 20, 2015 ; Goods and Services: “Exercise fitness equipment, namely,  
20 rowing machines, treadmills, elliptical exercise machines, stationary cycles,  
21 stair-stepping machines, weight lifting machines, and manually-operated exer-  
22 cise equipment; Pilates equipment, namely, exercise bands and resistance  
23 bands with handles and exercise cushions; Physical fitness training services;  
24 Physical fitness consultation; Physical fitness studio services, namely, provid-  
25 ing exercise classes; Physical fitness training services featuring aerobic and an-  
26 aerobic activities, flexibility training and weight training; Yoga instruction; Pi-  
27 lates instruction; Physical fitness conditioning classes; Providing facilities for  
28 cardio and weight training; Providing a website featuring information on

1 exercise and physical fitness accessible through a global computer network and  
2 mobile devices.”

3 b. PELOTON, Registration Number: 5,202,624, registered May 16, 2017,  
4 for “Retail store services in the fields of sports apparel, fitness equipment, and  
5 fitness classes; On-line retail store services in the fields of fields of sports ap-  
6 parel, fitness equipment, and fitness classes,” claiming a first use date of Au-  
7 gust 8, 2013.

8 c. PELOTON, Registration Number: 5,200,495, registered May 9, 2017, for  
9 Silicone wristbands in the nature of a bracelet, claiming a first use date of De-  
10 cember 2016, “All purpose sport bags,” claiming a first use date of April 22,  
11 2014, and “Sports apparel, namely, shirts, leggings, sleeveless tops, t-shirts,  
12 tank tops, sports bras, pullovers; headwear, namely, beanies; Sports apparel,  
13 namely, shorts, exercise tights, tops, jackets; bandanas, shoes, hats,” claiming a  
14 first use date of April 22, 2014.

15 d. ONE PELOTON, pending application number: 87/581,136, filed August  
16 23, 2017, for “Retail store services; online retail store services; Retail store ser-  
17 vices in the fields of apparel, fitness equipment, and fitness classes; On-line re-  
18 tail store services in the fields of fields of sports apparel, fitness equipment,  
19 and fitness classes, and Educational services; entertainment services; Providing  
20 classes, workshops and seminars in the fields of fitness and exercise; providing  
21 fitness and exercise facilities; physical fitness instruction and consultation;  
22 physical fitness conditioning classes; physical fitness training services provid-  
23 ing a website featuring information on exercise and physical fitness accessible  
24 through a global computer network and mobile devices; providing non-down-  
25 loadable live and recorded audiovisual content featuring physical fitness clas-  
26 ses, training and instruction.”

27 e. PELOTON TREAD, pending application number 87/746,853, filed January  
28 8, 2018, for “exercise equipment; treadmills.”

1 f. PELOTON, pending application number 87/394,247, for “Exercise equip-  
2 ment, namely, rowing machines, treadmills, elliptical exercise machines, sta-  
3 tionary cycles, stair-stepping machines, weight lifting machines, and manually-  
4 operated exercise equipment; Exercise equipment, namely, pilates equipment,  
5 namely, exercise bands and resistance bands with handles and exercise cush-  
6 ions; Exercise equipment, namely, yoga cushions, yoga blocks, yoga straps.”

7 18. Defendant’s marks products it sells, including the bicycle pictured below,  
8 which is copied from Defendants’ website, with its purported PELOTON trademark.



16 19. Defendant markets its goods and services via apparel with its purported  
17 PELOTON trademark. The garment pictured below was copied from Defendant’s web-  
18 site:



25 20. Move Press’s first use of PELOTON for its goods pre-dates Defendant’s use  
26 of PELOTON.

27 21. Move Press’s PELOTON magazine displays and advertises goods and ser-  
28 vices that Defendant provides under its PELOTON mark. Defendant’s goods and



1 services under its PELOTON mark also are in the natural zone of expansion of the  
2 goods that Move Press's PELOTON magazine will display and advertise.

3 22. Defendant's continued use of PELOTON is likely to confuse substantial num-  
4 ber of the parties' customers, prospects and the public are likely to be, and have been,  
5 deceived or confused about the source, origin, sponsorship of the parties' respective  
6 goods and services.

7 23. Defendant's use of PELOTON has caused actual confusion of the parties'  
8 customers, prospects and the public.

9 24. On July 3, 2014, counsel for Move Press notified Defendant by FedEx letter  
10 that Defendant's use of PELOTON infringed Move Press's rights in the mark PELOTON.  
11 The letter informed Defendant that Move Press had been using the mark PELOTON  
12 since 2010 and under the PELOTON brand, "Move Press sells magazines in 30 coun-  
13 tries, has robust social media presence on Facebook (100k likes), Twitter (44.9k fol-  
14 lowers), and Instagram (17k followers) [as of July 2014], distributes an online digital  
15 magazine, has an APP for iphones/smartphones/Android/etc., distributes PELOTON  
16 films and video, and sells related PELOTON bicycle products such as jerseys, socks and  
17 other gear. Move Press, LLC also owns the domain name pelotonmagazine.com."

