

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

AACRAFT, INC.	§	
<i>Plaintiff,</i>	§	
	§	
	§	
v.	§	Cause No.: 1:21-CV-963
	§	
JameslyCR,	§	
<i>Defendant.</i>	§	

COMPLAINT FOR PATENT INFRINGEMENT AND COPYRIGHT INFRINGEMENT

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW, Plaintiff, **Aacraft, Inc.**, by and through its/their/her attorney of record, Moster Craft, P.C., files this Complaint for Patent Infringement and Copyright Infringement against Defendant, **JameslyCR**, Owner: John Jamesly Charles, Address: 4391 NW 19th St. Apt 369, Lauderhill, Florida 33313, Registered Agent: Legalinc Corporate Services Inc., Address 10601 Clarence Dr. Ste. 250, Frisco, Texas 75033 (hereinafter referred to as Defendant, JameslyCR). Plaintiff alleges and shows this Honorable Court as follows:

I. JURISDICTION AND VENUE

1. This is an action for patent infringement arising under 35 U.S.C. §251 *et. seq.* and an action for copyright infringement arising under 17 U.S.C. §501 *et. seq.*
2. This Court has original jurisdiction over these actions under 35 U.S.C. §251 *et. seq.*, 17 U.S.C. §501 *et. seq.*, and 28 U.S.C. §§1331 and 1338.
3. Venue in this District is proper under 28 U.S.C. §1391(b) in that a substantial part of the events giving rise to these claims occurred in this judicial district, and under 28 U.S.C.

§1400(b) in that is a judicial district where Defendant has committed acts of patent infringement and copyright infringement and has a regular established place of business.

II. THE PARTIES

4. Plaintiff, Aacraft, Inc., is a Texas for Profit Corporation with an address at 221 Buck Bend, Georgetown, TX 78628 and does substantial business in Georgetown, TX, the State of Texas, and throughout the United States.
5. Defendant, JameslyCR, Owner: John Jamesly Charles, Address: 4391 NW 19th St. Apt 369, Lauderhill, Florida 33313, Registered Agent: Legalinc Corporate Services Inc., Address 10601 Clarence Dr. Ste. 250, Frisco, Texas 75033.
6. Upon information and belief, Defendant uses registered key words such as, “picture hanging tool,” “picture hanging kit,” “picture hanging device,” and “picture hanging,” which are intended to attract web traffic to its sites and infringing products (the “Infringing Products”).
7. Upon information and belief, Defendant, by and through the use of its Infringing Products for sale on Amazon, transacts extensive and substantial e-commerce business in Texas, to Texas residents, and across the United States.

III. FACTS

8. Plaintiff, Aacraft, Inc., owns a design patent for a picture hanging toolkit. The design patent number is US D895,455 S (herein after “the D455 patent”). The patent was issued on September 8, 2020 to Shari Michelle Hammond who has assigned the D455 patent to Plaintiff, Aacraft, Inc.

9. Plaintiff, Aacraft, Inc., owns a copyright for the images of the picture hanging toolkit. The copyright registration number is VA 2-250-655. The copyright's effective date of registration is April 19, 2021.
10. Defendant, JameslyCR, does not have permission from either Aacraft, Inc. or Ms. Hammond to use, manufacture, and sell the Infringing Products that violate Plaintiff's design patent and copyright.

IV. COUNT 1 – DIRECT PATENT INFRINGEMENT

11. Plaintiff reasserts and incorporates herein by reference, each of the allegations in paragraphs 1 through 11 of the Complaint.
12. Attached to the Complaint as Exhibit A, and incorporated herein by reference, is the design patent issued to Shari Hammond, owner and director of Aacraft, Inc., on September 8, 2020. This is a valid patent issued by the US Patent & Trademark Office.
13. Aacraft, Inc. is the rightful owner of the patent at issue in this matter and has always been the rightful owner of the patent at issue in this matter. As the exclusive owner of the patent, Plaintiff enjoys all rights of reproduction, distribution, manufacture, and sale of the patented product.
14. Aacraft, Inc. has not given Defendant permission or authorization to use, modify, manufacture, make, or sell the product that is the subject of the design patent.
15. Nevertheless, Defendant is manufacturing and selling a picture hanging kit, which is more than substantially similar to Plaintiff's picture hanging kit, protected by the design patent, on various websites, including but not limited to Amazon. Defendant's advertising and sale of these Infringing Products are done intentionally to convert Plaintiff's

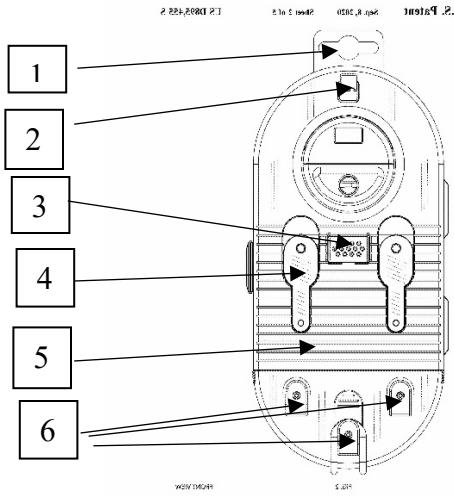
intellectual property rights and illegally divert income allocable to Plaintiff's product for Defendant's own use. Copies of screenshots showing Defendant selling the Infringing Products on Amazon Attached as Exhibit B, and incorporated herein by reference, are copies of screenshots showing Defendant selling the Infringing Products on Amazon and are reproduced below.

