

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

THE HELPING HAND COMPANY)	
(LEDBURY) LIMITED)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 18-cv-10996
)	
VIVE HEALTH, LLC)	
)	
Defendant.)	

COMPLAINT and Jury Demand

Plaintiff, The Helping Hand Company (Ledbury) Limited (“Helping Hand”), by and through its undersigned counsel, for its Complaint against Vive Health, LLC (“Vive”), shows and alleges as follows:

THE PARTIES

1. Helping Hand is a United Kingdom limited company with its principal place of business at Bromyard Road Industrial Estate, Ledbury HR8 1NS, UK.
2. Helping Hand’s United States division, Helping Hand Company USA, principal place of business is at 31 Porter Street, Stoughton, MA 02072
3. Upon information and belief, Vive Health, LLC is a Florida limited liability company with a principal place of business at 8955 Fontana Del Sol Way, Naples, FL 34109.

JURISDICTION AND VENUE

4. This action arises under 35 U.S.C. § 1 et seq. including 35 U.S.C. §§ 271, 281, 283, 284, and 285.
5. This Court has subject matter jurisdiction over the claims asserted in this Complaint pursuant to 28 U.S.C. §§1331 and 1338. In addition, the Court has diversity jurisdiction over this

action pursuant to 28 U.S.C. § 1332 because Helping Hand and Vive are citizens of different states and the amount in controversy exceeds \$75,000.00. This Court also has supplemental jurisdiction over the pendent state law claims pursuant to 28 U.S.C. §1367(a).

6. This Court has personal jurisdiction over Vive through its purposeful minimum contacts with Massachusetts, as Vive has been engaged in substantial and continuous business in this Judicial District. The Defendant is listed as the top selling “reacher grabber” and has sold over five thousand (5,000) of the allegedly infringing product on Amazon alone. *See* Exhibit D. Defendant also offers its products on its own website, eBay, and Bonanza. The Defendant’s advertisements through online retailers, such as Amazon, surely communicated to prospective Massachusetts buyers both a description of the product and a price at which it could be purchased. Undoubtedly, some of the five thousand sales via Amazon were to Massachusetts buyers.

7. This Court also has personal jurisdiction over Vive as Vive h has regularly engaged in business in this Commonwealth and District and purposefully availed themselves of the privilege of conducting business in this District by their interactive and commercial website which has, and continues to, solicit business in the Commonwealth

8. Venue is proper in this Court pursuant to 28 U.S.C. §§1391and 1400.

FACTUAL BACKGROUND

HELPING HAND’S PATENT PORTFOLIO

9. Helping Hand owns two issued patents covering parts incorporated in the designs of its TRU-GRIP®, TRU-GRIP MAX®, and TRU-GRIP PRO® tools. Helping Hand’s Tru-Group product line consists of hand-operated reaching devices used for picking up objects.

A. U.S. Patent No. D788,556 Patent

10. On August 4, 2014, Gavin Hugh James filed an application with the United States Patent and Trademark Office (hereinafter the "USPTO") for a U.S. Design Patent entitled "Bilateral Mechanism", to which the USPTO assigned Application No. 29/498,392.

11. Application No. 29/498,392 ultimately issued as U.S. Patent No. D788,556 (the "D556 Patent") on June 6, 2017. Exhibit A.

12. The 'D556 Patent is assigned to Helping Hand, which owns the full rights, title, and interest in the 'D556 Patent.

13. The 'D556 Patent claims the ornamental design for a bilateral mechanism.

14. The 'D556 Patent has not expired and is in full force and effect.

15. Pursuant to 35 U.S.C. § 282, the 'D556 Patent and all of its respective claims are presumed valid.

B. U.S. Patent No. D781,120 Patent

16. On July 17, 2014, Gavin Hugh James filed an application with the United States Patent and Trademark Office (hereinafter the "USPTO") for a U.S. Design Patent entitled "Bilateral Claw", to which the USPTO assigned Application No. 29/496,772.

17. Application No. 29/496,772 ultimately issued as U.S. Patent No. D781,120 (the "D120 Patent") on March 14, 2017. Exhibit B.

18. The 'D120 Patent is assigned to Helping Hand, which owns the full rights, title, and interest in the 'D120 Patent.

19. The 'D120 Patent claims the ornamental design for a bilateral claw.

20. The 'D120 Patent has not expired and is in full force and effect.

21. Pursuant to 35 U.S.C. § 282, the 'D120 Patent and all of its respective claims are presumed valid.

THE ACCUSED PRODUCT

22. Vive makes, imports into the United States, offers for sale, sells, and/or uses in the United States hand-operated reaching devices, including, without limitation, a hand-operated reaching device such as the Rotating Reacher Grabber (“Accused Product”). Exhibit C.

