

NOTICE OF FILING

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File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v
FITBIT LLC
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form NCF1

Concise Statement

No.

of 2022

Federal Court of Australia

District Registry: New South Wales

Division: General

Commercial and Corporations National Practice Area (Regulator and Consumer Protection)

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Applicant

FITBIT LLC

Respondent

A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

1 The Applicant (**ACCC**) alleges that the Respondent, Fitbit LLC (previously Fitbit Inc) (**Fitbit**) made false, misleading or deceptive representations to Australian consumers about their rights under the consumer guarantee regime in the *Australian Consumer Law (ACL)*, Schedule 2 to the *Competition and Consumer Act 2010 (Cth) (CCA)*.

2 In essence, the ACCC alleges that from about 10 May 2020 to about 22 February 2022 (**Relevant Period**) Fitbit made false, misleading or deceptive representations to Australian consumers of Fitbit products to the effect that:

- (a) a consumer could not be entitled to a refund in respect of a Fitbit product unless the product was returned within 45 days of purchase and/or shipment of the relevant product; and/or
- (b) in respect of a product supplied by Fitbit as a replacement product, a consumer could not be entitled to a further replacement after Fitbit's limited warranty period (of two years after the purchase and/or shipment of the original (replaced) product) expired.

Filed on behalf of (name & role of party) Australian Competition and Consumer Commission, Applicant

Prepared by (name of person/lawyer) John Fogarty

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[Version 2 form approved 09/05/2013]

- 3 These representations were false, misleading or deceptive because a consumer could, in certain circumstances, be entitled to a refund or replacement outside of those time periods in accordance with the consumer guarantee remedy provisions of the ACL.

Background

- 4 Fitbit is a consumer electronics and fitness company that develops and manufactures health and fitness devices and software. Fitbit's products include wearable fitness trackers and smart watches that automatically track users' daily steps, calories burned, distance travelled, quality of sleep, and other metrics, and display real-time feedback.
- 5 Fitbit is incorporated in the United States of America. It conducts its business in trade or commerce in Australia by marketing, offering for sale and concluding sales for its products to consumers based in Australia through its websites located at the URLs <https://www.fitbit.com> and <https://fitbit.com/au> (**Websites**). Fitbit also provides customer support services to Australian consumers, including via a chat function accessible on the Websites, email and/or telephone. Fitbit also maintains a presence in Australia through a related body corporate, Fitbit (Australia) Pty Ltd.
- 6 In the Relevant Period, Fitbit's Return Policy contained in its Terms of Sale relevantly provided that, to qualify for a refund, a consumer must (among other requirements) request a return authorisation within 45 days of their shipment date and return the device in good physical condition.
- 7 In the Relevant Period, Fitbit provided its customers with a limited product warranty for new products.
- 8 The terms of the limited product warranty were contained in a document called the Fitbit Limited Warranty. The written terms of the limited product warranty included the following:
- (a) a "warranty" which set out the "warranty period" for new Fitbit devices:

Fitbit warrants to the original purchaser that your Fitbit-branded device and accessories that are new (the "New Product(s)") shall be free from defects in materials and workmanship under normal use for a period of one (1) year from the date of purchase, except that if you reside in the European Economic Area (EEA) and you purchased your Fitbit product in the EEA, the warranty period is two (2) years from the date of purchase (the "New Product Warranty Period").

- (b) a term providing for the repair or replacement of a defective device within the “warranty period”:

If such a defect arises and a return authorization request is received by Fitbit within the applicable Warranty Period, Fitbit will, at its option and to the extent permitted by law, either (1) repair the Product at no charge, using new or refurbished replacement parts or (2) replace the Product with a new or refurbished Product. In the event of such a defect, to the extent permitted by law, these are your sole and exclusive remedies.

- (c) a term in respect of the length of the “warranty period” in circumstances where a consumer was provided a replacement device:

Any replacement Product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer, or for any additional period of time that may be required by applicable law.

