

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ICON HEALTH & FITNESS, INC.,                    )  
                                                                  )  
                                                          Plaintiff,                                            )  
                                                                  )  
                                                          v.                                                            )  
                                                                  )  
PELOTON INTERACTIVE, INC.,                    )  
                                                                  )  
                                                          Defendant.                                            )

C.A. No. 20-1386 (RGA)

**PELOTON INTERACTIVE, INC.’S UNOPPOSED MOTION  
TO SEAL DOCUMENTS AND TO SEAL THE COURTROOM**

Defendant Peloton Interactive, Inc. (“Peloton”) respectfully moves the Court to seal the exhibits that will be submitted for the Preliminary Injunction Hearing and to seal the courtroom during the Preliminary Injunction Hearing scheduled before this Court on Monday, December 21, 2020 at 2:00 p.m. EST (the “Hearing”). Plaintiff ICON Health & Fitness, Inc. (“ICON”) has represented that it does not oppose or object to this motion. The information that Peloton anticipates that the parties will be presenting at the Hearing consists of highly confidential information from both parties that has been designated by the parties as “Highly Confidential – Outside Attorney’s Eyes Only” under the Protective Order (D.I. 33). This information includes, *inter alia*, highly confidential technical information regarding the accused product, financial information of the parties, and prior confidential licensing agreements involving non-parties.

“[A] common law right of access attaches ‘to judicial proceedings and records.’” *In re Avandia Marketing*, 924 F.3d 662, 672 (3d Cir. 2019). This right “is a presumptive right.” *Id.* (citing *In re Cendant Corp.*, 260 F.3d 183, 193 (3d Cir. 2001)). “It is not an absolute right, however.” *Takeda Pharm. U.S.A., Inc. v. Mylan Pharm., Inc.*, No. 19-2216-RGA, 2019 WL 6910264, at \*1 (D. Del. Dec. 19, 2019).

The presumption of access to judicial proceedings and records may be rebutted. *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 662 (3d Cir. 1991). The party seeking to overcome the presumption and seal judicial proceedings “bears the burden of showing that the interest in secrecy outweighs the presumption.” *Avandia Marketing*, 924 F.3d at 672 (internal citations omitted). “The movant must show ‘that the material is the kind of information that courts will protect and that disclosure will work a clearly defined and serious injury.’” *Id.* (quoting *Miller v. Ind. Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994)).

In overcoming the strong presumption, “the District Court must articulate the compelling, countervailing interests to be protected, make specific findings on the record concerning the effects of disclosure, and provide[ ] an opportunity for interested third parties to be heard.” *Id.* at 672-73 (quoting *In re Cendant Corp.*, 260 F.3d at 194 (internal quotation marks omitted)). “Specificity is essential.” *Id.* at 673.

A transcript of the proceedings may act as a “substitute for the presence of reporters and the public at a hearing.” *Publiker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1072 (3d Cir. 1984). “If after the closed proceedings, the court deems the countervailing interests insufficient to overcome the presumption of openness, it may make a transcript of the proceedings available.” *Id.* (citing *Press-Enterprise Co. v. Superior Court of Cal., Riverside Cnty.*, 104 S. Ct. 819, 825 (1984)). Releasing a transcript as a substitute for public access to the hearing allows “people not actually attending trials [to] have confidence that standards of fairness are being observed.” *Id.* (citing *Press-Enterprise*, 104 S. Ct. at 823).

Both parties’ presentations to the Court will necessarily include discussion of evidence that is highly confidential non-public information, some of which may constitute trade secrets. The parties will be harmed by the public dissemination of such confidential information.

With respect to alleged infringement, such confidential information will include technical information regarding how the accused product works, including what data is exchanged between the accused product and Peloton's servers, and how such data is used by the Peloton Bike. For example, Peloton intends to discuss the contents of encrypted data that is highly confidential and not available to the public. Peloton also intends to discuss highly technical details about its Auto-Follow feature including the software and data used by that feature. Such information is not available to the public and Peloton would be harmed by the public dissemination of this information as competitors could copy Peloton's technology.

With respect to issues of irreparable harm, the parties will necessarily need to discuss highly confidential financial information regarding product sales, subscription revenues, and profitability, as well as licenses to the asserted patent between the parties and between ICON and non-parties. For example, Peloton intends to discuss information relating to Peloton's internal marketing and sales strategy for the Peloton Bike and the Peloton Bike+, ICON's internal financial calculations, non-public market share and subscriber data, and the contents of highly confidential licensing agreements between ICON and at least three non-parties to this case. Furthermore, Peloton anticipates that ICON will be discussing internal Peloton documents that have been designated "Highly Confidential – Attorneys' Eyes Only" under the Protective Order because they contain Peloton's confidential financial and marketing information. The public disclosure of such information would harm Peloton because, *inter alia*, its competitors could take advantage of this information to counter Peloton's marketing and sales strategies. Thus, unless the Hearing and associated exhibits are sealed, Peloton will be prevented from effectively offering its arguments relating to irreparable harm.

As a substitute for public access to this hearing, Peloton proposes releasing redacted public versions of the exhibits and a redacted transcript of these proceedings as soon after the hearing as practicable. *See Publicker* 733 F.2d at 1073 (a transcript may “substitute for the presence of reporters and the public at a hearing”). Closing the courtroom and releasing a redacted transcript shortly thereafter will protect the parties’ confidential information, while also providing the press and public with the substance of the Hearing and with “confidence that standards of fairness are being observed.” *Id.* at 1071-72.

For the foregoing reasons, Peloton respectfully requests that the Court seal the exhibits presented on Friday, December 18, 2020 and seal the courtroom for the December 21 Hearing. Counsel for Peloton has conferred with counsel for ICON about the subject of this motion, and ICON has represented that it would not oppose the request. Should the Court find that Peloton has not met its burden to rebut the presumption of public access to seal the courtroom for the duration of the Hearing, Peloton respectfully requests that the Court seal the Hearing during the portions of the argument that include discussion of or reference to the parties’ highly confidential information.

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*/s/ Andrew M. Moshos*

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December 17, 2020

**D. Del. LR 7.1.1 Certification**

The parties have conferred on the subject matter of this motion, and Plaintiff ICON Health & Fitness, Inc. has stated that it does not oppose the requested relief.

*/s/ Andrew M. Moshos*

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Andrew M. Moshos (#6685)

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FOR THE DISTRICT OF DELAWARE

ICON HEALTH & FITNESS, INC.,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 20-1386 (RGA)
v.	)	
	)	
PELOTON INTERACTIVE, INC.,	)	
	)	
Defendant.	)	

**[PROPOSED] ORDER**

WHEREAS, Defendant Peloton Interactive, Inc. (“Peloton”) moved to seal documents and to seal the courtroom for the Preliminary Injunction Hearing scheduled for Monday, December 21, 2020 and Plaintiff ICON Health & Fitness, Inc. did not oppose the motion;

WHEREAS, the Court has considered the Motion and found a showing that the parties would suffer a clearly defined and serious injury from the disclosure of their confidential information during the Preliminary Injunction Hearing sufficient to rebut the presumption of public access to the Hearing;

THEREFORE, Peloton’s Motion is GRANTED and the exhibits and hearing shall be sealed.

IT IS SO ORDERED.

Date:

\_\_\_\_\_

United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on December 17, 2020, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on December 17, 2020, upon the following in the manner indicated:

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