

Abby L. Dennis, DC Bar No. 994476  
 Peggy Bayer Femenella, DC Bar No. 472770  
 Joshua Goodman, NY Bar (No Number)  
 Jeanine Balbach, MD Bar (No Number)  
 Michael Barnett, TX Bar No. 24006801  
 E. Eric Elmore, NY Bar (No Number)  
 Justin Epner, DC Bar No. 1028431  
 Sean D. Hughto, DC Bar No. 421224  
 Frances Anne Johnson, MD Bar (No Number)  
 Andrew Lowdon, DC Bar No. 230095  
 Kristian Rogers, MA Bar No. 675951  
 Anthony R. Saunders, NJ Bar No. 008032001  
 Timothy Singer, DC Bar No. 1048769  
 Federal Trade Commission  
 600 Pennsylvania Avenue, NW  
 Washington, DC 20580  
 Tel: (202) 326-2381  
*adennis@ftc.gov; pbayer@ftc.gov;*  
*jgoodman@ftc.gov; jbalbach@ftc.gov;*  
*mbarnett@ftc.gov; eelmore@ftc.gov;*  
*jepner@ftc.gov; shughto@ftc.gov;*  
*fjohnson@ftc.gov; alowdon@ftc.gov;*  
*kr Rogers@ftc.gov; asaunders@ftc.gov;*  
*tsinger@ftc.gov*

Erika Wodinsky, CA Bar No. 091700  
 90 7th Street, Suite 14-300  
 San Francisco, CA 94103  
 Tel: (415) 848-5190  
*ewodinsky@ftc.gov*

Attorneys for Plaintiff Federal Trade Commission

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

**FEDERAL TRADE COMMISSION,**

Plaintiff,

v.

**META PLATFORMS, INC.,**

**MARK ZUCKERBERG,**

and

**WITHIN UNLIMITED, INC.,**

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR A TEMPORARY  
 RESTRAINING ORDER  
 AND PRELIMINARY INJUNCTION  
 PURSUANT TO SECTION 13(B)  
 OF THE FEDERAL TRADE  
 COMMISSION ACT**

**REDACTED VERSION OF DOCUMENT  
 SOUGHT TO BE SEALED**

1 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), by its designated  
2 attorneys, petitions this Court for a temporary restraining order and preliminary injunction  
3 enjoining Defendants Meta Platforms, Inc., its subsidiaries (collectively “Meta”), and its  
4 controlling shareholder Mark Zuckerberg from consummating its proposed acquisition (the  
5 “Acquisition”) of Within Unlimited, Inc. (“Within”). The Commission seeks this relief pursuant  
6 to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). Absent  
7 such relief, Meta, Mr. Zuckerberg, and Within (collectively, “Defendants”) have represented  
8 that they would be free to consummate the Acquisition after 11:59 p.m. Eastern Time (or 8:59  
9 p.m. Pacific Time) on July 31, 2022.

10 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Commission, whenever  
11 it has reason to believe that a proposed merger is unlawful, to seek preliminary injunctive relief  
12 to prevent consummation of a merger until the Commission has had an opportunity to issue an  
13 administrative complaint, and if such complaint is issued, adjudicate the merger’s legality in an  
14 administrative proceeding. The Commission therefore seeks this preliminary relief “pending the  
15 issuance of a[n administrative] complaint by the Commission and until such complaint is  
16 dismissed by the Commission or set aside by the court on review, or until the order of the  
17 Commission made thereon has become final.” 15 U.S.C. § 53(b)(2). Pursuant to 15 U.S.C. §  
18 53(b)(2), such an administrative complaint must be filed no later than 20 days after this Court  
19 grants a temporary restraining order.

20 A temporary restraining order enjoining the Acquisition is necessary to preserve this  
21 Court’s ability to provide full and effective relief after considering the Commission’s motion for  
22 a preliminary injunction. Preliminary injunctive relief is imperative to preserve the *status quo*  
23 and to protect competition “pending the issuance of a[n administrative] complaint by the  
24 Commission,” and if such complaint is issued, while the Commission adjudicates whether the  
25 Acquisition is unlawful. Allowing the Acquisition to proceed would harm competition and  
26 consumers and undermine the Commission’s ability to remedy the anticompetitive effects of the  
27  
28

1 Acquisition if the Commission issues an administrative complaint and the Acquisition is found  
2 unlawful after a full administrative trial on the merits and any subsequent appeals.

### 3 NATURE OF THE CASE

4 1. Meta, one of the largest technology companies in the world and [REDACTED]  
5 provider of virtual reality (“VR”) devices and applications (“apps”) in the United States, seeks  
6 to acquire Within, a software company that develops apps for VR devices, including the highly  
7 popular [REDACTED] fitness app “Supernatural.” If consummated, the Acquisition would  
8 substantially lessen competition, or tend to create a monopoly, in the relevant market for VR  
9 dedicated fitness apps and the broader relevant market for VR fitness apps. That lessening of  
10 rivalry may yield multiple harmful outcomes, including less innovation, lower quality, higher  
11 prices, less incentive to attract and keep employees, and less consumer choice.