9 While the Fitbit Limited Warranty provided that the “warranty period” for Australian consumers was one year, that period was extended by Fitbit to two years in or around May 2018, as communicated by Fitbit (Australia) Pty Ltd to the ACCC in an undertaking dated 31 May 2018 (**Undertaking**).

10 The Undertaking was provided to the ACCC pursuant to s 87B of the CCA arising out of concerns by the ACCC that at that time the Fitbit website contained false or misleading representations concerning Australian consumers’ entitlement to remedies under the ACL following non-compliance with the consumer guarantees (the **Concerns**). Pursuant to the Undertaking, Fitbit (Australia) Pty Ltd undertook among other things to (a) publish certain text and a notice on its website; and (b) implement an ACL compliance program. The Undertaking had effect for three years.

11 There was also a term of the Fitbit Limited Warranty that:

The Fitbit Return Policy and Limited Product Warranty is in addition to any other rights and remedies that you may have under the Australian Consumer Law... You are also entitled to choose a refund or replacement for major failures with goods.

12 In the Relevant Period, Fitbit responded to complaints about its products using a three-tiered system:

- (a) “Tier 1” involved assisting with inquiries relating to basic trouble shooting, including providing remedies for faulty products;
- (b) “Tier 2” involved providing an initial escalation path in cases where Tier 1 assistance was unable to resolve the customer’s concern; and
- (c) “Tier 3” was the final escalation team with additional training to handle complicated or sensitive customer enquiries, including providing remedies for faulty products.

- 13 During the Relevant Period, Fitbit mostly outsourced its customer support under a contract for services to Transactel International Services Limited, which carries on business as TELUS International (U.S.) Corp (**TELUS**). Fitbit created customer support policies and conducted training for TELUS.
- 14 Under the contract for services, TELUS provided customer support services on Fitbit’s behalf at a “Tier 1” and “Tier 2” level. Fitbit responded directly to complaints escalated to a “Tier 3” level.
- 15 In the Relevant Period, the Websites directed Australian consumers, who had purchased Fitbit devices from Fitbit and wished to make a complaint, to “Fitbit Help” pages on the Websites which (among other channels) provided access to a live chat function, direct message and telephone contact details.
- 16 TELUS representatives communicated with Australian consumers at “Tier 1” and “Tier 2” level, among other ways, via the chat function on the “Fitbit Help” pages; and via email, where TELUS representatives used “fitbit.com” email addresses.

The 45 day representation

- 17 In the Relevant Period, through a TELUS employee and/or a Fitbit employee (**Fitbit customer service representative**), Fitbit interacted with each of the 18 consumers identified in Annexure A to this Concise Statement in relation to problems those consumers claimed to be experiencing with a Fitbit device they had purchased from Fitbit (the **Category A Consumers**).
- 18 In the course of each of the Category A Consumers’ communication(s) with the Fitbit customer service representative, the Fitbit customer service representative represented to the consumer that the consumer could not have any right to a refund unless the product

was returned within Fitbit's Return Policy period of 45 days from the date of purchase, and/or shipment, of the relevant product from Fitbit (**45 day representation**).

- 19 Particulars of the representations referred to in the preceding paragraph are set out in Annexure A.
- 20 In fact, Fitbit's obligation to provide a refund to the consumer under the ACL continued or may have continued even if the consumer did not request a refund within 45 days of purchase and/or shipment, and Fitbit could not impose a 45 day limitation on a consumer, by virtue of the following:
- (a) sections 54 and 55 of the ACL provide for consumer guarantees;
 - (b) pursuant to sections 259 and 263 of the ACL, the consumer had a right to:
 - (i) reject products with a major failure; and
 - (ii) at the consumer's election, obtain a refund.
 - (c) having regard to sections 64 and 276 of the ACL, Fitbit could not exclude, restrict or modify the availability of the consumer guarantees or a consumer's entitlement to exercise the rights to a remedy for goods that do not comply with the consumer guarantees; and
 - (d) 45 days from purchase and/or shipment of a Fitbit product is not, or may not be, a reasonable rejection period, for the purposes of section 262 of the ACL.

