

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

VIVE HEALTH LLC, a Florida limited liability company,

Plaintiff,

v.

GOLD KERNAL LLC, a Delaware limited liability company,

Defendant.

**COMPLAINT**

Civil Action No. \_\_\_\_\_

**JURY TRIAL REQUESTED**

Plaintiff Vive Health LLC (“Vive Health”), a Florida limited liability company, by and through its attorneys, states as its Complaint against Defendant Gold Kernal LLC (“Gold Kernal”), a Delaware limited liability company, and alleges as follows:

**PARTIES**

1. Vive Health is a Florida limited liability company having a principal place of business at 8955 Fontana Del Sol Way, 2<sup>nd</sup> Floor, Naples, Florida 34109.

2. On information and belief, Gold Kernal is a Delaware limited liability company with a principal place of business at 9313 Good Springs Drive, Perry Hall, Maryland 21128.

**JURISDICTION AND VENUE**

3. This Court has original subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This court has personal jurisdiction over Defendant because Defendant does and/or has done business in the State of Maryland, among other things, offering for sale and selling home

mobility and safety devices, including the unlawful products at issue in this action. On information and belief, Defendant also causes or has caused the unlawful products to be sold outside of Maryland and places its products within the stream of commerce to reach its customers.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(1), 1391(b)(2), and 1400(b) because (1) Defendant resides in this judicial district, (2) Defendant has committed acts of infringement in this judicial district, and (3) a substantial part of the events giving rise to the claims asserted herein occurred in this judicial district.

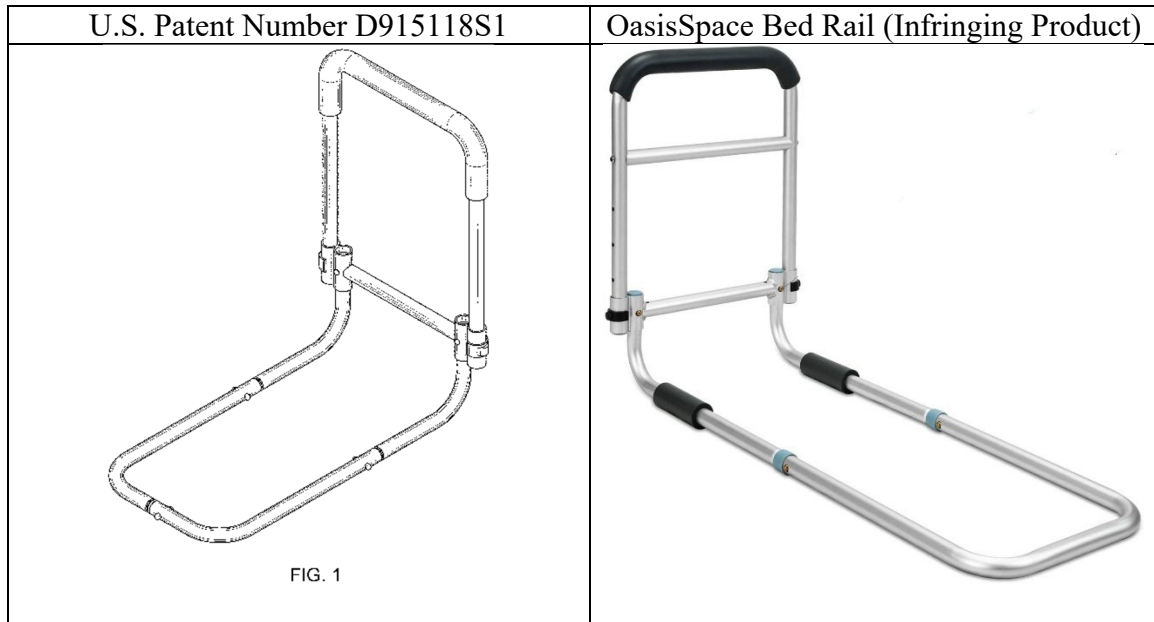
### **Factual Background**

6. Vive Health sells high-quality mobility and safety devices for bedroom, bathroom, and general home healthcare through its online store and through online retailers such as Amazon.com and Walmart.com.

