



CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 23-C0001]

Peloton Interactive, Inc.

AGENCY: Consumer Product Safety Commission

ACTION: Notice

SUMMARY: The Commission publishes in the *Federal Register* any settlement that it provisionally accepts under the Consumer Product Safety Act. Published below is a provisionally accepted Settlement Agreement with Peloton Interactive, Inc. containing a civil penalty in the amount of \$19,065,000, subject to the terms and conditions of the Settlement Agreement. The Commission voted unanimously (4-0) to provisionally accept the proposed Settlement Agreement and Order pertaining to Peloton Interactive, Inc.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by [INSERT DATE 15 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 23-C0001, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (240) 863-8938 (mobile), (301) 504-7479 (office); email: cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Michael J. Rogal, Trial Attorney, Division of Enforcement and Litigation, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; mrogal@cpsc.gov, 301-504-7528 (office).

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: January 4, 2023.

Alberta E. Mills,

Secretary.

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of:)	
)	
PELOTON INTERACTIVE, INC.)	CPSC Docket No.: 23-C0001
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_____)	

SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (“CPSA”), and 16 C.F.R. § 1118.20, Peloton Interactive, Inc. (“Peloton”), and the United States Consumer Product Safety Commission (“Commission”), through its staff, hereby enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order resolve staff’s charges set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Peloton is a corporation, organized and existing under the laws of the state of Delaware, with its principal place of business in New York, New York.

STAFF CHARGES

4. Between September 2018 and April 2021, Peloton imported to the United States, distributed and offered for sale approximately 125,000 Peloton Tread+ treadmills (Model No. TR01) (“Tread+ treadmills” or “Subject Products”).

5. The Subject Products are “consumer products” that were “import[ed]” and “distribut[ed] in commerce,” as those terms are defined or used in sections 3(a)(5), (7), and (9) of

the CPSA, 15 U.S.C. § 2052(a)(5), (7), and (9). Peloton is a “distributor” of the Subject Products, as such term is defined in section 3(a)(8) of the CPSA, 15 U.S.C. § 2052(a)(8).

Violation of CPSA Section 19(a)(4)

6. The Tread+ treadmills contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death because adult users, children, pets and objects can be pulled under the rear of the treadmill, posing an entrapment hazard.

7. Beginning in December 2018 and continuing into 2019, Peloton received reports of incidents associated with pull under and entrapment in the rear of the Subject Products, including reports of injuries.

8. During that time the Firm also began the process of relocating a warning label to the rear of the treadmill where the entrapment incidents were occurring, and evaluated the feasibility of a design change to add a rear guard to prevent entrapments.

9. Despite possessing information that reasonably supported the conclusion that the Subject Products contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death, Peloton did not immediately report to the Commission.

10. On March 3, 2021, Peloton received notice that a six-year-old child had died after being entrapped under the rear of the Tread+ treadmill.

11. On March 4, 2021, Peloton filed a report with the Commission under 15 U.S.C. § 2064(b) concerning the Tread+ treadmills. By that time, there were more than 150 reports of persons, pets and/or objects being pulled under the rear of the Tread+ treadmill, including the death of a child and 13 injuries, including broken bones, lacerations, abrasions and friction burns.

12. Because Peloton’s report failed to provide certain consumer contact information, the Commission was forced to issue a subpoena for this information.

13. On April 17, 2021, prior to the Firm's agreement to conduct a voluntary recall, the Commission issued a unilateral Health and Safety Notice warning consumers to stop using the Tread+.

14. The Commission and Peloton jointly announced the recall of the Tread+ treadmill on May 5, 2021.

Failure to Timely Report

15. Despite having information reasonably supporting the conclusion that the Subject Products contained a defect or created an unreasonable risk of serious injury or death, Peloton did not notify the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3), (4), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

16. Because the information in Peloton's possession about the Subject Products constituted actual and presumed knowledge, Peloton knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

17. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Peloton is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

Violation of CPSA Section 19(a)(2)

18. Between May 5, 2021, after Peloton received notice that the voluntary corrective action was approved by the Commission, through August 2021, Peloton knowingly distributed into commerce 38 Tread+ treadmills ("Recalled Products") that were subject to the recall by Peloton personnel and through third-party delivery firms to consumers.

19. The Recalled Products were subject to voluntary corrective action taken by Peloton in consultation with the Commission. Peloton knew of the voluntary corrective action taken for the Recalled Products.