The warranty period representation

- 21 In the Relevant Period, each of the 40 consumers identified in Annexure B to this Concise Statement communicated with a Fitbit customer service representative, in respect of a problem they claimed to be experiencing with a replacement Fitbit device that had been supplied by Fitbit within the preceding 24 months (the **Category B Consumers**).
- 22 In the course of each of the Category B Consumers' communication(s) with the Fitbit customer service representative, the Fitbit customer service representative represented to the consumer that the consumer could not have any right to a replacement product because the applicable "warranty period" was that of the original (replaced) device, and that warranty period had expired (**warranty period representation**).

23 Particulars of the representations referred to in the preceding paragraph are set out in Annexure B.

24 In fact, pursuant to s 54 and ss 259 to 263 of the ACL, where a replacement product supplied by Fitbit fails to comply with the guarantee as to acceptable quality, a consumer has a right, within a reasonable time (within the meaning of that term in sections 262 and 259 of the ACL):

(a) where the failure is a major failure, to reject the goods and, at the consumer's election, to obtain a refund or a replacement from the supplier; and

(b) where the failure is not a major failure, to obtain from the supplier of the goods a remedy in the form of repair, replacement or refund at the supplier's election,

regardless of whether any "warranty period" on an original (replaced) device has expired.

25 Having regard to sections 64 and 276 of the ACL, Fitbit could not exclude, restrict or modify the availability of the consumer guarantees or a consumer's entitlement to exercise the rights to a remedy for goods that do not comply with the consumer guarantees.

B. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

26 Where the conduct of the Fitbit customer service representatives set out above was engaged in by:

(a) TELUS employees, it was conduct engaged in on behalf of Fitbit within the scope of those TELUS employees' actual or apparent authority and/or at the direction of or with the consent of Fitbit and, by reason of s 139B(2) of the CCA, that conduct is also the conduct of Fitbit;

(b) Fitbit employees, it was conduct engaged in on behalf of Fitbit within the scope of those Fitbit employees' actual or apparent authority and/or at the direction of or with the consent of Fitbit and, by reason of s 139B(2) of the CCA, that conduct is also the conduct of Fitbit.

27 Therefore, Fitbit made the representations referred to at paragraphs [18] and [22] above in each instance set out in the Annexures.

- 28 By reason of the matters set out in paragraphs [17] to [20] above, Fitbit:
- (a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of section 18(1) of the ACL; and
 - (b) made a false or misleading representation as to the existence, exclusion or effect of any warranty, right or remedy in contravention of section 29(1)(m) of the ACL.
- 29 By reason of the matters set out in paragraphs [21] to [25] above, Fitbit:
- (a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of section 18(1) of the ACL; and
 - (b) made a false or misleading representation as to the existence, exclusion or effect of any warranty, right or remedy in contravention of section 29(1)(m) of the ACL.
- 30 Fitbit engaged in the conduct set out in paragraphs [17] to [25] notwithstanding that it was aware of the ACCC's Concerns and had previously given the Undertaking which related to Australian consumers' entitlement to remedies under the ACL following non-compliance with the consumer guarantees.

C. RELIEF SOUGHT FROM THE COURT

- 31 The ACCC seeks the relief set out in the accompanying Originating Application, which includes: (i) declarations pursuant to s 21 of the *Federal Court of Australia Act (1976)* (Cth); (ii) pecuniary penalties pursuant to s 224 of the ACL; (iii) injunctions pursuant to s 232 of the ACL; (iv) non-punitive orders (publication notice, corrective advertising, compliance program) pursuant to s 246 of the ACL; (v) orders as to findings of fact pursuant to s 137H of the CCA; and (vi) costs.

D. ALLEGED HARM

- 32 Fitbit's conduct misrepresented the application of consumer guarantees to Fitbit's products. A consequence of this conduct is that some consumers were deprived the opportunity of considering and potentially availing themselves of rights that may have been available to them under the ACL and which may have spared them financial expense and personal inconvenience.

Date: 24 October 2022



.....
Signed by John Fogarty
DLA Piper Australia
Lawyers for the Applicant

This Concise Statement was prepared by DLA Piper Australia and settled by Fiona Forsyth KC and James Stoller of counsel.

