

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HYDROW, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No.:
	)	
iFIT HEALTH & FITNESS, INC.,	)	DEMAND FOR JURY TRIAL
	)	
Defendant.	)	

**COMPLAINT FOR DESIGN PATENT AND  
TRADE DRESS INFRINGEMENT**

Plaintiff Hydrow, Inc. (“Hydrow”) hereby asserts the following claim for design patent and trade dress infringement against Defendant iFIT Health & Fitness, Inc. (“iFIT”), and states as follows:

**NATURE OF ACTION**

1. This is an action for design patent and trade dress infringement arising under the laws of the United States, Titles 35 and 15, United States Code, based upon iFIT’s infringing Hydrow’s intellectual property, including Hydrow’s patented rower design protected by United States Design Patents D898,843 titled “ROWING MACHINE (the “’843 Patent), and Hydrow’s distinctive trade dress rights.

2. iFIT has sold traditional fitness equipment, and it develops and manufactures exercise equipment under the brand name NordicTrack, under which it recently launched a rower product named the RW900 Rower. The RW900 infringes the ‘843 Patent and Hydrow’s trade dress in the design. iFIT offers for sale and sells the RW900 in place of the patented product designed, manufactured and sold by Hydrow.

3. As a result of iFIT's unlawful infringement, iFIT has been wrongfully enriched, and Hydrow has been injured through loss of sales and good will, and accordingly seeks injunctive and monetary remedies under the federal patent statute, 35 U.S.C. §§ 284, 285 and 289, and the federal Lanham Act, 15 U.S.C. §§ 1114, 1116, 1117, 1118 and 1125(a).

### **THE PARTIES**

4. Plaintiff incorporates the preceding paragraphs herein by reference.

5. Plaintiff Hydrow is a Delaware corporation with principal places of business at 10 Summer Street, Boston, MA 02110, and 14 Arrow Street, Cambridge, MA 02138.

6. Hydrow, formerly known as Crew By True Rowing, Inc., was organized under the laws of Delaware on November 16, 2017. The name was changed to Hydrow, Inc., on May 23, 2019.

7. Defendant iFIT is a Delaware corporation with a principal place at 1500 South 1000 West, Logan, Utah, 84321. On information and belief, Icon Health & Fitness rebranded to iFIT Health & Fitness in 2021.

8. iFIT sells its products online and through third-party retailers all across the United States, and additionally markets and sells the RW900 on its website for its NordicTrack product line, at <https://www.nordictrack.com/rowing-machines/rw900-rower-2022>.

### **JURISDICTION AND VENUE**

9. Plaintiff incorporates the preceding paragraphs herein by reference.

10. This is an action for patent infringement brought under the patent laws of the United States, 35 U.S.C. § 1, *et seq.* This Court has original subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. § 1331 and 1338(a).

11. This action also arises under the federal Lanham Act, 15 U.S.C. § 1051, et seq. This Court has subject matter jurisdiction over the claims in this action, which relate to trade dress infringement, pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121.

12. This Court has personal jurisdiction over the defendant because it, among other things: is incorporated under the laws of the State of Delaware and, on information and belief, has sold products that practice the '843 Patent into the stream of commerce with the knowledge, or reasonable expectation, that actual or potential purchasers and users of such products were located within this judicial district.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391, 1400 because iFIT is incorporated in and resides in Delaware.

### **BACKGROUND FACTS**

14. Plaintiff incorporates the preceding paragraphs herein by reference.

15. Rowing is in Hydrow founder Bruce Smith's blood. His ancestor, W.W. Ruddock, built single sculls for Harvard crew in the late 1800s. Smith has rowed and coached rowing his entire life. He has coached at the high school, collegiate, and national level. At the 2015 World Rowing Championships, he coached the United States Lightweight Eight to a Bronze medal. At the local level, Mr. Smith has endeavored to bring rowing to the masses, and is the former Executive Director of Community Rowing – Boston.

