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FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

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DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

FREE MOTION FITNESS, INC., fka,  
GROUND ZERO DESIGN  
CORPORATION, a Utah Corporation,

Plaintiff,

v.

THE NAUTILUS GROUP, INC., fka,  
DIRECT FOCUS, INC., and NAUTILUS  
HUMAN PERFORMANCE SYSYEMS,  
INC.,

Defendants.

Civil Action No. 1:02CV00122 PGC

Judge Paul G. Cassell

**SECOND AMENDED COMPLAINT  
OF PATENT  
INFRINGEMENT  
(JURY TRIAL DEMANDED)**

*6*

Plaintiff Free Motion Fitness, Inc., fka Ground Zero Design Corporation, ("FREEMOTION" or "Plaintiff") complains and alleges against Defendants The Nautilus Group, Inc. fka Direct Focus, Inc., ("NAUTILUS") and Nautilus Human Performance Systems, Inc., ("HUMAN PERFORMANCE") (collectively referred to herein as "Defendants") as follows:

### **PARTIES**

1. Plaintiff FREEMOTION is a Utah corporation having principal places of business at 1500 South 1000 West, Logan, Utah, 84321-8206 and 1096 Elkton Drive, Suite 600, Colorado Springs, Colorado 80907.

2. On information and belief, NAUTILUS is a Washington corporation having a principle place of business at 1400 NE 136<sup>th</sup> Avenue, Vancouver, Washington 98661.

3. On information and belief, HUMAN PERFORMANCE is a subsidiary of NAUTILUS, and is a Virginia Corporation with a principle place of business at 709 Powerhouse Road, Independence, Virginia 24348.

### **JURISDICTION AND VENUE**

4. This is a civil action for patent infringement under the patent laws of the United States, and more specifically, under Title 35 U.S.C. §§ 271, 281, 283, 284 and 285. Therefore, this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1338(a) (action arising under an Act of Congress relating to patents) and 28 U.S.C. § 1331 (federal question).

5. This is also an action in which the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states. Subject matter jurisdiction is also therefore conferred upon this Court by 28 U.S.C. § 1332(a)(1).

6. Defendants are subject to personal jurisdiction of this Court inasmuch as Defendants have offered to sell and/or sold numerous products within the State of Utah including, but not limited to the Nautilus Freedom Trainer exercise machine, either itself or through established distribution channels, at least one of which products and sales violates the above-cited federal statutes.

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1400(b), and 1391.

### **FIRST CLAIM FOR RELIEF**

#### **(Infringement U.S. Patent No. 6,238,323 B1)**

8. United States Patent No. 6,238,323 B1 (“the ‘323 patent”), directed to a cable crossover exercise apparatus, issued on May 29, 2001. A true and correct copy of the ‘323 patent is attached hereto as Exhibit A.

9. FREEMOTION is the owner by assignment of the ‘323 patent.

10. The ‘323 patent was duly and validly issued by the United States Patent and Trademark Office after undergoing examination according to law.

11. One or both of the Defendants have made, used, offered to sell and/or sold in the United States exercise machines, including, but not limited to, a device known as the Nautilus Freedom Trainer exercise machine, which incorporates structure corresponding to and infringing claims of the ‘323 patent.

12. Having knowledge of the '323 patent, Defendants have willfully made, used, imported, sold or offered for sale in the past and presently continue to willfully make, use, import, sell and/or offer for sale in the United States certain exercise machines, including, but not limited to, the Nautilus Freedom Trainer exercise machine, without license or authority from FREEMOTION and in violation of FREEMOTION's rights, thereby infringing one or more of the claims of FREEMOTION's '323 patent.

13. Defendants continue to willfully engage in acts of infringement without regard to FREEMOTION's '323 patent and will continue to do so unless otherwise enjoined by this Court. Defendants' infringing acts, as set forth herein, constitute willful infringement, entitling FREEMOTION to treble damages pursuant to 35 U.S.C. § 284.

14. The amount of money damages which FREEMOTION has suffered due to Defendants' acts of infringement of the '323 patent cannot be determined without an accounting, and is thus subject to proof at trial.

15. The harm to FREEMOTION arising from Defendants' acts of infringement of the '323 patent is not fully compensable by money damages, but further results in irreparable harm to FREEMOTION. FREEMOTION will continue to be irreparably damaged unless Defendants are preliminarily and permanently enjoined from continuing their infringing conduct.