16. The Infringing Products are identical and/or substantially similar to Plaintiff's patented product in violation of U.S. patent law.
17. Upon information and belief, Defendant's acts, infringes, and continues to infringe the claim of D495 patent at least by manufacturing, importing, distributing, selling, and offering for sale, and or using withing the United States at the Defendant's Accused product and acts as alleged herein, are a direct infringement of Plaintiff's patent under 35 U.S.C. § 271(a).
18. Defendant has continued to infringe Plaintiff's patent, causing Plaintiff irreparable harm, and such actions by Defendant have led to actual confusion amongst consumers within this jurisdiction. As a result of Defendant's infringement of the D495 patent, Plaintiff has suffered and will continue to suffer damages. Plaintiff is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty, as permitted under 35 U.S.C. § 285, as well as all remedies for design patent infringement permitted under 35 U.S.C. § 289.
19. Plaintiff has sustained and will continue to sustain, substantial injuries, loss, and damage to its exclusive rights under the patent laws regarding the patented product as listed in

Exhibit A, and Plaintiff will continue to sustain damages from the loss of value of the exclusive rights thereunder by reason of Defendant's conduct.

20. The above-described conduct by Defendant constitutes willful patent infringement under the patent laws of the U.S. As a result of the above-described conduct by Defendant, Plaintiff has been damaged in an amount to be proven at trial. Plaintiff is entitled to recover damages adequate to compensate it
21. By reason of the patent laws of the U.S., Plaintiff is entitled to recover Defendant's profits to the extent they are not included as part of Plaintiff's damages.
22. Plaintiff is also entitled to recover its reasonable attorney's fees from Defendant to enforce Plaintiff's intellectual property rights.
23. The similarities between the **FIG. 2** from Plaintiff's patented design, shown below on the left and the Defendant's accused product on the right are set out below. These similar elements are ornamental and are not found in the prior art.

Plaintiff's Patented Design



Accused Product

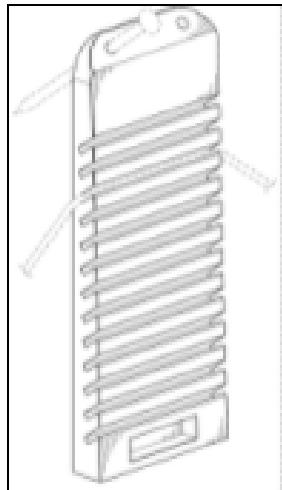


Prior Art

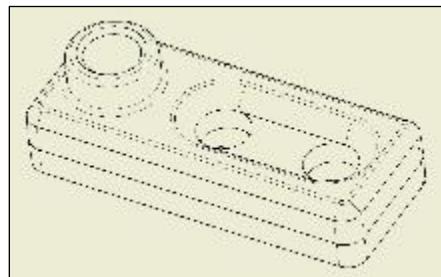
- KR 3020177000670 S



- **USD 826035 S1**



• **EM 001772088-0001**



The Defendant's accused product includes at least non-functional ornamental elements **1-6** from the Plaintiff's patented design. The Defendant's product appearance is closer to the Plaintiff's patented design than it is to the prior art. Both the Plaintiff's patented design and the Defendant's product have a similar shaped, positioned, and proportioned hang tag **1**. Both the Plaintiff's patented design and the Defendant's product

have a similar shaped, positioned and proportioned square **2** under the hang tag. Both the Plaintiff's patented design and the Defendant's product have a similar shaped, positioned and proportioned a rectangle **3** positioned between two keys. Both the Plaintiff's patented design and the Defendant's product have a similar shaped, positioned and proportioned have 2 keys **4**. Both the Plaintiff's patented design and the Defendant's product have a similar shaped, positioned and proportioned horizontal stripes **5** and Both the Plaintiff's patented design and the Defendant's product have a similar shaped, positioned and proportioned triangular arrangement of hooks **6**.

As shown below, both the plaintiff's product and the defendant's product are sold on Amazon and look substantially similar. Thus the overall appearance of the patented design and the accused product are substantially similar. A design patent is infringed “[i]f, in the eye of an ordinary observer, giving such attention as a purchaser usually give, tow designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing.” him to purchase one supping it to be the other.” Egyptian Goddess, 543 F.3d at 670. Thus, it is believed the Defendant's product directly infringes the Plaintiff's design patent.

Plaintiff's Product
on Amazon



Accused Product
on Amazon



V. COUNT 2 – DIRECT COPYRIGHT INFRINGEMENT

24. Plaintiff reasserts and incorporates herein by reference, each of the allegations in paragraphs 1 through 24 of the Complaint.
25. Attached to the Complaint as Exhibit C, and incorporated herein by reference, is the registered copyright issued to Aacraft, Inc. on July 10, 2020, and the deposited image associated with this registered copyright. The Registration Number is VA-2-211-473. This is a valid copyright issued by the U.S. Copyright Office.