18 25. Move Press' PELOTON social media followers have increased significantly  
19 since 2014.

20 26. Despite receiving the July 3, 2014, letter, Defendant did not change or stop  
21 using PELOTON.

22 27. Defendant is liable to Move Press for trademark infringement.

23 28. As a direct and proximate result of Defendant's infringement, Move Press  
24 has suffered and will continue to suffer damage to its business, reputation and good-  
25 will for which Move Press may have injunctive, monetary and other relief, and it will  
26 continue to suffer irreparable harm not fully compensable by money damages. The in-  
27 fringement has damaged Move Press in an amount not presently known.

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1 29. Because Defendant's infringement was willful, Defendant unjustly earned  
2 profits. Defendant also is liable to Move Press for Defendant's profits.

3 30. Because Defendant's infringement was willful, Defendant also is liable to  
4 Move Press for three time actual damages.

5 **SECOND CLAIM FOR RELIEF**

6 **UNFAIR COMPETITION UNDER LANHAM TRADEMARK ACT SECTION 43(a)**

7 **15 U.S.C. § 1125(a)**

8 31. Move Press repeats the allegations of paragraphs 1 through 30 above.

9 32. The Court has subject matter jurisdiction of this claim under 28 U.S.C.  
10 § 1338(a) and 15 U.S.C. § 1121

11 33. Defendant's continued use of PELOTON for its goods and services consti-  
12 tutes false representation as to source and unfair competition in violation of the Lan-  
13 ham Trademark Act, 15 U.S.C. § 1125(a).

14 34. Defendant's continued use of PELOTON for its goods and services has  
15 caused the public, potential customers and prospects of Move Press to believe incor-  
16 rectly that Move Press is infringing Defendant's rights in PELOTON.

17 35. As a direct and proximate result of Defendant's false representation and un-  
18 fair competition, Move Press has suffered and will continue to suffer damage to its  
19 business, reputation and goodwill for which Move Press is entitled to injunctive, mon-  
20 etary and other relief, and it will continue to suffer irreparable harm if Defendant is  
21 not enjoined and Move Press made fully whole compensable by money damages.

22 **THIRD CLAIM FOR RELIEF**

23 **UNFAIR COMPETITION UNDER CALIFORNIA LAW (CAL. BUS. & PROF. CODE,**

24 **§§ 17200 ET SEQ.)**

25 36. Move Press repeats the allegations of paragraphs 1 through 35 above.

26 37. This is an action for Unfair Competition under California Law (Cal. Bus. &  
27 Prof. Code, §§ 17200 et seq.). This Court has subject matter jurisdiction under 28  
28 U.S.C. § 1338(b).

1 38. California Business and Professions Code § 17200 prohibits any “unlawful,  
2 unfair, or fraudulent business act or practices.” Defendant has engaged in unlawful,  
3 fraudulent, and unfair business acts and practices in violation of the UCL. Defendant’s  
4 continued use of PELOTON has resulted in an unlawful, unfair, or fraudulent business  
5 act or practices because Move Press’ customers, prospects and the public have been  
6 deceived or confused as to the source, origin, sponsorship of the parties’ respective  
7 goods and services in violation of the UCL. Defendant had knowledge that Move  
8 Press had senior, exclusive rights to the mark use of PELOTON. Despite knowledge of  
9 Plaintiff’s rights, including a cease and desist letter from Move Press, Defendant  
10 knowingly and intentionally proceeded to unlawfully, unfairly, or fraudulently deceive  
11 Move Press’ customers, prospects and the public.

12 39. As a direct and proximate result of Defendant’s infringement, Move Press  
13 has suffered and will continue to suffer damage to its business, reputation and good-  
14 will for which Move Press is entitled to injunctive, monetary and other relief, and it  
15 and will continue to suffer irreparable harm not fully compensable by money dam-  
16 ages.

17 40. Accordingly, Move Press has suffered injury in fact including lost money as  
18 a result of Defendant’s misrepresentations and omissions.

19 41. Move Press seeks to enjoin further unlawful, unfair, and/or fraudulent acts  
20 or practices by Defendant under Cal. Bus. & Prof. Code § 17200.

21 42. Move Press requests that this Court enter such orders or judgments as may  
22 be necessary to enjoin Defendant from continuing its unfair, unlawful, and/or decep-  
23 tive practices and to restore to Move Press money any money it acquired by unfair  
24 competition, including restitution and/or restitutionary disgorgement, as provided in  
25 Cal. Bus. & Prof. Code § 17203 and Cal. Bus. & Prof. Code § 3345; and for such  
26 other relief set forth below.