20. The Recalled Products are “consumer products,” that were “import[ed]” and “distribut[ed] in commerce,” as those terms are defined or used in sections 3(a)(5), (7), and (9) of the CPSA, 15 U.S.C. § 2052(a)(5), (7), and (9). Peloton is a “distributor” of the Subject Products, as such terms are defined in section 3(a)(8) of the CPSA, 15 U.S.C. § 2052(a)(8).

21. Under CPSA section 19(a)(2)(B), 15 U.S.C. § 2068(a)(2)(B), it is unlawful for any person to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States, any consumer product that is subject to a voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which the Commission has notified the public, or if the seller, distributor, or manufacturer knew, or should have known, of such voluntary corrective action.

22. Pursuant to section 20(a)(1) of the CPSA, 15 U.S.C. § 2069(a)(1), any person who “knowingly” violates CPSA section 19 is subject to civil penalties. Under section 20(d) of the CPSA, 15 U.S.C. § 2069(d), the term “knowingly” means: “(1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.”

RESPONSE OF PELOTON

23. This agreement does not constitute an admission by Peloton to the staff’s charges as set forth in paragraphs 4 through 22 above, including without limitation that the Subject Product contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death; that Peloton failed to notify the Commission in a timely matter in accordance with section 15(b) of the CPSA, 15 U.S.C. 2064(b); that Peloton distributed any Recalled Products in violation of section 19(a)(2)(B) of the CPSA; and that Peloton knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), or section 19(a)(2)(B) of the CPSA, 15 U.S.C. 2068(a)(2)(B), as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

24. Peloton enters into this Agreement to settle this matter and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings. Peloton does not admit that it violated the CPSA or any other law, and Peloton's willingness to enter into this Agreement and Order does not constitute, nor is it evidence of, an admission by Peloton of liability or violation of any law.

25. At all relevant times, Peloton had a product safety compliance program, which among other things, prohibited the distribution of recalled products. Peloton requested its third-party distribution partners pause deliveries prior to the recall announcement. Peloton notified the Commission in connection with the Subject Products on March 4, 2021 and voluntarily notified the Commission of the post-recall distribution of Tread+ units that Peloton identified through an internal review.

AGREEMENT OF THE PARTIES

26. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products and over Peloton.

27. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Peloton or a determination by the Commission that Peloton violated the CPSA.

28. In settlement of staff's charges, Peloton shall pay a civil penalty in the amount of nineteen million, sixty-five thousand dollars (\$19,065,000) ("Total Civil Penalty Amount"). This includes a civil penalty of \$16,025,000 for the CPSA section 19(a)(4) timeliness violation and a \$3,040,000 civil penalty for the CPSA section 19(a)(2) distribution of recalled goods violation. The \$19,065,000 Payment shall be paid within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via <http://www.pay.gov>, for allocation to, and credit

against, the payment obligations of Peloton under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

29. The Commission or the United States may seek enforcement for any breach of, or any failure to comply with, any provision of this Agreement and Order in United States District Court, to seek relief including, but not limited to, collecting amounts due.

30. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Peloton to the United States, and interest shall accrue and be paid by Peloton at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter "Default Payment Amount" and "Default Interest Balance"). Peloton shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and Peloton agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. Peloton shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

31. After staff receives this Agreement executed on behalf of Peloton, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

32. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) Commission's final acceptance of this Agreement and service of the accepted Agreement upon Peloton, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

33. Effective upon the later of: (1) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Peloton and (2) and the date of issuance of the final Order, for good and valuable consideration, Peloton hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement:

- (i) an administrative or judicial hearing;
- (ii) judicial review or other challenge or contest of the Commission's actions;
- (iii) a determination by the Commission of whether Peloton failed to comply with the CPSA and the underlying regulations;
- (iv) a statement of findings of fact and conclusions of law; and
- (v) any claims under the Equal Access to Justice Act.

34. Peloton shall maintain an enhanced compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by Peloton, which shall contain the following elements:

- (i) written standards, policies and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury has been reported;
- (ii) procedures for reviewing claims and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified;

- (iii) procedures requiring that information required to be disclosed by Peloton to the Commission is recorded, processed, and reported in accordance with applicable law;
- (iv) procedures requiring that all reporting made to the Commission is timely, truthful, complete, accurate, and in accordance with applicable law;
- (v) procedures requiring that prompt disclosure is made to Peloton's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, Peloton's ability to record, process and report to the Commission in accordance with applicable law;
- (vi) procedures for the prompt identification, quarantine and disposition of recalled goods; including, but not limited to:
 - i. implementation and maintenance of stock keeping unit (SKU) blocks at points of sale, reinforced informational technology (IT) coverage for SKU blocks, and maintenance of SKU blocks of recalled products without a time limit;
 - ii. a product master database that consolidates all Peloton products;
 - iii. dissemination to stores and third-party delivery firms recall-related communications and a catalog of recalled product information; and
 - iv. labeling and quarantine of recalled products prior to disposition.
- (vii) mechanisms to effectively communicate to all applicable Peloton employees, through training programs or other means, compliance-related company policies and procedures to prevent violations of the CPSA;
- (viii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;

- (ix) Peloton's senior management responsibility for, and general board oversight of, CPSA compliance; and
- (x) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to CPSC staff upon request.

