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Mirror Mirror on the Wall, Whose IP Will Win It All?

An intellectual property battle among major athletic brands is brewing in the United States. Lululemon is suing Peloton. Peloton is suing Lululemon. And Nike is suing Lululemon.

In the recent claim filed in the United States District Court for The Southern District of New York, Nike alleges that Lululemon's Mirror infringes six Nike patents, relating to among other things:

- Prompt 2 users in different locations to compete in a challenge
- Instruct users based on heart rate
- Give users "streak awards" based on performance
- Let users share their activity to social media

In response Lululemon asserts that Nike's patents are not relevant to the Mirror and are invalid and not infringed. Invalidity defences include allegations that the Nike patents are not-patent-eligible, are anticipated, are obvious, are indefinite, fail to provide an adequate written description and/or fail to enable one of skill in the art to make and use the alleged invention described and claimed. Lululemon also asserts prosecution estoppel. The matter is in the early stages of litigation with the most recent procedural step being the filing of an amended complaint.

It does not (yet) appear that any patent disputes have been asserted by Nike against others in the workout mirror space such as Tempo Studio, Tonal, NordicTrack Vault Complete, Studio by Forme and/or Echelon Reflect.

Lululemon is on the defensive play against Nike but is playing offense in an IP dispute with Peloton.

Interestingly Lululemon and Peloton had been in a deal that ended in September 2021, whereby Peloton had been putting its brand on Lululemon made apparel. When the deal ended Peloton decided to go at it alone. The end of the relationship seems to have sparked big battles between these two big players.

In the first matter between Lululemon and Peloton, Lululemon alleges that certain Peloton leggings and sports bras

infringe six of its design patents and that one Peloton-branded active wear apparel product infringes Lululemon's trade dress rights relating to the distinctive trade dress in the design of the ALIGN pant. Lululemon also alleges passing off and unfair competition, as well as false designation of origin.

Peloton countersued in a separate action seeking declaratory judgment that its apparel does not infringe Lululemon's design patents and trade dress. Peloton alleges, among other things, that Lululemon's patents are invalid for anticipation and obviousness and are not infringed.

When players venture out of their traditional playing field these kinds of disputes are more likely to arise. Peloton is branching out into its own athletic apparel line when traditionally it has focused on athletic programing and equipment. By contrast, Lululemon is well known in the athletic wear industry, but branched out in 2020 when it purchased fitness tech company Mirror for approximately $500 million.

Perhaps not to be overlooked is the fact that like Peloton, Mirror offers live and pre-recorded at-home workouts. While Mirror is the direct focus of Lululemon's battle with Nike, it may indirectly be contributing to the tension between Lululemon and Peloton.

Conclusion

At home exercise has been on the rise during the global pandemic. Athletic wear (a.k.a the new work wardrobe) is also pervasive these days. On the IP front, we have seen a general rise in public awareness of innovation and brand reputation. Protecting, enforcing, and commercializing IP is top of mind for companies across industries. Having a strong understanding of your company's IP and your competitor's IP makes good business sense. With all these forces coming together it should not be a surprise that some of the biggest names in the athletic goods and services industry are battling it out in court.

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