

**TRILEGAL PRESENTS**

**2<sup>ND</sup> NALSAR-CCI ANTITRUST MOOT, 2023**



**14<sup>th</sup> – 16<sup>th</sup> APRIL 2023**

**MOOT PROPOSITION**

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1. Fitness Freak Private Limited (“**Fitness Freak**”) is a company incorporated in India. Fitness Freak has created a digital fitness guide called “The Digital Personal Trainer” or “The Digital PT”, which is a 56-inch vertical screen that comes integrated with a high-resolution camera and LIDAR depth sensors.
2. Through this hardware as well as their algorithms, Fitness Freak:
  - a. Profiles its users for data such as height, weight, BMI, muscle mass, fat percentage etc.;
  - b. Tracks the users’ movements during a workout, and provides interactive feedback on the users’ form for each exercise; and
  - c. Tracks repetitions for each exercise.
3. The Digital PT provides a broad range of interactive content (including Yoga, Weightlifting, calisthenics, high intensity interval training etc.) for its users to follow along and workout on a regular basis. As opposed to the ordinary fitness applications – which merely suggest limited workouts, the Digital PT guides its users on their form and provides live feedback. The Digital PT is also used by smaller gyms.
4. It has been noted that the use of the Digital PT has led to an increased adoption of exercise as a habit, from 2-3 days a week to 5-6 days a week, in a timeframe of 6 months. Naturally, the fitness content (workout videos) on Fitness Freak’s platform is viewed more frequently than fitness content uploaded on other platforms. Fitness Freak’s Digital PT, within a span of 3 years, becomes the most widely adopted fitness equipment, and has changed consumer behaviour such that many frequent gym visitors have started working out from the comfort of their homes, using the Digital PT.
5. An approximate statistic of the number of people that go to various gyms in India (on a monthly basis), and the people that use Digital PT has been set out below:

S. No.	Name of fitness brand	Number of Users
1.	Bold’s Gym	12,80,000
2.	All-time Gym	8,00,020

S. No.	Name of fitness brand	Number of Users
3.	Brutal Fit	7,10,000
4.	Various miscellaneous single outlet gyms and at-home personal trainers	3,50,000
5.	Fitness Freak “The Digital PT”	15,30,500 <sup>1</sup>
6.	Various fitness content creators on Vizeo	5,15,000
7.	Couch-to-Fit, Fitness App	79,000

6. Owing to this traction, various fitness content creators start approaching Fitness Freak and express an interest in uploading their video content on Fitness Freak’s Digital PT interface. Fitness Freak as a company believes in closely monitoring the quality of the video content that is uploaded to its device. It conducts a consumer survey that reveals an overwhelming response in favour of allowing various third-party video content creators, given that many of the content creators are influencers and social media stars.
7. As a result, Fitness Freak decides that it will allow third-party video creators to provide content. Fitness Freak puts out a social media post announcing that it will allow third-party video content creators to upload content to its platform, subject to the following conditions:
- i. the videos will be created, exclusively for Fitness Freak (the clauses vaguely seem to suggest that the content cannot be uploaded to any other platform); and
  - ii. the videos will be in conformity with the quality guidelines of Fitness Freak which make it compliant with the movement tracking technology.
8. In the following 2 months, multiple fitness influencers including Push-up Kabila, Soyi Thing and Bruce & Zoya start creating exclusive video content and uploading it on Fitness Freak’s platform. Fitness Freak also uses this as an opportunity to aggressively market its Digital PT through the various influencers that it has onboarded. This leads to a near doubling of the consumer base in a span of two years (as indicated in the market shares above).

<sup>1</sup> All of whom have been garnered within the last 3 years.

9. Fitness Freak now starts attracting investor interest globally, with many interested parties. Two years later (in July 2022), Sharkania Inc., a private equity investor from Oceania that only invests in digital ventures, invests in Fitness Freak and acquires 20% of its equity. As part of the investment, Sharkania Inc. also gets the right to appoint 2 out of 8 directors on the board of Fitness Freak. Sharkania Inc.'s investment in Fitness Freak breaches notifiability thresholds according to the Competition Act of India. The investment is notified to the Competition Commission of India (“CCI”). Soon after, the notification is approved by the CCI, which notes that *the transaction is unlikely to cause any AAEC in any relevant market.*
10. Sharkania Inc. also had an existing minority investment (along with a nominee director) in a new healthy food delivery venture, called Eato Keto. After consummating the investment in Fitness Freak, Sharkania Inc.'s nominee director moves a motion to mandatorily install Eato Keto on all Digital PT devices (through a back-end software update). Sharkania Inc. suggests that there are business synergies between the two businesses, whereby Eato Keto can use the comprehensive data from the Digital PT to provide prompt food suggestions based on the body fat percentage, muscle mass, fitness goals, time of day etc. After some deliberation, this idea is accepted by all stakeholders in Fitness Freak and Eato Keto. A software update is rolled out, installing Eato Keto on all Digital PT devices. Consumer data is shared by Fitness Freak with Eato Keto on a live basis, using which Eato Keto provides accurate food recommendations to its users. The feature is widely appreciated by Digital PT users, and Eato Keto garners a significant amount of business, with its user base and revenue doubling on a monthly basis. There is widespread consumer satisfaction, with many taking to social media in appreciation of the integration.
11. Fitness Freak's advisors and directors from Sharkania Inc. suggest that Fitness Freak's platform should only host and promote such forms of exercise as video content, which yield quick results, in order to attract more consumers. Therefore, certain forms of exercise such as yoga, acrobatics, pilates etc. should not be allowed on the platform, even though these videos are some of the most widely viewed by users. In the following months, Fitness Freak unilaterally removes all videos of a few forms of exercises, which were exclusively made by creators for Fitness Freak. While Bruce & Zoya who predominantly train in calisthenics, do not protest to this. However, Push-up Kabila and Soyi Thing write to Fitness Freak in protest to avoid their video content from being removed. They release social media statements stating that the videos that were exclusively created for Fitness Freak and were deeply connected to their viewers. Removing it from the platform has led to the loss of some

of their best and most viewed video content which will lead to irreparable loss of viewership. However, their letter and protest heed no result.

12. Push-up Kabila and Soyi Thing file an information before the CCI, alleging that unconditionally removing the video content from the Fitness Freak platform is anti-competitive and has led to irreparable loss. In their information, they also challenge the excessive and unreasonable data collection, processing and sharing by Fitness Freak to provide targeted recommendations for Sharkania Inc.'s investee company, Eato Keto. Specifically, they allege that the fact that Fitness Freak did not take the users' consent prior to sharing the data with Eato Keto amounts to an abuse of dominance.
13. In light of the foregoing factual matrix, the following issues have been formulated to be heard before the CCI:
  - I. Whether pre-loading of Eato Keto on the Fitness Freak device interface amounts to anti-competitive conduct under the Indian Competition Act?
  - II. Whether the sharing of data, without taking the users' consent, amounts to an abuse of dominance?
  - III. Whether unilateral removal of exclusive video content by Fitness Freak amounts to a violation of the Indian Competition Act?
  - IV. Any other issue that would need to be adjudicated upon by the CCI.

**Clarifications** regarding the Moot Proposition should be sought by filling out the form in the [Clarification Section](#) of the website.

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