Certificate of lawyer

I, John William Fogarty, certify to the Court that, in relation to the Concise Statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 24 October 2022

A handwritten signature in black ink, appearing to read 'JWF', written in a cursive style.

Signed by John Fogarty
DLA Piper Australia
Lawyers for the Applicant

ACCC v FITBIT, LLC

ANNEXURE A: PARTICULARS RELATING TO THE 45 DAY REPRESENTATION

No.	NUIX document ID	Fitbit case number	Approximate date of contact with Fitbit	Relevant extract
1.	1050256.002.001.0547	37391500	10 May 2020	<i>"We're afraid that your Versa Lite is already beyond 45 days from the date of purchase and is no longer eligible for a refund"</i>
2.	1050256.002.001.0276	36665073	14 September 2020	<i>"To be eligible for a refund, there are two requirements needed: * Within 45 days upon shipment of the device. * Purchased directly from Fitbit online web store. As I can see here, you are not qualified of the two requirements."</i>
3.	FBT.001.001.7076	38575903	26 November 2020	<i>"I'm sorry but we are unable to provide a refund. You can only request a return authorisation within 45 days of your shipment date"</i>
4.	FBT.001.044.8325	38899842	20 December 2020	<i>"First, we apologize but we can only issue refunds for products purchased directly from us within 45 days of purchase date."</i>
5.	FBT.001.018.3495	40782257	4 May 2021	<i>"With regard to the refund, the Versa 2 is already beyond the 45-day money back guarantee and we won't be able to provide you with a refund."</i>
6.	1050256.004.001.0972	41407983	On or around 16 June 2021	<i>"Please note that we can only provide refund if the device is directly purchased from us and if it's still inside 45 days from the day it was purchased..."</i>
7.	FBT.001.021.7180	41487604	22 June 2021	<i>"Please be advised that refund is only applicable for orders made directly at fitbit.com <http://fitbit.com/> and if it is within 45 days since it was</i>

No.	NUIX document ID	Fitbit case number	Approximate date of contact with Fitbit	Relevant extract
				<i>purchased.”</i>
8.	FBT.001.024.7072	42018923	2 August 2021	<i>“We can only accept return 45 days from the date of purchased.”</i>
9.	FBT.001.024.8181	42036586	3 August 2021	<i>“Unfortunately, your product doesn’t meet the refund requirements of our warranty policy. If you bought your device from fitbit.com, we accept returns in accordance with our return policy. See www.fitbit.com/global/us/legal/returns and warranty. Within 45 days from date of purchase.”</i>
10.	FBT.001.027.4950	42448795	5 September 2021	<i>“Please be guided that we only accept return if the product was purchased directly from fitbit.com or within 45 days from the date of purchase.”</i>
11.	FBT.001.030.4531	42812901	8 October 2021	<i>“To further assist you, we would like you to let you know that we’re sorry because your Fitbit Luxe isn’t covered for refund for 45 days from the date of purchase.”</i>
12.	FBT.001.031.1003	42886939	15 October 2021	<i>“Hi, Julie. Sorry to hear this. We can only accept returns 45 days from purchase if you purchased it from; fitbit.com/store. ...”</i>
13.	FBT.001.031.9319	42984196	25 October 2021	<i>“Now, about the refund option, this is available when you purchase the original device directly on our website and this purchase didn’t pass 45 days since the date of purchase, if you purchased the original device with another retailer you can check with them their return policies.”</i>
14.	FBT.001.031.9539	42985809	26 October 2021	<i>“We can only provide a refund within the 45 days of purchase.”</i>
15.	FBT.001.032.3929	43033367	31 October 2021	<i>“Reading your email, you did mention about getting a refund. Please be guided that we only accept return for refund if the product was purchased directly from fitbit.com or within 45 days from the date of purchase.”</i>

