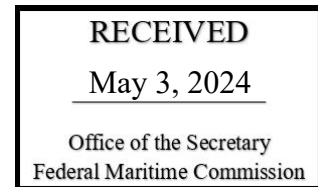


BEFORE THE
FEDERAL MARITIME COMMISSION



DOCKET NO. 24-19



PELTON INTERACTIVE, INC.,

COMPLAINANT,

v.

FLEXPOR INTERNATIONAL LLC,

RESPONDENT.

VERIFIED COMPLAINT

Complainant Peloton Interactive, Inc. (“Complainant” or “Peloton”), by its undersigned attorneys, files this Verified Complaint against Respondent Flexport International LLC (“Respondent” or “Flexport”), alleging violations of the Shipping Act of 1984, 46 U.S.C. § 40101, *et. seq.* (the “Shipping Act”) as follows:

I. COMPLAINANT

1. Peloton is a Delaware corporation with its corporate headquarters at 441 9th Ave, 6th Floor, New York, NY 10001.

2. Peloton is a technology-enabled fitness company that offers, among other things, connected fitness equipment, apparel, and classes through streaming and on-demand media. Peloton’s connected fitness product portfolio includes the Peloton Bike, Bike+, Tread, Tread+, Guide, and Row. Peloton operates internationally and in North America.

3. In connection with the international nature of its manufacturing and product sales, Peloton regularly utilizes shipping and other logistics services to transport its materials and products, including containerized ocean shipping between the U.S. and foreign locations, and as relevant here, using “non-vessel operating common carriers” (“NVOCCs”).

II. RESPONDENT

4. Respondent is an entity organized under the laws of the state of Delaware, with its principal place of business at 760 Market Street, 8th Floor, San Francisco, CA 94102.

5. Respondent is an NVOCC pursuant to 46 U.S.C. § 40102(17), having Federal Maritime Commission (“FMC”) organization and license No. 025219.

III. JURISDICTION

6. The FMC has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act.

7. The FMC has personal jurisdiction over the Respondent as a regulated and registered NVOCC as defined in 46 U.S.C. § 40102(17).

8. This Complaint is being filed pursuant to 46 U.S.C. § 41301. Peloton is seeking reparations for injuries resulting from Respondent’s violations of 46 U.S.C. § 41102(c), § 41104(a)(15), and § 41104(a)(14).

9. Respondent’s actions as alleged herein constitute failures by Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering Peloton’s property, in violation of 46 U.S.C. § 41102(c) and 46 C.F.R.

§§545.4 and 545.5 (unreasonable practices); § 41104(a)(15) (unlawful invoicing); and 46 U.S.C. § 41104(a)(14) (unreasonable charges).

IV. FACTUAL ALLEGATIONS

10. Flexport holds itself out as part of a global transport and logistics company, and part of a “global partner infrastructure to ship any volume of goods.”

11. On the landing page of Flexport’s website, Flexport advertises to current and potential shipping and consignee customers that it is:

Your end-to-end supply chain, all in one platform

Flexport goes on to tout that it “is the platform that coordinates global logistics from factory to **customer door**—empowering businesses to ship anywhere, sell everywhere and grow faster.”¹ (emphasis added).

12. Peloton required the services of an entity such as Flexport that offered these end-to-end transport capabilities, as Peloton did not have the necessary infrastructure or agreements in place to manage inland transportation of its containers after they were discharged at marine or rail terminals.

13. For example, Peloton did not have a dispatch operation to schedule trucking appointments with trucking companies.

14. Peloton entered into an agreement with Flexport to coordinate its global logistics, consistent with the end-to-end supply chain services Flexport advertised.

15. Flexport failed to maintain and enforce just and reasonable practices in connection with the cargo carried and handled for Peloton, causing considerable damages.

¹ <https://www.flexport.com/> (last visited May 3, 2024).

16. Flexport's performance of inland transportation of Peloton's shipped goods (the "Peloton Containers") resulted in Flexport wrongfully and unreasonably requiring Peloton to pay millions of dollars in unreasonable demurrage and detention ("D&D") charges.

17. Flexport's conduct involved multiple, interrelated violations of the Shipping Act.

18. Peloton and Flexport were parties to an agreement for transportation of goods whereby Flexport would transport Peloton Containers between foreign ports and U.S. ports and on to designated U.S. inland locations.

19. Store door transportation is also commonly referred to as "carrier haulage" because, in addition to the ocean transportation, the common carrier of the ocean transportation is also responsible for the inland movement of the container from the arrival port to the named place of delivery, via rail and/or truck drayage.

20. In the store door shipments, Flexport was responsible for arranging and paying for all aspects of the inland movement of the Peloton Containers, including the provision of chassis, and for ensuring the Peloton Containers were removed from U.S. marine and intermodal terminals, delivered to the final designated inland destination, and the empty containers were returned to the carrier-designated return locations.