26. Aacraft, Inc. is the rightful owner of the copyright at issue in this matter and has always been the rightful owner of the copyright at issue in this matter. As the exclusive owner of the copyrighted material, Plaintiff enjoys all rights of reproduction and distribution of the copyrighted material.
27. Aacraft, Inc. have given Defendant permission or authorization to use, modify, reproduce, or distribute the product that is the subject of the copyrighted material.
28. Nevertheless, Defendant is advertising a picture hanging kit using pictures that are the same as or substantially similar to Plaintiff's copyrighted material, on various websites, including but not limited to Amazon. (See Exhibit B and above comparison of Plaintiff's and Defendant's product pictures on Amazon). Defendant's use of Plaintiff's copyrighted material in advertising for its Infringing Products is done intentionally to convert Plaintiff's intellectual property rights and illegally divert income allocable to Plaintiff's product for Defendant's own use.
29. The advertised products are identical and/or substantially similar to Plaintiff's copyrighted material in violation of U.S. copyright law.
30. Defendant's acts, as alleged herein, are a direct infringement of Plaintiff's copyright.
31. Defendant has continued to infringe Plaintiff's copyright, causing Plaintiff irreparable harm, and such actions by Defendant have led to actual confusion amongst consumers within this jurisdiction.
32. Plaintiff has sustained and will continue to sustain, substantial injuries, loss and damage to its exclusive rights under the copyright laws regarding the copyrighted material as

listed in Exhibit C, and Plaintiff will continue to sustain damages from the loss of value of the exclusive rights thereunder by reason of Defendant's conduct.

33. The above-described conduct by Defendant constitutes willful copyright infringement under the copyright laws of the U.S. As a result of the above-described conduct by Defendant, Plaintiff has been damaged in an amount to be proven at trial.
34. By reason of the copyright laws of the U.S., Plaintiff is entitled to recover Defendant's profits to the extent they are not included as part of Plaintiff's damages.
35. Plaintiff is also entitled to recover its reasonable attorney's fees from Defendant to enforce Plaintiff's intellectual property rights.

VI. REQUEST FOR A JURY TRIAL

36. Plaintiff respectfully requests a jury trial in this matter.

VII. CONCLUSION AND PRAYER

37. WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests judgment in its favor against Defendant for all causes of action herein, and upon final trial receive:
 - a. Adjudge that Defendant has directly infringed, literally or under the doctrine of equivalents, claim 1 of the D495 patent, and that the manufacture, use, sale, offer for sale and /or importation of at least the Accused Product infringes claim 1 of the D495 patent.
 - b. An order preliminarily enjoining Defendant, their officers, agents, employees, and those acting in concert or conspiracy with them temporarily during the pendency of this action and permanently thereafter from infringing, contributing to, or participating in the infringement of others of the D495 Patent and copyrighted

- material rightfully owned by Plaintiff by manufacturing, selling, copying, duplicating, licensing, displaying, distributing, or otherwise without authorization by Plaintiff;
- c. Award Plaintiff damages to compensate for Defendant's infringement of the D495 patent, but in no event less than a reasonable royalty permitted by 35 USC §284 together with prejudgment interest from the date the infringement began;
 - d. That Defendant be required to pay over to the account of Plaintiff the actual damages suffered by Plaintiff as a result of the infringements and any profits of the Defendant earned and attributable to the infringements of Plaintiff's patented product and copyrighted material and to pay such other damages as this Court shall appear just and proper under U.S. patent and copyright laws;
 - e. Award Plaintiff the total profit made by Defendant from its infringement of the D495 patent under 35 US.C. §289.
 - f. Award Plaintiff increased damages under 35 U.S.C. §284;
 - g. Declare this to be an exceptional case under 35 U.S.C. §285.
 - h. That Defendant be required to pay Plaintiff triple damages for Defendant's patent infringement;
 - i. Award of costs under 35 U.S.C. §284 or otherwise provided by law;
 - j. Award of attorney's fees pursuant to 35 U.S.C. §285;
 - k. Pursuant to 17 U.S.C. § 502,
 - (1) permanently enjoin Defendant and his agents, servants, employees, and attorneys; and all other persons who are in active concert or participation with

any of the aforementioned from publishing or trafficking the Infringing Work or any other work derivative of Plaintiff's Copyright;

(2) order that Defendant remove all copies of the Infringing Work from any chain of distribution including online and in stores

(3) order that all labels, signs, prints, packages, wrappers, receptacles, photographs, and advertisements in the possession of the Defendant or his agents or co-conspirators, depicting or promoting the Infringing Work, or a colorable imitation thereof, and all plates, molds, matrices, negatives, and other means of making the same, be delivered up to this Court and destroyed;

(4) order Defendant to file with the Court and serve on the Plaintiff within thirty days (30) after the service on the Defendant of the permanent injunction, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the injunction.

1. Award Plaintiff damages, including copyright infringement damages pursuant to 17 U.S.C. § 504(b);
- m. Award Plaintiff Defendants' copyright infringement profits pursuant to 17 U.S.C. § 504(b);
- n. Award Plaintiff copyright infringement statutory damages of \$30,000 for each copyright infringement pursuant to 17 U.S.C. § 504(c)(1);
- o. Award Plaintiff maximum statutory damages for willful copyright infringement of \$150,000 pursuant to 15 U.S.C. § 504(c)(2);
- p. Award Plaintiff its costs and attorneys' fees as part of the costs pursuant

- to 17 U.S.C. § 505;
- q. Award of prejudgment interest and post judgment interest in the maximum amount permitted by law; and
 - r. For such other and further relief this Court deems just and proper and Plaintiff is entitled to.

Dated: October 25, 2021.