No.	NUIX document ID	Fitbit case number	Approximate date of contact with Fitbit	Relevant extract
16.	FBT.001.037.1903	43572266	27 December 2021	<i>"Please be advised that refund is only applicable for orders made directly at fitbit.com and if it is within 45 days since it was purchased."</i>
17.	FBT.001.039.7657	43843488	19 January 2022	<i>"Please know that we accept refunds within the first 45 days of purchase."</i>
18.	FBT.001.041.5238	44020782	6 February 2022	<i>"Okay Yoni, thanks for letting me know this info, in this case the return for refund of the devices only can be done on the period of time between the first 45 days after done the purchase"</i>

ACCC v FITBIT, LLC

ANNEXURE B: PARTICULARS RELATING TO THE WARRANTY PERIOD REPRESENTATION

No.	NUIX document ID	Fitbit case number	Approximate date of contact with Fitbit	Relevant extract
1.	FBT.001.001.0938	38501274	20 November 2020	<i>"please note that as this is a replacement device, it will still follow the same purchased date of your original Versa. With this, your device didn't meet the requirements for a replacement."</i>
2.	FBT.001.001.2753	38525259	22 November 2020	<i>"We have confirmed that your device is outside the warranty period, please remember that the company covers 2 years of warranty for Australia, and although it isn't eligible for a replacement we would love to keep you in the Fitbit family and building years with you."</i>
3.	FBT.001.001.5035	38544924	24 November 2020	<i>"After reviewing your account, we see that your device is no longer in the warranty period, and therefore isn't eligible for replacement."</i>
4.	FBT.001.002.6173	38667353	3 December 2020	<i>"After reviewing your account, we see that your device is no longer in the warranty period and therefore isn't eligible for replacement."</i>
5.	FBT.001.045.3299	38949563	24 December 2020	<i>"After reviewing your account, we see that your device is no longer in the warranty period, and therefore isn't eligible for replacement. For more information about our warranty policy, visit www.fitbit.com/returns."</i> ... <i>"Thank you for being part of the family, we really appreciate you as a customer and we do want to keep you here so we can reach our goals together, however, since the device is more than 2 years old counting your original one, we are not able to replace it."</i>

No.	NUIX document ID	Fitbit case number	Approximate date of contact with Fitbit	Relevant extract
6.	FBT.001.045.5486	38982822	27 December 2020	<i>"Our limited warranty provides repair or replacement of products that have a defect while still in the warranty period. Your device is out of the warranty period, and therefore is not eligible for repair or replacement."</i>
7.	FBT.001.005.2609	39202502	9 January 2021	<i>"Please be advised that the Fitbit's warranty provides a coverage of 365 days from the original device's purchased date and doesn't renew when a replacement takes place."</i> ... <i>"After reviewing your account, we see that the device is no longer in the warranty period, and therefore isn't eligible for replacement ..."</i>
8.	FBT.001.009.6915	39642675	8 February 2021	<i>"Although your tracker is not eligible for a replacement, we want to offer you the following: 35% discount on a new Fitbit"</i> ... <i>"Our requirements provides replacement of products that have a defect while still in the two year period. Your device does not meet the requirements for replacement, but we want to offer you a discount to thank you for your loyalty to Fitbit."</i>
9.	FBT.001.010.7594	39752089	16 February 2021	<i>"After reviewing your account, we see that your device is no longer in the warranty period, and therefore isn't eligible for replacement."</i>
10.	FBT.001.011.6414	39844491	23 February 2021	<i>"With regard to your concern, please note that as your Charge 2 is a replacement from us, it will still follow the original purchase date of your original Charge 2. With that, your Charge didn't meet the requirement for a replacement."</i>
11.	FBT.001.011.6549	39844716	23 February 2021	<i>"please note that the replacement Charge 3 will still follow the original purchase date of your original Charge 3. With that, your device didn't meet the requirements for a replacement. we would like to inform you that your Charge 3 didn't meet the</i>

