

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PHILIPS NORTH AMERICA LLC,

Plaintiff,

v.

FITBIT LLC,

Defendant.

Civil Action No. 1:19-cv-11586-FDS

**JOINT MOTION OF THE PARTIES FOR LEAVE TO FILE A REPLY AND SUR-
REPLY ON PLAINTIFF'S MOTION TO STRIKE AFFIRMATIVE DEFENSES AND
JOINT STIPULATION RELATING TO THE SAME**

Plaintiff Philips North America LLC ("Philips") and Fitbit LLC ("Fitbit") hereby jointly stipulate and request that the Court permit limited additional briefing on Plaintiff's pending Motion to Strike Affirmative Defenses (Dkt. No. 236) according to the following proposed terms:

- (1) Philips to file a Reply no longer than ten (10) pages by October 7, 2021,
- (2) Fitbit to file a Sur-Reply no longer than ten (10) pages by October 14, 2021.

Further, Fitbit intends to file an amended answer under Rule 15(a)(1)(B), to make a limited supplement to its inequitable conduct pleading on October 5, 2021. Philips objects to this amended pleading as untimely for the same reasons set forth in Philips's Motion. (*See* Dkt. No. 237 at 8-9.) However, to the extent Fitbit's amended answer is not found to be untimely, and in view of the limited changes to the pleading, Philips consents to the amendments, and in any event, the parties agree and stipulate that Philips's presently pending Motion to Strike Affirmative Defenses (Dkt. 236) and subsequent briefing thereon may act as the operative response to Fitbit's amended pleading filed on October 5, 2021.

Additionally, expert reports are presently due to be exchanged in this matter on November 12, 2021 (*See* Dkt. 231). In light of Philips's pending Motion to Strike Fitbit's inequitable conduct

defense, and a desire of the parties to avoid potentially unnecessary work pending a decision on that motion, the parties hereby agree and stipulate that the November 12, 2021 deadline for the service of opening expert reports shall not apply to any expert reports relating to inequitable conduct, and that the parties shall meet and confer with regards to a future schedule on exchanging expert reports with regard to inequitable conduct issues, and any subsequent expert discovery relating thereto. Fitbit has further represented that it will seek to take the deposition of Mr. Helget if Philips's Motion to Strike is not granted, and Philips agrees to meet and confer on the scheduling of the same prior to the service and exchange of any expert reports on inequitable conduct.

WHEREFORE, Philips and Fitbit hereby respectfully request that the Court grant the parties' joint motion and joint stipulation.

Dated: October 5, 2021

/s/ Ruben J. Rodrigues

Lucas I. Silva (BBO 673,935)
Ruben J. Rodrigues (BBO 676,573)
John Custer (BBO 705,258)
FOLEY & LARDNER LLP
111 Huntington Avenue
Suite 2500
Boston, MA 02199-7610
Phone: (617) 342-4000
Fax: (617) 342-4001
lsilva@foley.com
rrodrigues@foley.com
jcuster@foley.com

Eley O. Thompson (pro hac vice)
FOLEY & LARDNER LLP
321 N. Clark Street
Suite 2800
Chicago, IL 60654-5313
Phone: (312) 832-4359
Fax: (312) 832-4700
ethompson@foley.com

*Counsel for Plaintiff Philips North America
LLC*

Respectfully Submitted,

/s/ David J. Shaw

David J. Shaw (pro hac vice)
dshaw@desmaraisllp.com
DESMARAIS LLP
1701 Pennsylvania Ave., Suite 200
Washington, D.C. 20006
Telephone: (202) 451-4900
Facsimile: (202) 451-4901

Karim Z. Oussayef (pro hac vice)
koussayef@desmaraisllp.com
Leslie M. Spencer (pro hac vice)
lspencer@desmaraisllp.com
Brian D. Matty (pro hac vice)
bmatty@desmaraisllp.com
DESMARAIS LLP
230 Park Avenue
New York, NY 10169
Telephone: (212) 351-3400
Facsimile: (212) 351-3401

Ameet A. Modi (pro hac vice)
amodi@desmaraisllp.com
DESMARAIS LLP
101 California Street
San Francisco, CA 94111
Telephone: (415) 573-1900
Facsimile: (415) 573-1901

Gregory F. Corbett (BBO # 646394)
gcorbett@wolfgreenfield.com
WOLF, GREENFIELD & SACKS, P.C.
600 Atlantic Avenue
Boston, MA 02110
Telephone: (617) 646-8000
Facsimile: (617) 646-8646

Attorneys for Fitbit, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 5, 2021 a copy of the foregoing document was filed with the Court through the ECF system and that a copy will be electronically served on registered participants as identified on the Notice of Electronic Filing.

/s/ Ruben J. Rodrigues
Ruben J. Rodrigues