

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

**Before the Honorable Thomas B. Pender  
Administrative Law Judge**

**In the Matter of**

**CERTAIN WEARABLE ACTIVITY  
TRACKING DEVICES, SYSTEMS, AND  
COMPONENTS THEREOF**

**Investigation No. 337-TA-973**

**COMPLAINANT'S MOTION FOR TERMINATION OF THIS INVESTIGATION**

Pursuant to Commission Rules of Practice and Procedure 210.15 and 210.21(a)(1) (19 C.F.R. §§ 210.15 and 210.21(a)(1)), Complainant Fitbit, Inc. ("Complainant" or "Fitbit") respectfully moves for termination of the investigation based on the withdrawal of its Complaint naming Aliphcom d/b/a Jawbone and BodyMedia, Inc. (collectively, "Respondents" or "Jawbone") as Respondents. Fitbit filed its Complaint on November 2, 2015, in order to protect its domestic industry from patent infringement by the importation and sale of Jawbone's UP Move and two newest (at the time) wearable activity trackers, the UP3 and UP4, both released in 2015. Today, however, Jawbone appears to be a different company; it no longer offers for sale any of its wearable activity trackers, nor any of its other products. Press reports and other public documents indicate that the demise of Jawbone's products has created substantial questions regarding Jawbone's ability to continue to operate. SEC filings of one of its biggest investors now value Jawbone shares as worth nothing, as well as indicate that Jawbone has filed for bankruptcy or is in default, as of October 6, 2016. Consequently, given the substantial change in Jawbone's business condition, together with the limited relief available in a Section 337 action, Complainant withdraws its Complaint in this Investigation.

Fitbit informed all parties of its intention not to proceed with its Complaint on December 21, 2016. There are no agreements, written or oral, express or implied between the parties concerning the subject matter of the Investigation.

Jawbone and the Commission Investigative Attorney do not oppose this motion to terminate this Investigation based on withdrawal of the Complaint, though Jawbone reserves the right to respond to this motion.

Date: December 23, 2016

Respectfully submitted,

*/s/ Mark N. Reiter*

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*Counsel for Complainant Fitbit, Inc.*

**COMPLAINANT’S MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF  
COMPLAINANT’S MOTION FOR TERMINATION OF THIS INVESTIGATION**

Pursuant to Commission Rules of Practice and Procedure 210.15 and 210.21(a)(1) (19 C.F.R. §§ 210.15 and 210.21(a)(1)), Complainant Fitbit, Inc. (“Complainant” or “Fitbit”) respectfully submits this Memorandum in Support of the Motion for Termination of the Investigation based on the withdrawal of its Complaint naming as Respondents AliphCom d/b/a Jawbone and BodyMedia, Inc. (collectively, “Respondents” or “Jawbone”).

**BACKGROUND**

Complainant filed its Complaint on November 2, 2015, in order to protect its domestic industry from patent infringement by products being imported and sold by Jawbone at the time. The Commission instituted this Investigation on December 1, 2015, to determine whether Respondents violate Section 337 of the Tariff Act of 1930, as amended, through their importation into the United States, sale for importation, or sale within the United States after importation of certain wearable activity tracking devices, systems, and components thereof that infringe U.S. Patent Nos. 8,920,332, 8,868,377, and 9,089,760 (the “Asserted Patents”). On December 8, 2015, Administrative Law Judge Pender set April 7, 2017 as the target date for completion of this Investigation and scheduled an evidentiary hearing for August 8-12, 2016. *See* Order No. 3 (Dec. 8, 2015). After the Commission’s review and remand of an initial determination that terminated the Investigation, the Administrative Law Judge reset (1) the evidentiary hearing date to March 3-10, 2017, (2) the due date for the Final Initial Determination to July 6, 2017, and (3) the date target date for completion of the Investigation to November 22, 2017. Order No. 25 (Nov. 22, 2016); Order No. 26 (Nov. 29, 2016).

## RELEVANT LAW AND DISCUSSION

Commission Rule 210.21(a)(1) provides that “[a]ny party may move at any time prior to the issuance of an initial determination on violation of Section 337 of the Tariff Act of 1930 to terminate an investigation in whole or in part as to any or all respondents, on the basis of withdrawal of the complaint or certain allegations contained therein.” 19 C.F.R. § 210.21(a)(1). The Commission has held that “in the absence of extraordinary circumstances, termination of the investigation will be readily granted to a complainant during the prehearing state of an investigation.” *Certain Television Sets, Television Receivers, Television Tuners, & Components Thereof*, Inv. No. 337-TA-910, Order No. 50 at 2 (Nov. 12, 2014) (citing *Certain Navigation Products, Including GPS Devices, Navigation and Display Systems, Radar Systems, Navigational Aids, Mapping Systems and Related Software*, Inv. No. 337-TA-900, Order No. 16 (April 16, 2014) (other citations omitted)).