12 2. A global technology behemoth, Meta reaches into every corner of the world  
13 through its “Family of Apps”—Facebook, Instagram, Messenger, and WhatsApp—with more  
14 than three billion regular users. Seeking to expand its empire even further, Meta in recent years  
15 has set its sights on building, and ultimately controlling, a VR “metaverse.” One need look no  
16 further than the rebranding of the company from Facebook to “Meta” in 2021 to understand its  
17 vision—and its priorities—for the future. And Meta is serious about its goals: it has become the  
18 largest provider of VR devices and apps to customers in the United States.

19 3. Meta’s campaign to conquer VR began in 2014 when it acquired Oculus VR,  
20 Inc., a VR headset manufacturer. Since then, Meta’s VR headsets have become the cornerstone  
21 of its growth in the VR space: its current generation headset, the Meta Quest 2, is by far [REDACTED]  
22 [REDACTED] with a significant majority of headset sales in 2021 and  
23 2022. Meta CEO Mark Zuckerberg has publicly stated that Meta subsidizes its VR devices or  
24 sells them at cost in order to attract users.

25 4. And Meta’s Quest Store (formerly Oculus Store) has become [REDACTED]  
26 distribution platform for VR software apps in the United States, connecting app developers and  
27 VR users in an online marketplace through which developers can offer their products to users  
28

1 for download onto their individual VR devices. Meta controls the wildly popular app Beat  
2 Saber, which it acquired by purchasing Beat Games in November 2019. Beat Saber [REDACTED]

3 [REDACTED]  
4 [REDACTED] In addition to Beat Games, Meta owns a number of other VR  
5 apps, some of which it developed in-house but most of which it acquired by rolling up other app  
6 studios.

7 5. Meta has thus become a key player at each level of the VR ecosystem: in  
8 hardware with its Meta Quest 2 headset, in app distribution with the Quest Store, and in apps  
9 with Beat Saber and several other popular titles. This is not by accident; Meta has an explicit  
10 strategy of [REDACTED]

11 [REDACTED] Meta could have chosen to try to compete with Within on the merits; instead, Meta  
12 decided it preferred to simply buy [REDACTED] in a vitally important, [REDACTED]  
13 category.

14 6. As Meta fully recognizes, network effects on a digital platform can cause the  
15 platform to become more powerful—and its rivals weaker and less able to seriously compete—  
16 as it gains more users, content, and developers. The acquisition of new users, content, and  
17 developers each feed into one another, creating a self-reinforcing cycle that entrenches the  
18 company's early lead. This market dynamic can spur companies to compete harder in beneficial  
19 ways by, for example, adding useful product features or hiring additional employees. But it can  
20 also make anticompetitive strategies more attractive.

21 7. Meta seeks to exploit the network-effects dynamic in VR. Indeed, Mr.  
22 Zuckerberg has made clear that his aspiration for the VR space is control of the *entire*  
23 ecosystem. As early as 2015, Mr. Zuckerberg instructed key Facebook executives that his vision  
24 for “the next wave of computing” was control of apps *and* the platform on which those apps  
25 were distributed, making clear in an internal email to key Facebook executives that a key part of  
26 this strategy was for his company to be “completely ubiquitous in killer apps”—i.e., in  
27  
28

1 significant VR apps that prove the value of the technology. In that same email, Mr. Zuckerberg  
2 told his executives that Facebook should “us[e] acquisitions opportunistically.”

3 8. The proposed acquisition of Within would be one more step along that path  
4 toward dominance. According to Within’s co-founder and CEO, “Fitness is the killer use case  
5 for VR.” But instead of choosing to compete on the merits through its own VR dedicated fitness  
6 app, Meta has resorted to proposing this unlawful acquisition.

7 9. If Meta is able to proceed with this proposed acquisition of Within, the merger  
8 poses a reasonable likelihood of substantially lessening competition in the market for VR  
9 dedicated fitness apps, where Supernatural is [REDACTED].

10 10. Having simply bought up the [REDACTED], Meta would no longer have  
11 any incentive to develop its own competing app from scratch, add new features to Beat Saber or  
12 other existing Meta apps to compete with Supernatural on the merits, or [REDACTED]

13 [REDACTED]  
14 [REDACTED] develop an app to compete with Supernatural. Instead of adding a significant new rival  
15 to the mix, the Acquisition would simply let Meta assume total control of [REDACTED]  
16 overnight. That lessening of competition violates the antitrust laws.

17 11. Moreover, a company poised on the edge of a market may exert competitive  
18 pressure on existing participants. Regardless of whether such a company actually intends to  
19 enter, the possibility that it may do so can spur other companies already in the market to  
20 proactively ramp up their own competitive efforts. Meta, poised on the edge of the VR  
21 dedicated fitness app market with its popular Beat Saber app, and with all its vast resources and  
22 unique strategic advantages, exerts such an influence. [REDACTED]

23 [REDACTED]  
24 [REDACTED]. The Acquisition  
25 would eliminate that incentive for market participants to compete, again in contravention of the  
26 antitrust laws.



# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.