21. Flexport arranged for the inland transportation of the Peloton Containers from port of arrival to the final inland place of delivery by subcontracting with motor carriers and railroads.

22. Beginning in 2020 and continuing through 2023, Peloton paid thousands of individual D&D and other related charges in connection with Flexport's store door transportation of Peloton Containers, which were improperly invoiced by Flexport in violation of the Shipping Act.

23. From 2020 to 2023, Flexport repeatedly and chronically failed to properly perform its inland transportation obligations, including, but not limited to, failing to timely remove Peloton Containers from U.S. marine and intermodal terminals, failing to timely deliver Peloton Containers to their designated inland locations, and failing to timely return the empty containers within the applicable free time periods.

24. Because of Flexport's failure to properly perform its inland transportation obligations, Peloton ultimately engaged a third-party logistics provider to manage the inland intermodal transportation of certain Peloton Containers.

25. Flexport improperly charged to Peloton D&D charges on the carriage of goods arranged by Flexport, despite the carriage of goods being on store door terms and despite Flexport's responsibility for arranging and managing the inland transportation, including timely removal and return of Peloton Containers.

26. Upon information and belief, Flexport categorically assessed these D&D charges against Peloton and Peloton Containers without first undertaking an evaluation as to whether Flexport was responsible for the charges or whether its acts or omissions were a cause or contributing factor to the charges.

27. Flexport assessed these D&D charges against Peloton and Peloton Containers in circumstances where Peloton was not the party responsible to pick up, move, or return the containers.

28. Flexport assessed these D&D charges against Peloton and Peloton Containers in circumstances where charging Peloton D&D charges did not incentivize the pickup of the cargo or primarily function to promote cargo fluidity.

29. Flexport's invoices and billing information lacked adequate detail to determine the basis and responsibility for the individual D&D charges.

30. As a result of Flexport's wrongful conduct, Peloton incurred substantial injuries and monetary damages, including but not limited to paying improper charges for D&D, with charges and damages continuing to be tabulated as of the filing of this Complaint.

V. VIOLATIONS OF THE SHIPPING ACT

COUNT I VIOLATIONS OF 46 U.S.C. § 41102(c) - Unjust and Unreasonable Practices in Handling Property

31. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

32. Section 46 U.S.C. § 41102(c) prohibits common carriers from failing to "establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property."

33. Respondent has violated 46 U.S.C. § 41102(c), including 46 CFR § 545.4, because the following elements are established here: (1) the respondent is a common carrier; (2) the claimed acts or omissions occurred on a normal, customary, and continuous basis; (3) the practice or regulation relates to or is connected with receiving, handling, storing, or delivering property; (4) the practice or regulation is unjust or unreasonable; and (5) the practice or regulation is the proximate cause of the claimed loss.

34. Respondent is a common carrier and a NVOCC as defined by the Shipping Act.

35. Respondent's actions and omissions described herein occurred on an ongoing and continuous basis over a period of approximately three years from 2020 to 2023.

36. Respondent's actions and practices described herein relating to containers, charges, D&D, per diem, and accessorial charges are directly related to receiving, handling, storing, or delivering property, *e.g.* containerized cargo.

37. Respondent's actions and practices described herein relating to the assessment of D&D and related charges are unjust and unreasonable in violation of § 41102(c).

38. Respondent's actions and practices as described herein are unjust and unreasonable in violation of Section 41102(c) and 46 C.F.R. §§ 545.4 and 545.5. These actions and practices include, but are not limited to:

- a. assessing D&D charges to Peloton for the inland intermodal transportation of Peloton Containers moving under store door terms for reasons that were not within Peloton's control;
- b. assessing D&D charges to Peloton for the inland intermodal transportation of Peloton Containers when Flexport was responsible for the pickup from the port, movement to the inland place of delivery, and return of the empty Peloton Containers;
- c. continuing to book new Peloton Containers under store door terms without taking adequate steps to address increasing delays and costs incurred in securing timely intermodal movement of Peloton Containers;
- d. assessing D&D charges to Peloton in the inland intermodal transportation of Peloton Containers without a meaningful practice or procedure to first determine Flexport's responsibility for such charges (under store door terms or otherwise);
- e. assessing demurrage charges to Peloton in the inland intermodal transportation of Peloton Containers accrued during periods that Peloton Containers were not

available for pickup from marine terminals and from inland terminals (under store door terms or otherwise);

- f. failing to provide Peloton with adequately detailed billing information and/or invoices related to D&D charges to permit Peloton to meaningfully understand and/or contest the charges;
- g. failing to confirm or arrange for the extension of free time and/or mitigate, waive, or reduce D&D charges that were not Peloton's responsibility;
- h. failing to have or employ an adequate dispute resolution policy or practice with regard to D&D charges;
- i. assessing D&D charges to Peloton, as consignee of the goods, for costs and charges of delays in the inland intermodal transportation of Peloton Containers moving under store door terms that serve no incentivizing purpose and do not promote freight fluidity; and
- j. assessing detention charges for equipment return delays that were Flexport's responsibility and for delays arising because Flexport did not provide an adequate opportunity to return containers.