16. Prior to Hydrow, existing rowing machines on the market were ugly, noisy, and boring. These attributes were somewhat intentional, as rowing machines of prior generations were meant to appeal only to those committed to enduring the monotonous training offered by those rowers. *See* <https://www.concept2.com/indoor-rowers> ("Concept2 created the original

rowing ergometer (or rowing machine) in 1981 as a training tool for competitive athletes.”). One of those early rowers is pictured below:

### Model A



Manufactured 1981–1986

17. In 2018, Smith sought to change that dynamic by designing a rowing machine that was stylish and fun. The result was a rower that was inspired by three visual concepts: a wave, a 1971 Maserati Ghibli, and the bow of a Stämpfli single scull rower. The Hydrow Rower was the result of that brainstorm and is shown below:



18. Hydrow began selling its Hydrow Rower in 2018, and the product has been an overwhelming success. The Hydrow Rower has garnered great goodwill, notoriety and praise in

the market and the media, including articles in Time, Shape, The Independent, British GQ, Women’s Health, British Vogue, c/net, Wired UK, The Telegraph UK, The Wall Street Journal, and others. The Hydrow Rower also received a “best design” award from iF Design in 2020.

See <https://ifdesign.com/en/winner-ranking/project/hydrow/272357>.

19. Hydrow continues to make and sell the Hydrow Rower and related branded products to be used in conjunction with the Hydrow Rower. These products are offered for sale on Hydrow’s on-line shop, at <https://shop.hydrow.com/>, and at physical locations such as Best Buy.

20. Hydrow filed for patent protection on its design on July 16, 2019. U.S. Patent No. D898,843 (“the ’843 Patent”) issued on October 13, 2020. The ’843 Patent is valid and enforceable, and was duly issued in full compliance with Title 35 of the United States Code. Hydrow is the owner and assignee of all rights, title and interest in the ’843 Patent. A copy of the ’843 Patent is attached as **Exhibit A**.

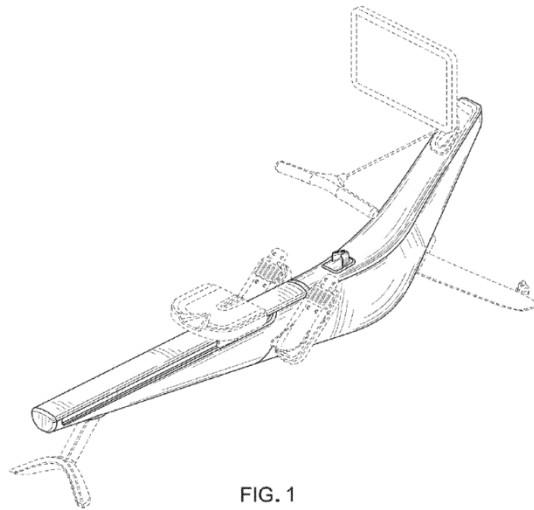


FIG. 1

21. The ’843 Patent claims the ornamental design, as shown below:

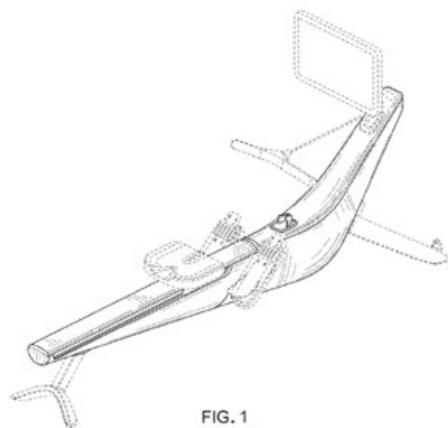
’843 Patent, FIG. 1.

22. Hydrow practices the '843 patent as the Hydrow Rower, which is covered by the '843 Patent and Hydrow marks the Hydrow Rower with the '843 Patent number.

