



# THE CASE FOR FITNESS LAW

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**T**he fitness industry is booming. Take a walk down most metropolitan streets and you can pick from any number of well-established fitness chains or emerging boutiques—from your traditional gym to contemporary fitness, cycling, yoga, Pilates, and barre studios, to name just a few.

Take a close look the next time you shop for groceries. Nationwide chains and local stores alike are carrying more nonprocessed, natural products and offering customers more food options that promote a healthy, active lifestyle. Or take a minute to inspect your daily social media feeds and apps, which are full of fitness-related pictures, messaging, products, and services. The fitness movement, without question, is alive and well.



Recent statistics confirm this anecdotal evidence. According to the International Health, Racquet, and Sportsclub Association (IHRSA), health clubs in the United States grossed more than \$24.2 billion in 2014, a 7.4 percent increase from the previous year. IHRSA also reported that 54 million Americans belonged to health clubs in 2014—nearly 18.5 percent of the U.S. population.

The rise of the industry seems to be a product of a new generation of fitness enthusiasts. A 2014 Nielsen study found that 76 percent of regular exercisers globally are eighteen to thirty-four years in age. And in June 2014, Flurry Analytics reported a 62 percent increase in the usage of health and fitness apps over the previous six months, while the overall mobile app industry reported only a 33 percent increase.

With the recent explosion of such an influential social and commercial movement, it makes sense that organized efforts to examine and understand the unique legal issues that affect the industry would be well under way.

But that has not been the case. To date, the legal issues faced by the fitness industry generally have fallen in the category of sports law or entertainment law. Sports law is focused on the body of legal issues associated with the amateur and professional sports worlds, while entertainment law involves the application of a number of legal principles to the film, music, television, publishing, digital, and multimedia industries.

The core issues addressed by these practice areas, however, are not the same issues that confront the fitness industry. Instead, the fitness industry is focused on the broader

mission of providing products and services related to fitness, exercise, and overall health and wellness. So while there is a slight overlap among these industries, the key issues faced by the fitness industry are fundamentally different. The recent blossoming of the space has made clear that the legal issues that confront the industry no longer fit under these broad legal headings.

Enter fitness law. Fitness law represents a unique and more appropriate way of thinking about the intersection between the law and the fitness industry. In a word, fitness law is the collection of legal issues and disciplines that affect the fitness and health and wellness industries, including the closely related supplement and food industries that also operate in the fitness space. Like sports law or cyber law, fitness law is less like a discrete legal discipline and more like the application of a number of legal disciplines to a distinct industry.

Of course, there are laws on the books that govern the fitness industry, most of which apply to gyms and fitness facilities. For example, the health studio services contract law (Civil Code section 1812.80 et seq.) requires that California health studios include and conspicuously disclose certain terms in their membership contracts. California's automated external defibrillator (AED) law (Health and Safety Code section 104113 et seq.) requires health and fitness studios to maintain AEDs at their facilities and train their employees on how to properly use AED units in the event of a sudden cardiac arrest. There is also a body of law governing the use and scope of participant, assumption of risk, and waiver agreements when someone joins a gym or works with a personal trainer.



But the concept of fitness law is much bigger than health studios and the laws that regulate them. Like many industries, the fitness industry faces its own set of commercial, consumer, and regulatory issues that deserve a unique and specialized form of representation.

Consider a few examples. Wearable fitness technology companies are developing innovative products that track and report our location, vital statistics, and physical outputs—which implicate cutting-edge privacy and health law issues. Nutrition and health and wellness companies are redefining the way we think about food and supple-

ments and how they affect our bodies, triggering a host of consumer and regulatory issues. And the fitness industry generally has been a massive contributor to the explosion of social media campaigns, online advertising, and e-commerce—testing the reach and expanding the applicability of advertising and media laws.

Fitness law is everywhere, affecting fitness companies of all shapes and sizes. It affects the established, multinational brands and famous fitness personalities that are confronted with complex legal issues. It touches the emerging, rising-star brands from people who are creating



the next big fitness or wellness movement in their garage or kitchen as we speak. Fitness law encompasses apparel, apps, movement and mobility products, health foods, fitness theories and concepts, paleo products, supplements, wearable technologies, and a whole range of other products and services that live in the fitness space.

The point is, an organized effort to support the industry and understand the issues that affect it will be beneficial for all fitness companies, no matter their size, product, or service.

Some might ask, with an already complex legal landscape full of subspecialties, whether it makes sense to go through the trouble of acknowledging yet another practice area. The answer, I believe, is a resounding yes. A movement with as much impact and influence as the current state of fitness deserves its own stand-alone treatment. The exponential growth and popularity of fitness movements—along with advances in science, therapies, nutrition, and social movements—will continue to place the importance of health and wellness front and center in the public eye.

The industry would be better served if uniform efforts were made to understand fitness clients, their customers, business structure, and interests, and how those interests are affected both by current regulations and those on the horizon. Like many industry-focused practices, a deep understanding of the client and the client's customers ultimately leads to better service and better representation.

It's time to acknowledge the fitness industry as the stand-alone, dynamic, influential, and progressive commercial

space that it is. Let's organize efforts to critically examine the legal issues that affect the industry-specific issues so we can advocate for and better serve clients in the space. And let's consider giving fitness law its own seat at the table among other well-established practice groups that currently provide industry-specific services.

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