23. Vive’s infringement may include additional products, services and technologies (to be determined in discovery).

24. The Accused Product is covered by at least claim 1 of the ’D120 Patent and ’D556 Patent.

25. Vive manufactures, offers to sell, and sells the Accused Product in the United States without a license to do so.

26. Vive offers for sale the Accused Product throughout the United States (e.g., Massachusetts) via their website <https://www.vivehealth.com> website as well as Amazon.com, eBay, and other outlets. Exhibit D.

27. Vive has sold at least one, if not all, of its Accused Products in Massachusetts.

NOTICE OF INFRINGEMENT

28. On or about August 21, 2017, Helping Hand, via its counsel, sent a letter to the registered agent for Vive Health, LLC. In that letter, Helping Hand provided written notice to Vive that the USPTO had allowed issued U.S. Design Patent Nos. D788,556 and D781,120. (“Helping Hand’s Notice Letter”). Exhibit E.

29. On September 26, 2017 counsel for Vive confirmed receipt of the Helping Hand’s Notice Letter and stated a substantive response would be provided by October 6, 2017. Exhibit F.

30. To date, Vive has not provided any substantive response to the Helping Hand’s Notice Letter.

31. Despite Helping Hand's Notice Letter Vive has continued to offer for sale the Accused Product.

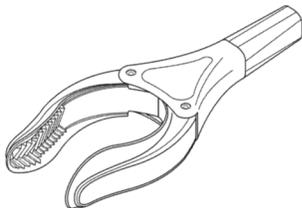
INFRINGEMENT OF THE D'556 PATENT

32. The below is a pictorial comparison of the claim of the D'556 Patent directed to the ornamental design in a bilateral mechanism as compared with the Accused Product.

33. The figure on the left is Figure 5 of the D'556 Patent and on the left is picture of the Accused Product:



34. The figure on the left is Figure 1 of the D'556 Patent and on the left is picture of the Accused Product:



35. The similarity between the Accused Product and the ornamental design of the D'556 Patent is unmistakable and striking.

36. Rather than innovate on its own, Vive copied Helping Hand's patented designs for the head and neck portion of its hand-operated reaching device as embodied in the D'556 Patent.

37. When comparing the design of the Accused Product, as a whole, to the design of the D'556 Patent, as a whole, it is readily apparent that the designs would appear substantially the

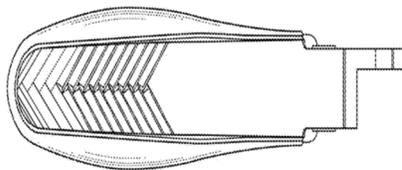
same to an ordinary observer. Specifically, the shapes of the grabber are similarly shaped as are the neck portions of Accused Product and the D'556 Patent. Furthermore, the inside structure of the grabber are identical in design and texture.

38. Vive does not have permission to use Helping Hand's inventions as disclosed in the D'556 Patent.

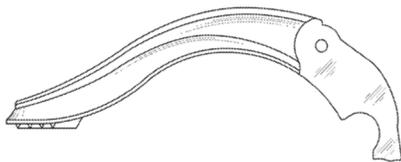
INFRINGEMENT OF THE D'120 PATENT

39. The below is a pictorial comparison of the claim of the D'120 Patent directed to the ornamental design in a bilateral claw as compared with the Accused Product.

33. The figure on the left is Figure 4 of the D'120 Patent and on the left is picture of the Accused Product:



34. The figure on the left is Figure 7 of the D'556 Patent and on the left is picture of the Accused Product:



35. The similarity between the Accused Product and the ornamental design of the D'120 Patent is unmistakable and striking.

36. Rather than innovate on its own, Vive copied Helping Hand's patented designs for the head and neck portion of its hand-operated reaching device as embodied in the D'120 Patent.

37. When comparing the design of the Accused Product, as a whole, to the design of the D'120 Patent, as a whole, it is readily apparent that the designs would appear substantially the same to an ordinary observer. Specifically, the shapes of the claws of Accused Product and the claimed design of the D'120 Patent are identical. Furthermore, the inside structure of the claw are identical in design and texture.

38. Vive does not have permission to use Helping Hands's inventions as disclosed in the D'120 Patent.

HELPING HAND'S COMMERCIAL EMBODIMENT

39. Helping Hand sells a number of products which are covered by the D'556 and D'120 Patents.

40. Specifically, Helping Hand's Tru Grip Pro and Tru Grip Max are covered by the D'556 and D'120 Patents. Exhibit G.

41. Helping Hand began marking its Tru Grip Pro, Tru Grip Max products with one or both of its patent numbers no later than 2017.