Respectfully submitted,

/s/ G. Michael Roebuck
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J. Brandon Schuelke
State Bar No. 24120663
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ATTORNEYS FOR PLAINTIFF



US00D895455S

(12) **United States Design Patent** (10) Patent No.: **US D895,455 S**
Hammond (45) Date of Patent: ** Sep. 8, 2020

(54) **HAND-HELD PICTURE HANGING AND LEVELING TOOL**(71) Applicant: **Shari Michelle Hammond**, Round Rock, TX (US)(72) Inventor: **Shari Michelle Hammond**, Round Rock, TX (US)(73) Assignee: **Shari Hammond**, Georgetown, TX (US)(***) Term: **15 Years**(21) Appl. No.: **29/681,680**(22) Filed: **Feb. 27, 2019**(51) LOC (12) Cl. **10-04**

(52) U.S. Cl.

USPC **D10/69**(58) **Field of Classification Search**

USPC D10/65, 69

CPC G01C 9/26; G01C 9/28

See application file for complete search history.

(56)

References Cited

U.S. PATENT DOCUMENTS

7,171,755 B1 * 2/2007 Arent A47G 1/16
33/194
10,422,638 B2 * 9/2019 Burge G01C 9/28

* cited by examiner

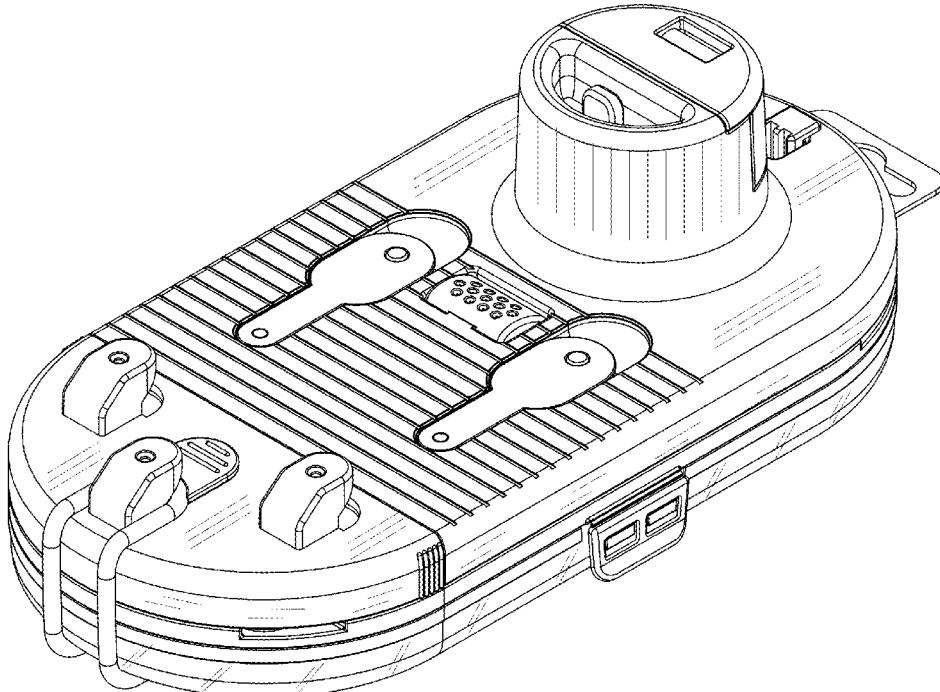
Primary Examiner — Antoine Duval Davis

(57) **CLAIM**

The ornamental design for a hand-held picture hanging and leveling tool, as shown.

DESCRIPTION

FIG. 1 is an isometric view of the picture hanging tool;
 FIG. 2 is a straight-on, front view thereof;
 FIG. 3 is a straight-on, back view thereof;
 FIG. 4 is a top view thereof;
 FIG. 5 is a bottom view thereof;
 FIG. 6 is a left-side view thereof; and,
 FIG. 7 is a right-side view thereof.