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**Fourth Claim for Relief**

**VIOLATIONS OF CALIFORNIA FALSE ADVERTISING LAW**

**(Cal. Bus. & Prof. Code §§ 17500, et seq.)**

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43. Move Press repeats the allegations of paragraphs 1 through 42 above.

44. California Bus. & Prof. Code § 17500 states: “It is unlawful for any ... corporation ... with intent directly or indirectly to dispose of real or personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, ... or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

45. Defendant caused to be made or disseminated through California and the United States, through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Defendant, to be untrue and misleading to consumers.

46. Defendant has violated § 17500 because the misrepresentations and omissions regarding the source, origin, sponsorship of the parties’ respective goods and services under the mark PELOTON as set forth in this Complaint were material and likely to deceive a reasonable consumer.

47. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendant’s business. Defendant’s wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated, both in the State of California and nationwide.

48. Move Press requests that this Court enter such orders or judgments as may be necessary to enjoin Defendant from continuing their unfair, unlawful, and/or deceptive practices and to restore to Move Press any money Defendant acquired by its

1 unlawful conduct, including restitution and/or restitutionary disgorgement, and for  
2 such other relief set forth below.

3 **Fifth Claim for Relief**

4 **CANCELLATION OF DEFENDANT’S TRADEMARK REGISTRATIONS**

5 49. Move Press repeats the allegations of paragraphs 1 through 48 above.

6 50. This claim arises under 15 U.S.C. 1064 of the Lanham Trademark Act. This  
7 Court has subject matter jurisdiction under 28 U.S.C. § 1338(a).

8 51. Defendant owns United States trademark Registration Nos. 4,580,888,  
9 5,202,624 and 5,200,495 for the mark PELOTON for the goods and services stated in  
10 paragraphs 14, 17 and 18.

11 52. The court has the power under 15 U.S.C. § 1119 to cancel or modify each  
12 registration.

13 53. Move Press owns registered trademark and common law trademark rights  
14 in the mark PELOTON.

15 54. The goods and services in Defendant’s trademark registrations provided un-  
16 der the PELOTON mark are likely to cause confusion or mistake with Move Press’s  
17 PELOTON goods.

18 55. Therefore, cancellation of Defendant’s registrations under 15 U.S.C. § 1119  
19 is proper.

20 **REQUEST FOR RELIEF**

21 56. Move Press requests that the Court issue judgment against Defendant:

22 57. Holding Defendant liable for infringement of Move Press’s registered and  
23 common law trademark in PELOTON.

24 58. Holding Defendant liable for unfair competition for using Move Press’s  
25 registered and common law trademark in PELOTON.

26 59. Holding Defendant liable for false advertising for using Move Press’s regis-  
27 tered and common law trademark in PELOTON.

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1           60. Holding Defendant’s use of the mark PELOTON, alone or in combination  
2 with other words, as a trademark, trade name, service mark, component or otherwise,  
3 likely to cause confusion with Move Press’s superior rights in the mark PELOTON.

4           61. Holding Defendant’s use of the mark PELOTON likely to cause reverse con-  
5 fusion with Move Press’s superior rights in the mark PELOTON.

6           62. Awarding damages in an amount to be proved.

7           63. Awarding Move Press Defendant’s profits.

8           64. Trebling the monetary award under the Lanham Act claims.

9           65. Awarding Move Press exemplary damage under the state claims.

10          66. Enjoining Defendant, its officers, agents, servants, employees, and attor-  
11 neys, assigns and all persons in active concert with or participation with it from using  
12 Move Press’s PELOTON registered mark and common law mark, alone or in combina-  
13 tion with other words, or any similar mark confusing similar to Move Press’s PELO-  
14 TON mark and from further acts of unfair competition and false advertising.

15          67. Cancelling United States Trademark Registration No. 4,580,888, 5,202,624  
16 and 5,200,495.

17          68. Permanently enjoining Defendant, its officers, agents, servants, employees,  
18 and attorneys, assigns and all persons in active concert with or participation with it,  
19 from using the mark PELOTON, alone or in combination with other words, or any mark  
20 confusingly similar to Move Press’s PELOTON mark, as a trademark, trade name, ser-  
21 vice mark, component or otherwise, to advertise or identify its goods and services.

22          69. Awarding Move Press its costs.

23          70. Awarding Move Press its reasonable attorney fees.

24          71. Granting Move Press any other relief to which it is entitled.

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February 28, 2018

/s/ Marina L. Lang  
Marina L. Lang  
SoCal IP Law Group LLP  
Attorneys for Plaintiff Move Press, LLC

**DEMAND FOR JURY TRIAL**

Plaintiff Move Press, LLC requests a jury trial on all claims for relief.

February 28, 2018

/s/ Marina L. Lang  
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