7. Vive Health is the lawful assignee of U.S. Patent No. D915,118 (“the ’118 patent”) and owns the entire right, title, and interest in and to the ’118 patent. The ’118 patent issued on April 6, 2021. A true and correct copy of the ’118 patent is attached hereto as Exhibit A.

8. Defendant sells mobility and home healthcare devices through many of the same online retailers as Vive Health such as Amazon.com and Walmart.com.

9. Defendant unlawfully and wrongfully offers to sell and sells, and/or has offered to sell and sold, a product that infringes Vive Health’s patented design as claimed in the ’118 patent. This product, titled, “OasisSpace Bed Rail” (“the Infringing Product”) infringes upon the patented design claimed in the ’118 patent, as illustrated below.



10. As demonstrated above, the design of the Infringing Product is substantially the same as the patented design claimed in the '118 patent such that an ordinary observer purchasing the Infringing Product would believe that she had purchased the patented Vive Health design.

11. Upon information and belief, Defendant knowingly copied Vive Health's patented design. The '118 patent is listed on Vive Health's patent marking website, <https://www.vivehealth.com/pages/our-patents>, which provides constructive notice to the world of Vive Health's patent rights.

12. Defendant's continual infringement of the '118 patent is irreparably harming and/or is likely to irreparably harm Vive Health.

**COUNT 1**

**INFRINGEMENT OF UNITED STATES DESIGN PATENT NO. D915118S1  
(25 U.S.C. § 271)**

13. Vive Health hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

14. Section 271(a) of the Patent Act (35 U.S.C. § 271(a)) provides, in relevant part:

*(a) Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.*

15. The design of the Infringing Product is substantially the same as the ornamental design claimed in the '118 patent such that an ordinary observer giving such attention as a purchaser usually gives would be deceived into purchasing the Infringing Product believing it to be the patented product.

16. Defendant has made, used, offered for sale, sold, and/or imported into the United States the Infringing Product and/or making, using, offering for sale, selling, and/or importing into the United States the Infringing Product, thereby directly infringing the '118 patent under 35 U.S.C. § 271(a).

17. Upon information and belief, Defendant's infringement is and/or has been willful and the decision to infringe the '118 patent is and/or was in egregious disregard of the law.

18. Defendant has infringed the ornamental design claimed in the '118 patent through the aforesaid acts and may continue to do so unless enjoined by this court.

19. Defendant's activities constitute infringement of the '118 patent without authority or license from Vive Health and in violation of Vive Health's rights pursuant to 35 U.S.C. § 271.

20. To the extent that Defendant's wrongful conduct is causing or will cause Vive Health to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering for sale, and importing the patented invention, Vive Health is entitled to preliminary and permanent injunction relief under 35 U.S.C. § 283.

21. Vive Health is entitled to recovery of Defendant's total profits from its sale of the Infringing Product under 35 U.S.C. § 289.

22. Alternatively, Vive Health is entitled to recover damages as appropriate pursuant to 35 U.S.C. § 284.

**PRAYER FOR RELIEF**

WHEREFORE, Vive Health prays for judgment in its favor and demands the following relief:

- A. for judgment holding Defendant liable for patent infringement under 25 U.S.C. § 271;
- B. for an injunction prohibiting Defendant from infringing the '118 patent pursuant to 35 U.S.C. § 283;
- C. entry of an Order prohibiting those in active concert or participation with Defendant and having notice of the injunction, including, without limitation, retailers such as Amazon.com and Walmart.com (collectively, the "Third Party Providers"), from selling or displaying any advertisements for the Infringing Product for the Defendant;
- D. for an award of damages adequate to compensate Vive Health for Defendant's infringement of the '118 patent, but in no event less than a reasonable royalty for the use made of the invention by the Defendant, together with interests and costs, pursuant to 35 U.S.C. § 284;
- E. for a trebling of damages for willful infringement under 35 U.S.C. § 284, or an award of Defendant's profits from their infringement pursuant to 35 U.S.C. § 289, whichever is greater;
- F. for an award of attorney's fees pursuant to 35 U.S.C. § 285;
- G. for an award of costs pursuant to Fed. R. Civ. P. 54(d)(1); and

H. such other award and any and all relief as the Court may deem just and proper.

**JURY TRIAL DEMAND**

Vive Health hereby demands a trial by jury on all triable issues.

Dated: August 18, 2021

Respectfully submitted,

/s/

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