35. Peloton shall submit a report under CPSA Section 16(b), sworn to under penalty of perjury:

- (i) describing in detail its compliance program and internal controls and the actions Peloton has taken to comply with each subparagraph of paragraph 34;
- (ii) affirming that during the reporting period Peloton has reviewed its compliance program and internal controls, including the actions referenced in subparagraph (i) of this paragraph, for effectiveness, and that it complies with each subparagraph of paragraph 34, or describing in detail any non-compliance with any such subparagraph; and
- (iii) identifying any changes or modifications made during the reporting period to Peloton's compliance program or internal controls to ensure compliance with the terms of the CPSA and, in particular, the requirements of CPSA Section 15 related to timely reporting.

Such reports shall be submitted annually to the Director, Office of Compliance, Division of Enforcement and Litigation, for a period of five (5) years beginning 12 months after the Commission's Final Order of Acceptance of the Agreement. The first report shall be submitted 30 days after the close of the first 12-month reporting period, and successive reports shall be due annually on the same date thereafter. Without limitation, Peloton acknowledges and agrees that failure to make such timely and accurate reports as required by this Agreement and Order may constitute a violation of Section 19(a)(3) of the CPSA and may subject the Firm to enforcement under section 22 of the CPSA.

36. Notwithstanding and in addition to the above, Peloton shall promptly provide written documentation of any changes or modifications to its compliance program or internal controls and procedures, including the effective dates of the changes or modifications thereto. Peloton shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials and personnel deemed necessary by staff to evaluate Peloton's compliance with the terms of the Agreement.

37. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

38. Peloton represents that the Agreement:

- (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever;
- (ii) has been duly authorized; and
- (iii) constitutes the valid and binding obligation of Peloton, enforceable against Peloton in accordance with its terms. The individuals signing the Agreement on behalf of Peloton represent and warrant that they are duly authorized by Peloton to execute the Agreement.

39. The signatories represent that they are authorized to execute this Agreement.

40. The Agreement is governed by the laws of the United States.

41. The Agreement and the Order shall apply to, and be binding upon, Peloton and each of its parents, successors, transferees, and assigns; and a violation of the Agreement or Order may subject Peloton, and each of its parents, successors, transferees, and assigns, to appropriate legal action.

42. The Agreement, any attachments, and the Order constitute the complete agreement between the parties on the subject matter contained therein.

43. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and

the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.

44. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

45. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Peloton agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

(Signatures on next page)

PELTON INTERACTIVE, INC.

Dated: 12/8/22

By: /s/ Barry McCarthy
Barry McCarthy
Peloton Interactive, Inc.
CEO & President

Dated: 12/9/2022

By: /s/ Erin M. Bosman
Erin M. Bosman
Morrison Foerster LLP
Counsel to Peloton Interactive, Inc.

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Mary B. Murphy, Director
Leah Ippolito, Supervisory Attorney
Michael J. Rogal, Trial Attorney

Dated: 12/14/22

By: /s/ Michael J. Rogal
Michael J. Rogal
Trial Attorney
Division of Enforcement and Litigation
Office of Compliance and Field Operations

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of:)
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PELOTON INTERACTIVE, INC.)
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CPSC Docket No.: 23-C0001

ORDER

Upon consideration of the Settlement Agreement entered into between Peloton Interactive, Inc. (“Peloton”), and the U.S. Consumer Product Safety Commission (“Commission” or “CPSC”), and the Commission having jurisdiction over the subject matter and over Peloton, and it appearing that the Settlement Agreement and the Order are in the public interest, the Settlement Agreement is incorporated by reference and it is:

Provisionally accepted and provisional Order issued on the 28th day of December, 2022.

BY ORDER OF THE COMMISSION:

/s/ Alberta Mills

Alberta E. Mills, Secretary

U.S. Consumer Product Safety Commission

[FR Doc. 2023-00146 Filed: 1/6/2023 8:45 am; Publication Date: 1/9/2023]