COUNT II
VIOLATIONS OF 46 U.S.C. § 41104(a)(15) - OSRA –Invoice Violations

39. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

40. As amended by the Ocean Shipping Reform Act of 2022 ("OSRA"), 46 U.S.C. § 41104(a)(15) provides that a "common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not...invoice any party for demurrage and detention charges

unless the invoice includes information as described in subsection (d) [referring to 46 U.S.C. § 41104(d)].”

41. On information and belief, Flexport itself, or in conjunction with a subcontractor or others acting on behalf of Flexport, sought to invoice and/or charge Peloton for D&D charges on and after the effective date of OSRA in violation of 46 U.S.C. § 41104(d).

42. On information and belief, Flexport itself, or in conjunction with a subcontractor or others acting on behalf of Flexport, issued invoices without required information, and/or otherwise failing to comply with the requirements for D&D invoices in 46 U.S.C. § 41104(d), in violation of 46 U.S.C. § 41104(a)(15).

43. In addition to other penalties and remedies, the issuance of such invoices would trigger 46 U.S.C. § 41104(f), which provides that “[f]ailure to include the information required under subsection (d) of an invoice with any demurrage or detention charge shall eliminate any obligation of the charged party to pay the applicable charge.”

COUNT III
VIOLATIONS OF 46 U.S.C. § 41104(a)(14) – OSRA – Unreasonable Charges

44. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

45. As amended by OSRA, 46 U.S.C. § 41104(a)(14) provides that a “common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not ... assess any party for a charge that is inconsistent or does not comply with all applicable provisions and regulations, including subsection (c) of section 41102 or part 545 of title 46, Code of Federal Regulations (or successor regulations).”

46. As alleged in each of the Counts above, Flexport's practices and actions in connection with assessment of D&D charges in and after the effective date of OSRA would also violate 46 U.S.C. § 41104(a)(14).

VI. CAUSATION AND INJURY TO COMPLAINANT

47. As a result of Respondent's violations of the Shipping Act, Peloton has sustained injuries and monetary damages, including but not limited to thousands of improper D&D and related charges totaling millions of dollars.

VII. ALTERNATIVE DISPUTE RESOLUTION

48. Peloton has unsuccessfully attempted to resolve this matter with Respondent prior to filing this Verified Complaint. From February to March of 2024, Peloton's operations team engaged in numerous discussions with Flexport regarding Peloton's claims.

49. On March 21, 2024, Peloton's counsel sent a demand letter to Flexport in an effort to resolve the matter without the need for FMC involvement. Peloton's counsel have been in ongoing discussions with Flexport but to date have been unable to resolve the matter. This includes providing a list of charges, with FLEX-ID numbers.

50. In light of the prior exchanges and efforts made by both the principals and counsel, Peloton did not seek to use the FMC's alternative dispute resolution process prior to filing this Verified Complaint but remains open to continued discussions with Flexport in that context.

51. Complainant has not had any preliminary consultations with the FMC's Dispute Resolution Specialist regarding the availability of alternative dispute resolution ("ADR") under the FMC's ADR program, 46 C.F.R. § 502.64, but will do so following this filing in accordance with the FMC's regulations.

VIII. REQUEST FOR ORAL HEARING

52. Complainant requests a hearing on this matter, and further request that the hearing be held at the Federal Maritime Commission, 800 N. Capitol St., NW, Washington, D.C. 20573-0001.

IX. PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests that Respondent be required to answer the charges in this Complaint, and that after a hearing, the FMC issue an Order:

1. Ordering that Respondent cease and desist from the unlawful conduct;
2. Requiring Respondent to pay Complainant reparations for the unlawful conduct described above, along with interest and Complainant's attorneys' fees and costs as described in 46 U.S.C. § 41305;
3. Requiring Respondent's payment of any other amounts that the FMC deems appropriate; and
4. Providing Complainant such other and further relief that the FMC deems is just and proper.

Respectfully Submitted,

Dated: May 3, 2024

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Counsel to Complainant

VERIFICATION

I, Martina Majstorovic, Director, NA Transportation for Peloton Interactive, Inc., hereby declare and attest under penalty of perjury on behalf of Complainants that I have read the foregoing Verified Complaint and believe, to the best of my knowledge, information, and belief, that the facts stated therein are true and correct.

Dated: May 3, 2024



Name: Martina Majstorovic
Title: Director, NA Transportation