No.	NUIX document ID	Fitbit case number	Approximate date of contact with Fitbit	Relevant extract
				<i>requirements for a replacement."</i>
12.	FBT.001.011.8049	39861419	24 February 2021	<i>"Your device is out of the warranty period, and therefore is not eligible for a replacement."</i>
13.	FBT.001.012.5692	39967979	3 March 2021	<i>"Please note that as this is a replacement Ionic, it will still follow the original purchase date of your original Ionic. For that, your Ionic didn't meet the requirement for a replacement."</i>
14.	FBT.001.012.7500	39989376	5 March 2021	<i>"After reviewing your account, we see that your device is no longer in the warranty period, and therefore isn't eligible for replacement."</i>
15.	FBT.001.014.1338	40162024	18 March 2021	<i>"Your device is out of the warranty period, and therefore is not eligible for repair or replacement, but we want to offer you a discount to thank you for your loyalty"</i>
16.	FBT.001.015.3386	40313852	31 March 2021	<i>"We found the warranty stated in 2019-01 and end up in 2021-01. Note warranty is not renewed with replacements. Any replacement Product will be warranted for the remainder of the original warranty period or 30 days, whichever is longer ... After reviewing your account, we see that your device is no longer in the warranty period and therefore isn't eligible for replacement".</i>
17.	FBT.001.017.3630	40605164	22 April 2021	<i>"After reviewing your account, we see that your device is no longer in the warranty period, and therefore isn't eligible for replacement. For more information about our warranty policy, visit fitbit.com/returns."</i>
18.	FBT.001.021.9354	41525373	25 June 2021	<i>"device does not meet the requirements for a replacement but you may still receive remedies or services"</i>

No.	NUIX document ID	Fitbit case number	Approximate date of contact with Fitbit	Relevant extract
				... <i>it is because upon checking your account, I've confirmed that your Charge 3 tracker is originally purchase on May 22, 2019"</i>
19.	FBT.001.022.6467	41649564	5 July 2021	<i>"Upon checking the system, your device does not meet the requirements for a replacement..."</i> ... <i>We would like to inform you that we based the requirements on the original purchase date... and the replacement will not renew or extend the requirements."</i>
20.	FBT.001.023.3361	41776351	13 July 2021	<i>"Since there's a physical damage on the watch, I already checked your eligibility for a replacement... Upon checking here, it shows that your device does not meet the requirements for a replacement"</i> ... <i>Note that eligibility starts from the purchase date of the original device..."</i>
21.	FBT.001.025.8316	42195554	16 August 2021	<i>"After reviewing your account, we see that your device is no longer in the warranty period, and therefore isn't eligible for replacement."</i>
22.	FBT.001.028.0054	42512900	10 September 2021	<i>"After reviewing your account, we see that your device is no longer in the warranty period since this warranty starts with the original pair date from the original device, and therefore isn't eligible for replacement."</i>
23.	FBT.001.028.7305	42605205	19 September 2021	<i>"After reviewing your account, we see that your device is no longer in the warranty period, and therefore isn't eligible for a replacement..."</i>

No.	NUIX document ID	Fitbit case number	Approximate date of contact with Fitbit	Relevant extract
24.	FBT.001.029.3028	42680458	26 September 2021	<i>"looks like the current device that you have is a replacement that we have previously. Is that correct? After reviewing your account, we see that it's been a while that you have the original Fitbit, and therefore isn't eligible for replacement."</i>
25.	FBT.001.029.5849	42715244	29 September 2021	<i>"we see that your device is no longer in the warranty period, and therefore isn't eligible for a replacement."</i>
26.	FBT.001.029.8964	42756124	2 October 2021	<i>"Upon checking on the system, your device does not meet the requirements for a replacement ... The replacement will not renew or extend the requirements. I would like to inform you that we based the requirements on the original purchase date of your Versa 2"</i>
27.	FBT.001.031.9473	42985443	26 October 2021	<i>"After reviewing your account, we see that your device is no longer in the warranty period, and therefore isn't eligible for replacement. For more information about our warranty policy, visit fitbit.com/global/us/legal/returns-and-warranty"</i>
28.	FBT.001.034.7337	43296353	27 November 2021	<i>"After reviewing your account, we see that your device is no longer in the warranty period, and therefore isn't eligible for replacement"</i>
29.	FBT.001.034.7613	43302705	27 November 2021	<i>"After reviewing your account, we see that your device is no longer in the warranty period, and therefore isn't eligible for replacement"</i>
30.	FBT.001.037.0629	43556906	12 December 2021	<i>"Upon checking on the system, your device does not meet the requirements for a replacement but we'd really love to help you continue what you started with Fitbit." ... "Just like we have mentioned in our previous email, we based the requirements on the</i>