23. On information and belief, iFIT sought to exploit the success of the Hydrow Rower for its own purposes, and recently began selling the RW900, which copies all of the significant aspects of the award-winning design that has led to the success of the Hydrow Rower. iFIT began offering the RW900 within the last few weeks. Upon learning of this product, Hydrow immediately sent a cease and desist letter attached as **Exhibit B**. iFIT has not agreed to stop selling the RW900.

24. The overall appearance of iFIT's RW900 is substantially the same as the design in the '843 Patent, and/or at least a colorable imitation thereof:

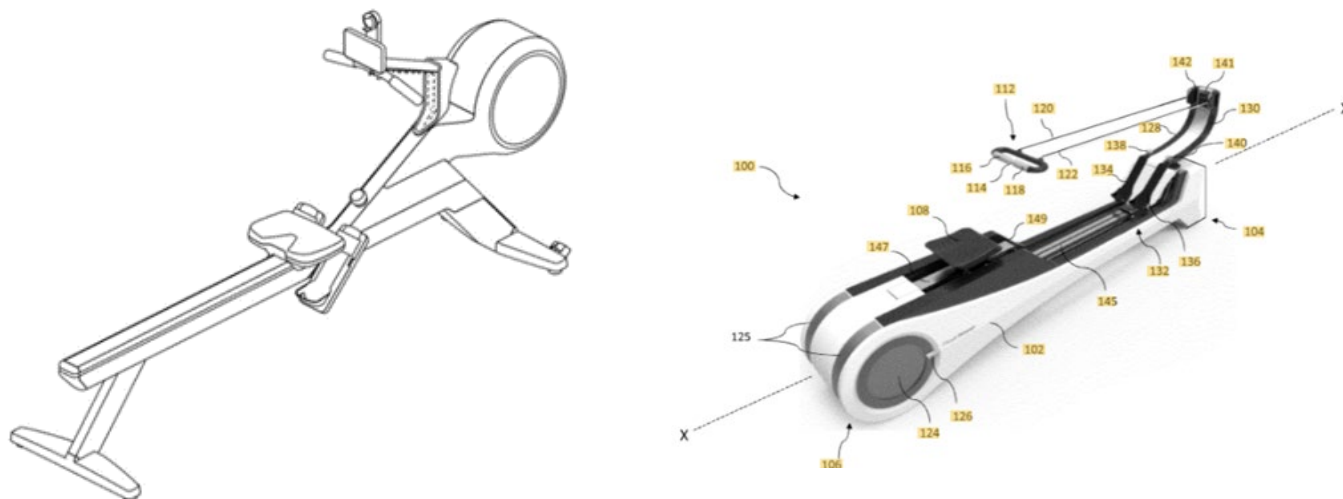
**Hydrow '843 Patent**



**iFIT RW 900**



25. The ordinary observer, seeing the RW900, would be deceived into believing that it is the same as Hydrow's patented design. This conclusion is even more apparent when one considers the prior art. None of the prior art is remotely similar to the design protected by Hydrow's patent and used by the RW900. Two of the rowers that could be considered the "closest" prior art cited on the front of the '843 patent are shown below:

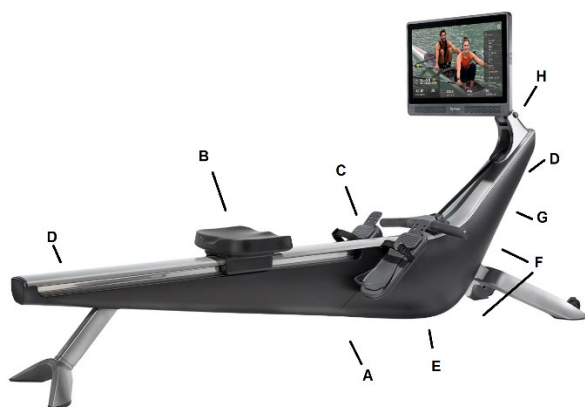


26. The unique distinctive contour shape and ornamental design of the Hydrow Rower is also protected by the common law of trade dress from a likelihood of confusion under the Lanham Act. 15 U.S.C. §1125(a) (the “Hydrow Trade Dress”).