VIVE'S UNFAIR TRADE PRACTICES

42. With respect to Vive's Accused Product, Vive does minimal research and development of their own, and simply copies Helping Hand's patented products.

43. Vive tarnishes Helping Hand's reputation and erodes Helping Hand's ability to leverage its patents by making misleading statements to potential purchasers of Helping Hand's patented products and by providing inferior copycat products which tarnishes industry.

COUNT I (INFRINGEMENT OF THE 'D556 PATENT)

44. Helping Hand repeats and realleges each and every allegation set forth in paragraphs 1-43 and incorporates them herein by reference.

45. Vive has been and is still infringing the claim of the D'556 Patent by manufacturing, using, selling, importing, or offering for sale the Accused Product within the United States in violation of 35 U.S.C. § 271.

46. Vive had actual notice of the issued patent at least as early as August 21, 2017.

47. Vive has profited and continues to profit from their manufacture, use, sale, offers to sell, and importation of the Accused Product.

48. Vive's infringement of the D'556 Patent is wanton, willful, and deliberate.

49. As a direct and proximate consequence of the acts and practices of Vive, Vive has also caused, is causing and, unless such acts and practices are enjoined by the Court, will continue to cause irreparable harm to Helping Hand for which it is entitled to preliminary and permanent injunctive relief under 35 U.S.C. §283.

50. Vive's acts of infringement are intentional and willful and "exceptional" pursuant to 35 U.S.C. §285.

COUNT II
(INFRINGEMENT OF THE 'D120 PATENT)

51. Helping Hand repeats and realleges each and every allegation set forth in paragraphs 1-50 and incorporates them herein by reference.

52. Vive has been and is still infringing the claim of the D'120 Patent by manufacturing, using, selling, importing, or offering for sale the Accused Product within the United States in violation of 35 U.S.C. § 271.

53. Vive had actual notice of the issued patent at least as early as August 21, 2017.

54. Vive has profited and continue to profit from their manufacture, use, sale, offers to sell, and importation of the Accused Product.

55. Vive's infringement of the D'120 Patent is wanton, willful, and deliberate.

56. As a direct and proximate consequence of the acts and practices of Vive, Defendant has also caused, is causing and, unless such acts and practices are enjoined by the Court, will continue to cause irreparable harm to Helping Hand for which it is entitled to preliminary and permanent injunctive relief under 35 U.S.C. §283.

57. Vive's acts of infringement are intentional and willful and "exceptional" pursuant to 35 U.S.C. §285.

**COUNT III
(UNJUST ENRICHMENT)**

58. Helping Hand repeats and realleges each and every allegation set forth in paragraphs 1-59 and incorporates them herein by reference.

59. As a result of the conduct of Vive described above, and unless the relief sought in this Complaint is granted, Vive will unjustly benefit from and be unjustly enriched by, their own intentional and wrongful acts.

JURY DEMAND

Plaintiff demands a trial by jury on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, as relief, Helping Hand respectfully prays for a judgment against Defendant as follows:

A. A judgment that Vive has infringed one of more claims of Helping Hand's 'D120 and 'D556 Patents;

B. An order and judgment preliminarily and permanently enjoining Vive and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns, from further acts of infringement of Helping Hand's 'D120 and 'D556 Patents;

C. An order requiring that Vive account for all gains, profits, and advantages derived by its infringement of Helping Hand's 'D120 and 'D556 Patents in violation of 35 U.S.C. § 271, and that Vive pay to Helping Hand all damages suffered by Helping Hand;

D. A judgment awarding Helping Hand all damages, including treble damages, based on any infringement found to be willful, pursuant to 35 U.S.C. §284, together with prejudgment interest;

E. Declaring this to be an "exceptional" case within the meaning of 35 U.S.C. §285, entitling Helping Hand to an award of its reasonable attorney fees, expenses and costs in this action as well as pre-judgment and post judgment interests; and,

F. Such other and further relief as this Court or a jury may deem proper and just.

Dated: May 17, 2018

Respectfully Submitted,
Attorney for Plaintiff

By: /s/ Brendan M. Shortell
Brendan M. Shortell (BBO# 675851)
Gary E. Lambert (BBO# 548303)
Lambert & Associates
92 State Street , Suite 200
Boston, MA 02109
Telephone: 617.720.0091
Facsimile: 617.720.6307
shortell@lambertpatentlaw.com