No.	NUIX document ID	Fitbit case number	Approximate date of contact with Fitbit	Relevant extract
				<i>original purchase date of your Ionic and the replacement will not renew or extend the requirements. Considering that it was first connected on January 3, 2019, we can conclude that your Ionic was purchased before the said date, which does not meet the requirements for a replacement."</i>
31.	FBT.001.036.1223	43460196	14 December 2021	<p><i>"we don't base the requirements for a replacement on the issue that you have experience, okay?</i></p> <p><i>... We based the requirements for a replacement on the original purchased date</i></p> <p><i>...</i></p> <p><i>I would like to inform you that we based the requirements on the original purchase date of your Blaze's and the replacement will not renew or extend the requirements Considering that it was first connected on October 18, 2017, we can conclude that your Blaze was purchased before the said date, whichh does not meet the requirements for a replacement".</i></p>
32.	FBT.001.036.4651	43499550	18 December 2021	<i>"we see that your device is no longer in the warranty period, and therefore isn't eligible for replacement"</i>
33.	FBT.001.036.9416	43542933	23 December 2021	<i>"After reviewing your account, we see that your device is no longer in the warranty period, and therefore isn't eligible for replacement. any replacement Product will be warranted for the remainder of the original Warranty Period or thirty (30) days, whichever is longer"</i>
34.	FBT.001.038.2126	43685358	5 January 2022	<i>"After reviewing your account, we see that your device is no longer in the warranty period, and therefore isn't eligible for replacement. For more information about our warranty policy, visit fitbit.com/global/us/legal/returns-and-warranty"</i>
35.	FBT.001.038.5569	43729301	8 January 2022	<i>"After reviewing your account, we see that your device is no longer in the warranty</i>

No.	NUIX document ID	Fitbit case number	Approximate date of contact with Fitbit	Relevant extract
				<i>period, and therefore isn't eligible for replacement"</i>
36.	FBT.001.038.5698	43730198	9 January 2022	<p><i>"Upon checking on the system, your device does not meet the requirements for a replacement...."</i></p> <p>...</p> <p><i>"I can see here that your original device, a Fitbit Blaze was first connected to your account last December 24, 2017..."</i></p> <p>...</p> <p><i>"I would like to inform you that we based the requirements on the original purchase date of your Blaze's and the replacement will not renew or extend the requirement... You have still received several replacement despite that...Considering that it was first connected on December 24, 2017, we can conclude that your Blaze was purchased before the said date, which does not meet the requirements for a replacement"</i></p>
37.	FBT.001.039.5214	43818858	17 January 2022	<i>"After reviewing your account, we see that your device is no longer in the warranty period, and therefore isn't eligible for replacement"</i>
38.	FBT.001.041.3803	44000653	4 February 2022	<i>"After reviewing your account, we see that your device is no longer in the warranty period, and therefore isn't eligible for replacement."</i>
39.	FBT.001.041.8514	44055524	10 February 2022	<p><i>"we've confirmed that your Charge 3 tracker is defective because it is showing dim screen"</i></p> <p>...</p> <p><i>"upon checking on the system, your device does not meet the requirements for a replacement..."</i></p>

No.	NUIX document ID	Fitbit case number	Approximate date of contact with Fitbit	Relevant extract
				<p>....</p> <p><i>"We would like to inform you that we based the requirements on the original purchase date of your Charge 3 and the replacement will not renew or extend the requirements"</i></p>
40.	FBT.001.042.2117	44090015	14 February 2022	<p><i>"We see that your device is no longer in the warranty period and therefore isn't eligible for replacement"</i></p>