1 Claim, 5 Drawing Sheets

ISOMETRIC VIEW

U.S. Patent

Sep. 8, 2020

Sheet 1 of 5

US D895,455 S

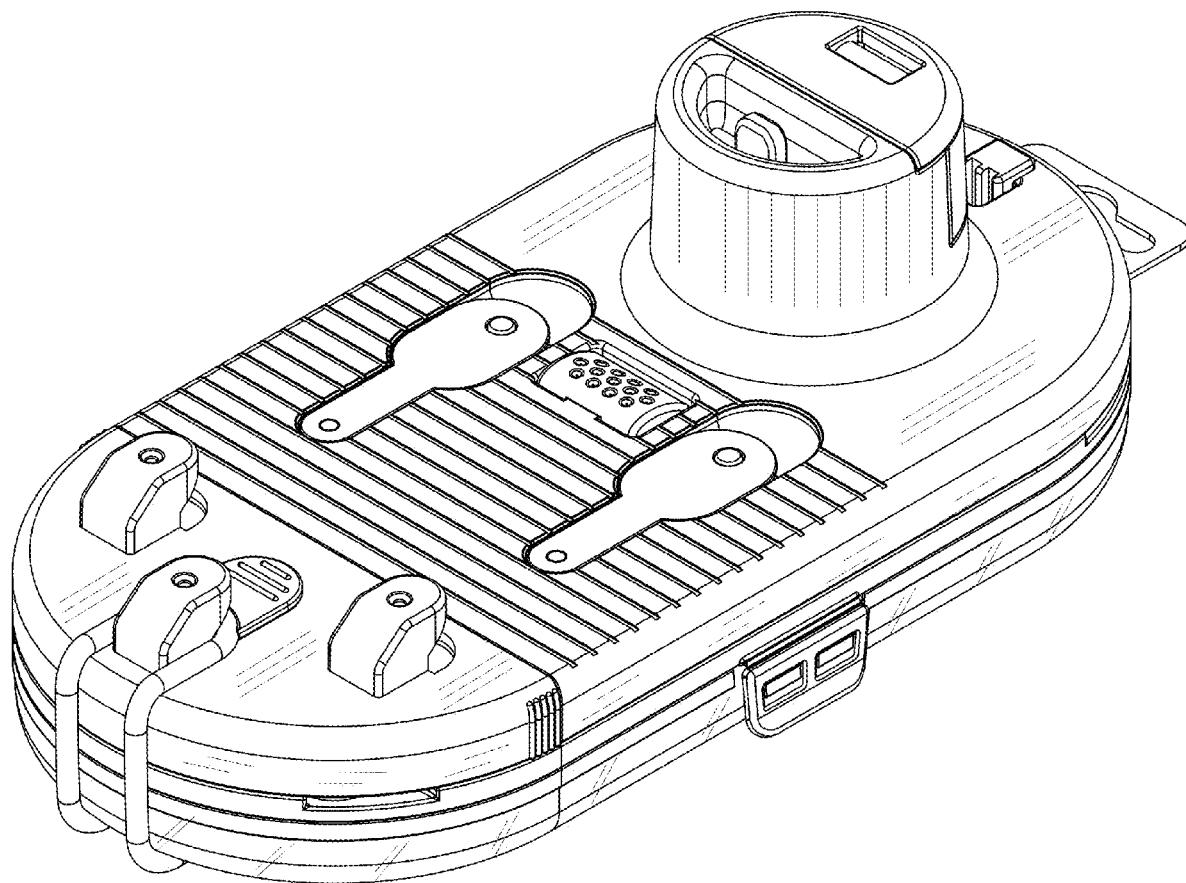


FIG. 1

ISOMETRIC VIEW

U.S. Patent

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Sheet 2 of 5

US D895,455 S

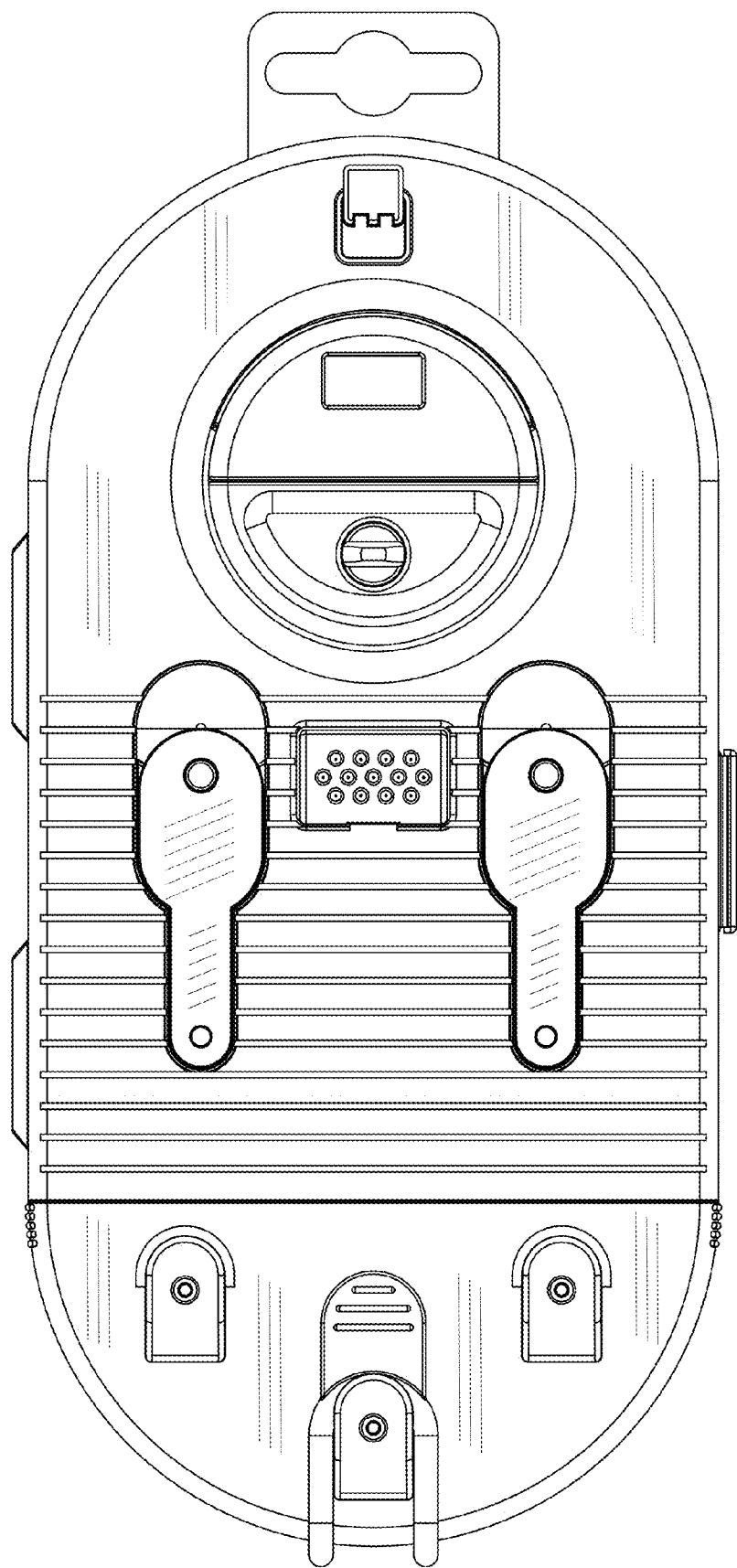


FIG. 2

FRONT VIEW

U.S. Patent

Sep. 8, 2020

Sheet 3 of 5

US D895,455 S

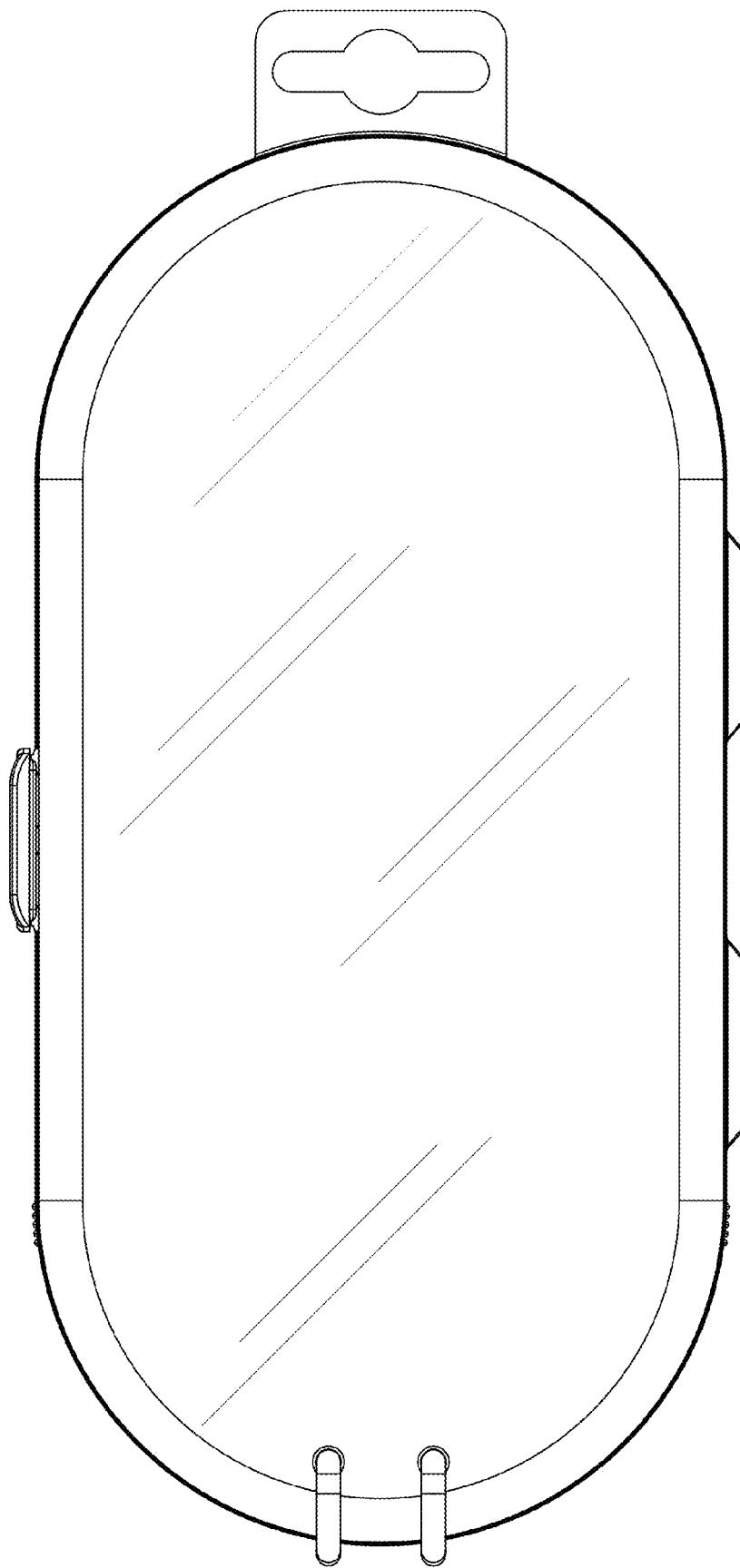


FIG. 3

BACK VIEW

U.S. Patent

Sep. 8, 2020

Sheet 4 of 5

US D895,455 S

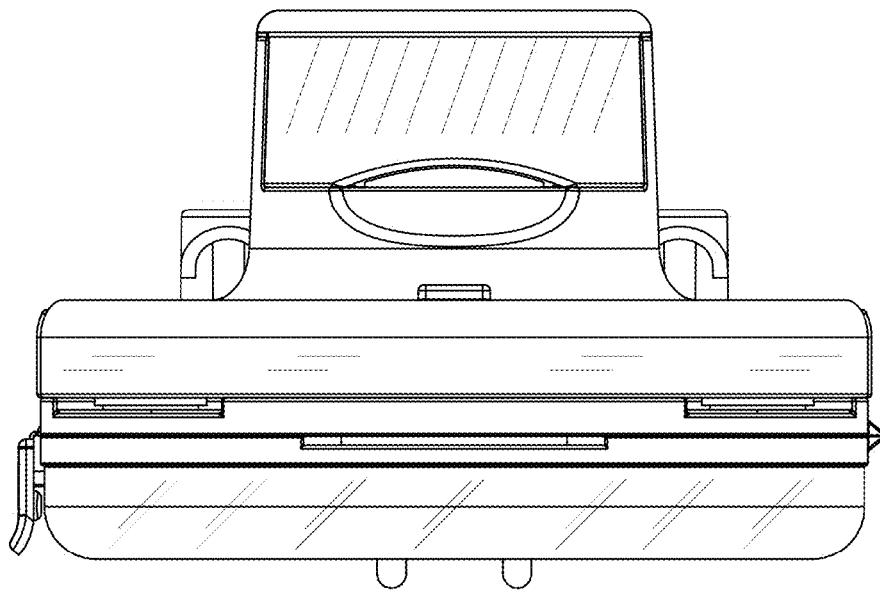


FIG. 4

TOP VIEW

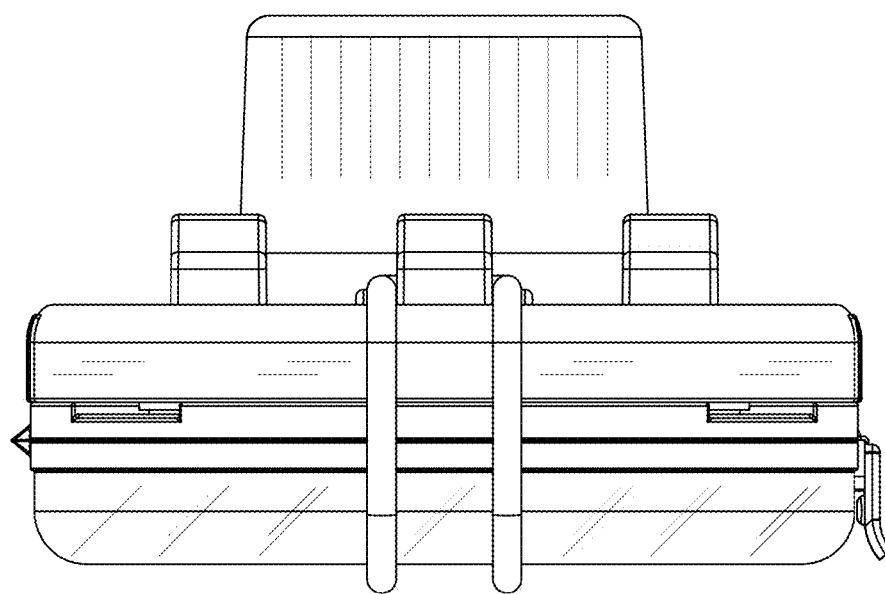


FIG. 5

BOTTOM VIEW

U.S. Patent