No extraordinary circumstances exist in this Investigation that would prevent termination of this Investigation in light of Complainant’s withdrawal of its Complaint. Complainant filed its Complaint in Fall 2016, after Jawbone released its newest wearable activity tracking device, the UP4. In addition to the UP4, at the time the complaint was filed, Jawbone also imported into the United States, and sold after importation, the UP3 and UP Move wearable activity tracking devices, which, along with the UP4, were identified as accused products during the Investigation.

Today, however, Jawbone appears to be a different company. Jawbone has shut down its online store and no longer offers for sale any of its wearable activity tracking devices, or any of its other products. See <https://jawbone.com>. Public reports indicate that Jawbone sold its remaining inventory of wearable activity tracking devices to a third-party reseller based in New Zealand. See *Business Insider*, “Jawbone hasn’t paid one of its key business partners and has almost no

inventory left, sources say,” (Sept. 22, 2016). Jawbone no longer identifies any U.S. retail partners for the UP4, and those of the retail partners that continue to offer Jawbone activity trackers for sale do so at greatly reduced prices. Compare Amazon’s Sale Page for the UP3 (Dec. 21, 2016) (offering the UP3 for \$44.94 on Dec. 21, 2016), [https://www.amazon.com/Jawbone-Heart-Activity-Tracker-Silver/dp/B00N9E403C/ref=sr\\_1\\_2?ie=UTF8&qid=1482339272&sr=8-2&keywords=jawbone+up3](https://www.amazon.com/Jawbone-Heart-Activity-Tracker-Silver/dp/B00N9E403C/ref=sr_1_2?ie=UTF8&qid=1482339272&sr=8-2&keywords=jawbone+up3), with Complainant’s Complaint, Ex. 26 (Oct. 28, 2015) (Oct. 8, 2015 receipt from Amazon for, the purchase of, among other products, an UP3 at \$154.98).

The demise of Jawbone’s products has, according to public reports, created substantial questions regarding Jawbone’s ability to continue to operate. For example, Blackrock, which apparently invested hundreds of millions of dollars in Jawbone in 2015, recently valued its shares in Jawbone as worth nothing and reported the value of its debt holdings in Jawbone as approximately \$51 million. See, e.g., Blackrock’s N-CSR SEC Filing at 47 (Aug. 4, 2016); Blackrock’s N-Q SEC Filing (Oct. 6, 2016). Blackrock also reported that Jawbone had filed for bankruptcy or is in default, as of October 6, 2016. *Id.* Thus, despite reports that Jawbone is soliciting investments from other sources, see, e.g., *Fortune*, “Jawbone’s CEO Is Battling This Investment Firm over the Company’s Fate (Oct. 12, 2016), Jawbone’s continued viability as a company is in question. Indeed, Jawbone’s CEO reportedly indicated in an email to the company that “not everyone is aligned with moving us forward,” even though he claimed to have obtained an additional \$150 million in financing. *Id.*

Consequently, given the substantial change in Jawbone’s business condition, together with the limited relief available in a Section 337 action, Complainant withdraws its Complaint in this Investigation. Pursuant to Commission Rule 210.21(a)(1), Complainant states that there are no

agreements, written or oral, express or implied between the parties concerning the subject matter of the Investigation.

Accordingly, for the foregoing reasons, Complainant respectfully requests that the Administrative Law Judge grant the termination of this Investigation based on withdrawal of the Complaint.

Date: December 23, 2016

Respectfully submitted,

*/s/ Mark N. Reiter*

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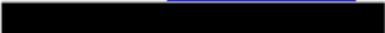
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*Counsel for Complainant Fitbit, Inc.*

### CERTIFICATE OF SERVICE

I, Phillip K. Lum, certify that on December 23, 2016, the foregoing Motion for Termination of this Investigation was served pursuant to Commission regulations, on all interested parties and in the manner so indicated:

<p>The Honorable Lisa Barton Secretary to the Commission U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, S.W. Washington, DC 20436</p>	<p><i>Via EDIS</i></p>
<p>The Honorable Thomas H. Pender Administrative Law Judge U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, S.W., Room 317 Washington, DC 20436</p>	<p><i>Via Courier (2 copies)</i> <i>Via E-Mail:</i> [REDACTED]</p>
<p>Yoncha Kundupoglu, Esq Office of Unfair Import Investigations U.S. International Trade Commission 500 E Street, S.W., Suite 401 Washington, D.C. 20436</p>	<p><i>Via E-mail:</i> [REDACTED]</p>
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Date: December 23, 2016

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