### **SECOND CLAIM FOR RELIEF**

**(Infringement U.S. Patent No. 6,458,061 B2)**

16. FREEMOTION realleges and by this reference incorporates paragraphs 1 through 15 into its Second Claim for Relief.

17. United States Patent No. 6,458,061 B2 (“the ‘061 patent”), directed to a cable crossover exercise apparatus, issued on October 1, 2002. A true and correct copy of the ‘061 patent is attached hereto as Exhibit B.

18. FREEMOTION is the owner by assignment of the ‘061 patent.

19. The ‘323 patent was duly and validly issued by the United States Patent and Trademark Office after undergoing examination according to law.

20. One or both of the Defendants have made, used, imported, offered to sell and/or sold in the United States exercise machines, including, but not limited to, a device known as the Nautilus Freedom Trainer exercise machine, which incorporates structure corresponding to and infringing one or more of the claims of the ‘061 patent.

21. Upon information and belief, having knowledge of the ‘061 patent, Defendants have, or will, willfully make, use, import, sell, or offer for sale in the United States certain exercise machines, including, but not limited to, the Nautilus Freedom Trainer exercise machine, without license or authority from FREEMOTION and in violation of FREEMOTION’s rights, thereby infringing the claims of FREEMOTION’s ‘061 patent.

22. Upon information and belief, Defendants will continue to willfully engage in acts of infringement without regard to FREEMOTION’s ‘061 patent and will continue to do so unless otherwise enjoined by this Court. Defendants’ infringing acts, as set forth herein, constitute willful infringement, entitling FREEMOTION to treble damages pursuant to 35 U.S.C. § 284.

23. The amount of money damages which FREEMOTION has suffered due to Defendants’ acts of infringement of the ‘061 patent cannot be determined without an accounting, and is thus subject to proof at trial.

24. The harm to FREEMOTION arising from Defendants' acts of infringement of the '061 patent is not fully compensable by money damages, but further results in irreparable harm to FREEMOTION. FREEMOTION will continue to be irreparably damaged unless Defendants are preliminarily and permanently enjoined from continuing its infringing conduct.

**PRAYER FOR RELIEF**

WHEREFORE, FREE MOTION prays:

On its First Claim for Relief:

- a. For a judgment holding Defendants liable for infringement of one or more of the claims of the '323 patent;
- b. For a judgment finding Defendants' infringement of the '323 patent willful;
- c. For preliminary and permanent injunctive relief enjoining Defendants, their officers, agents, servants, employees and attorneys, and all other persons in active concert or participation with Defendants from further infringement of the '323 patent, including the making, using, importing, selling and/or offering for sale of the Nautilus Freedom Trainer exercise machine and similar devices;
- d. For an award to FREEMOTION of its damages incurred as a result of infringement by Defendants of the '323 patent, and that such damages be trebled in view of the willful and deliberate nature of Defendants' infringing conduct, pursuant to 35 U.S.C. § 284.
- e. That this be declared an exceptional case, and that FREEMOTION be awarded its attorneys' fees pursuant to 35 U.S.C. § 285;

f. For an award of FREEMOTION's costs of this action; and

g. For such other and further relief to which this Court deems that FREEMOTION may be entitled to in law and in equity.

On its Second Claim for Relief:

a. For a judgment holding Defendants liable for infringement of the claims of the '061 patent;

b. For a judgment finding Defendants' infringement of the '061 patent willful;

c. For preliminary and permanent injunctive relief enjoining Defendants, their officers, agents, servants, employees and attorneys, and all other persons in active concert or participation with Defendants from further infringement of the '061 patent, including the making, using, importing, selling and/or offering for sale of the Nautilus Freedom Trainer exercise machine and similar devices;

d. For an award to FREEMOTION of its damages incurred as a result of infringement by Defendants of the '061 patent, and that such damages be trebled in view of the willful and deliberate nature of Defendants' infringing conduct, pursuant to 35 U.S.C. § 284.

e. That this be declared an exceptional case, and that FREEMOTION be awarded its attorneys' fees pursuant to 35 U.S.C. § 285;

f. For an award of FREEMOTION's costs of this action; and


g. For such other and further relief to which this Court deems that FREEMOTION may be entitled to in law and in equity.

**DEMAND FOR JURY TRIAL**

FREEMOTION hereby demands a trial by jury in this action on all issues that may, by law,  
be properly tried to a jury.

DATED this 6th day of November, 2002.

WORKMAN, NYDEGGER & SEELEY

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Exhibits/  
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Please see the  
case file.