Sep. 8, 2020

Sheet 5 of 5

US D895,455 S

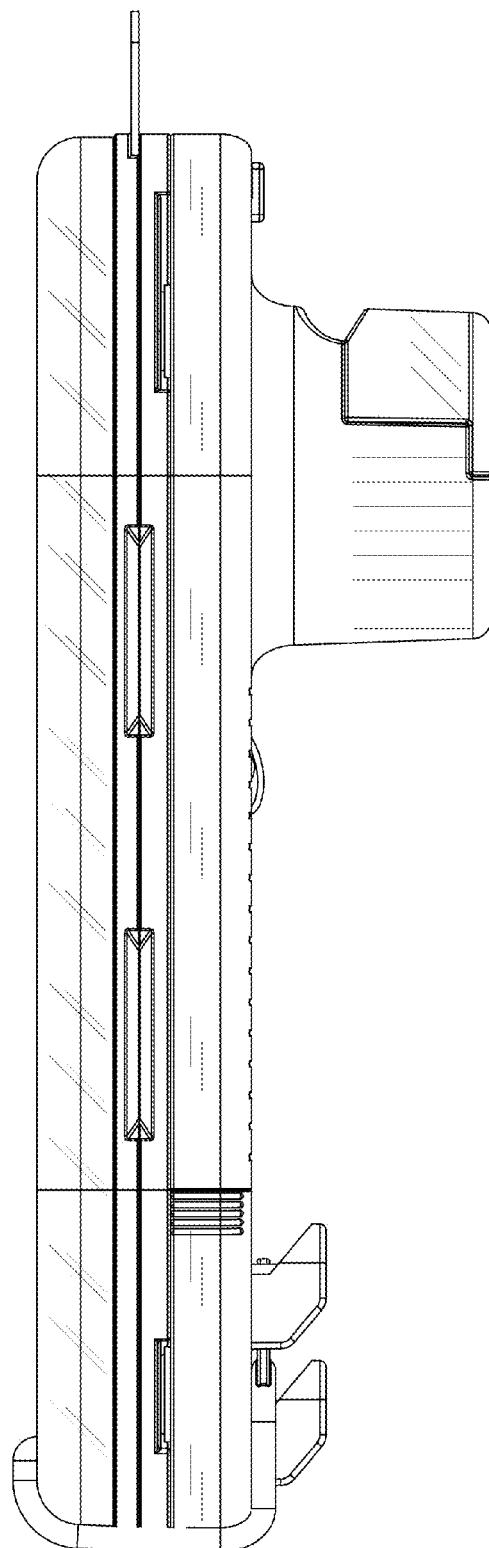


FIG. 6 LEFT-SIDE VIEW

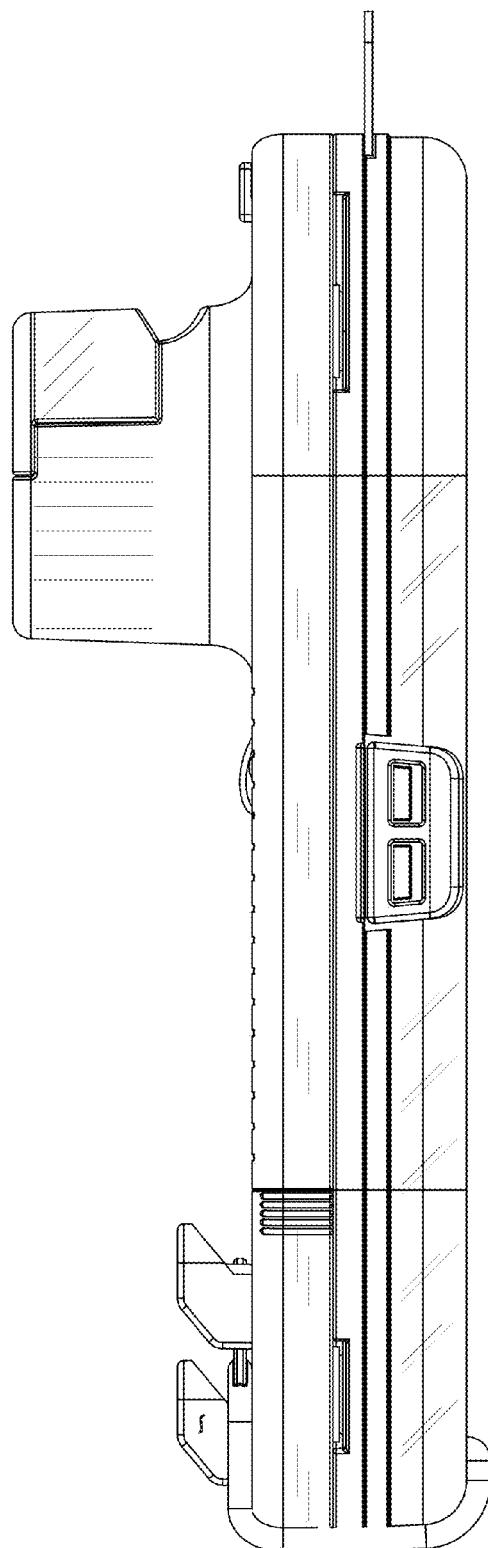


FIG. 7 RIGHT-SIDE VIEW

EXHIBIT B URL FOR ACCUSED PRODUCT ON AMAZON

https://www.amazon.com/dp/B08S7G58GS/ref=sspa_dk_detail_2?psc=1&pd_rd_i=B08S7G58GS&pd_rd_w=ANhqk&pf_rd_p=4269e1a0-a218-4fbd-9748-1cd337d2f2a5&pd_rd_wg=JCxHk&pf_rd_r=RA4TKFZSG9Y7XDMWBAR8&pd_rd_r=331869ca-c357-490c-907f-3ce128ada09c&spLa=ZW5jcnlwdGVkUXVhbGlmaWVyPUEyMVJGRUkwQjRHQ1FLJmVuY3J5cHRIZEIkPUEwNjkzMjA0M0pGNTFON1VSWTJIMSZlbmNyeXB0ZWRBZEIkPUEwNjg4MjQ1NzU1V1BVVjdJTkhGJndpZGdIdE5hbWU9c3BfZGV0YWlsJmFjdGlvbj1jbGlja1JIZGlyZWN0JmRvTm90TG9nQ2xpY2s9dHJ1ZQ==