27. The elements of the Hydrow Rower subject to trade dress protection include, without limitation: (A) the overall shape and contour of the main support structure that supports (B) the moveable seat, (C) stationary foot pads, (D) which is tapered down at the ends, (E) with a boomerang-like angular bend past midway after the foot pads, (F) where the angular bend section is wider than the ends in a downward horizontal direction, (G) where the structure bend provides an upward narrowing tapered section from the main base, (H) at the top of which is disposed an angular neck supporting a monitor facing the rower.

28. The RW900 possess each of the foregoing elements of the Hydrow Trade Dress, as shown in the comparison below:

**Hydrow Rower**



**NordicTrack RW900**



29. Through its sales and marketing of tens of thousands of Hydrow Rowers to customers through the United States and internationally for over three years, Hydrow has achieved substantial good will as noted above in paragraph 18. Accordingly, the Hydrow Trade Dress has gained significant acquired distinctiveness and secondary meaning for its design, which consumers associate with Hydrow.

30. In contravention to 35 U.S.C. § 271 and § 289, and 15 U.S.C. § 1125(a), iFIT infringed the '843 Patent and Hydrow Trade Dress by making, using, selling, and/or offering to sell, or causing others to make, use, sell, and/or offer to sell the RW900.

31. The trade dress used by the iFIT RW900 copies the shape and contour of Hydrow's Trade Dress and is likely to cause confusion, mistake, or deception as to the source, sponsorship, or approval of the iFIT's products, in that the trade and consumers are likely to believe, or will believe, that the iFIT's products are Hydrow's products.

32. On information and belief, iFIT was aware of the Hydrow Rower before it designed the RW900, and the shape and contour of iFIT's RW900 was directly copied from the Hydrow Rower, knowingly and intentionally to confuse customers.



**CAUSE OF ACTION**  
**COUNT I**  
**(Infringement of U.S. Patent No. D898,843)**  
[35 U.S.C. §§ 271, 289]

33. Plaintiff incorporates the preceding paragraphs herein by reference.

34. iFIT has infringed, currently infringes, and will continue to infringe, the '843 Patent unless enjoined by this Court from making, using, offering for sale, importing and/or selling products infringing Hydrow's patented design within the United States. 35 U.S.C. § 271(a).

35. On information and belief, iFIT knew of Hydrow, Hydrow' patented commercial product, the '843 Patent, or was willfully blind to its existence, and iFIT knew or was willfully blind in consciously ignoring the possibility that its actions would infringe the '843 Patent.

36. As a direct and proximate result of iFIT's direct and indirect infringement of the '843 Patent, Hydrow is suffering damages as well as irreparable injury for which it has no adequate remedy at law. Hydrow will continue to suffer such harm unless iFIT is enjoined.

37. Hydrow is entitled to recover damages under 35 USC § 284 and § 289 to adequately compensate for iFIT's infringement.

**CAUSE OF ACTION**  
**COUNT II**  
**(Federal Unfair Competition-Trade Dress Infringement)**  
[15 U.S.C. § 1125(a)]

38. Plaintiff incorporates the preceding paragraphs herein by reference.

39. This is a claim for trade dress infringement arising under the Lanham Act, Section 43(a), 15 U.S.C. § 1125(a).

40. For over three years, Hydrow has been, and is presently, engaged in the distribution, promotion, and sale of Hydrow Rowers throughout the United States. Continuously and long prior to iFIT' acts, Hydrow has been distributing, promoting, and selling in interstate

commerce Hydrow Rowers using a distinctive trade dress. For a substantial period of time, and continuing through the present, said Hydrow Rowers were sold having the distinctive trade dress shown above.

41. The overall shape and contour of the trade dress for Hydrow Rowers are arbitrary and non-functional. As a result of Hydrow's established use and extensive promotion and sales, the trade dress of Hydrow Rowers has acquired distinctiveness and has become well and favorably known to distributors and end-users as identifying Hydrow as the sole and exclusive source thereof.

42. Consumers have also come to recognize that the Hydrow Rowers, in their distinctive trade dress, are of high quality and, as a result, the distinctive trade dress has come to represent valuable goodwill which Hydrow owns.

43. Hydrow Rowers are well known by their distinctive trade dress which is recognized as an indicator of origin with Hydrow, and the trade and consumers have come to rely on this distinctive trade dress as an indication that they are receiving the genuine products of Hydrow.

44. The Hydrow Trade Dress is distinctive and has acquired secondary meaning.

45. The trade dress used by the iFIT RW900 copies the shape and contour of Hydrow's trade dress and is likely to cause confusion, mistake, or deception as to the source, sponsorship, or approval of iFIT's products, in that the trade and consumers are likely to believe, or will believe, that iFIT's products are Hydrow's products.

46. Hydrow has never authorized, licensed or consented in any way to iFIT's use of Hydrow's distinctive, well known, and extremely valuable trade dress.

47. A nearly limitless number of other shapes and contours could have been used on the RW900 sold and distributed by iFIT, rather than using a design which so closely copies Hydrow's well known product.

48. iFIT's use of the Hydrow Trade Dress has caused and is likely to cause actual confusion as to the source or origin of iFIT's products and constitutes trade dress infringement.

49. As a result of iFIT's acts of infringement, Hydrow has suffered and will continue to suffer damages in an amount to be proven at trial.

50. By reason of the foregoing, iFIT has violated and is continuing to violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Hydrow has no adequate remedy at law and is suffering irreparable harm.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the Court enter the following orders on final judgment against iFIT:

1. Pursuant to 35 U.S.C. § 271, enter a judgment that iFIT infringes U.S. Patent No. D898,843 by making, offering for sale, selling, importing or using the RW900;

2. Pursuant to 35 U.S.C. § 283, grant a preliminary and permanent injunction enjoining iFIT, its subsidiaries, affiliates, divisions, officers, agents, servants, employees, directors, partners, representatives, and all parties in active concert and/or participation with iFIT from directly or indirectly making, having made, selling, offering for sale, distributing, using, or importing into the United States products that infringe the '843 Patent;

3. Pursuant to 35 U.S.C. § 284, direct iFIT to account for and pay to Plaintiff all damages caused by iFIT's infringement of the '843 Patent, including lost profits and interest, but in no event less than a reasonable royalty;

4. Pursuant to 35 U.S.C. § 289, award Plaintiff the total extent of iFIT's total profits derived from sales of the RW900;

5. Award damages and disgorgement of profits for all conveyed and derivative sales associated with the RW900;

6. Pursuant to 35 U.S.C. § 285, award Plaintiff its costs and attorneys' fees incurred in connection with this action, upon a judgment declaring this an exceptional case;

7. Pursuant to 15 U.S.C. § 1125(a), enter a judgment that iFIT infringes Hydrow's trade dress for its Rower;

8. Pursuant to 15 U.S.C. § 1116, grant a preliminary and permanent injunction enjoining and restraining iFIT, its subsidiaries, affiliates, divisions, officers, agents, servants, employees, directors, partners, representatives, and all parties in active concert and/or participation with iFIT from directly or indirectly making, having made, selling, offering for sale, distributing, using, or importing into the United States products that infringes the Hydrow's Trade Dress by offering for sale the RW900 or any other confusingly similar rower that is likely to cause confusion, deception or mistake;

9. Pursuant to 15 U.S.C. § 1117(b), award to Hydrow all of iFIT's gross profits and any other damages Hydrow has sustained as a consequence of iFIT's trade dress infringement and requiring iFIT to account for all gains, profits and advantages derived by the iFIT from the sale and distribution of the RW900, and that the award trebled;

10. Pursuant to 15 U.S.C. § 1117, award to Hydrow the costs of this action together with reasonable attorneys' and investigators' fees and prejudgment interest; and

11. Such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands trial by jury pursuant to Fed. R. Civ. P. 38(b).

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Dated: February 14, 2022