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Have a question?

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Compare with similar items

This item	Picture Hanging Kit With 225 Pieces Accessories Wall Hanger Wire SAWTOOTH + Easy Level Frame Ruler Multifunction Wall Picture Hanger With Hammer and EASY LEVEL BUBBLE Picture Hanging tool Supplies	Go Hang It! Pro – The Original All-in-One Picture Hanging & Leveling Kit Zero Measuring Required Easily Hang Sawtooth/Wire Hangers Includes Hardware Case +85 Pcs. Picture Hanging Essentials	Picture Hanging Kit, Picture Hangers 260 Pieces Wall Hangers Accessories with Picture Hanging Hooks,Nails for Hanging Pictures,Frame Hanging Hardware with Small Claw Mini Hammer with Magneti Head.	VEAMOR All-in-One Picture Hanging Kit -with Calibration Function and Picture Hanging Tool to Hang it Perfect-Hardware Case +105 Pcs Hanging Hardware-Zero Measurement with The Hanging Tool Kit.	  	Picture Hanging Kit & Leveling Tool, Easy One Step Hanging Tool for Photo Frames, Mirrors, Clocks, Artwork, Wall Coverings with Hardware Case Included 79 PCS Hardware, Zero Measuring Required	 	Picture Hanging Kit, Picture Frame Hanger Tool (Picture Hanging kit)
		Add to Cart	Add to Cart	Add to Cart	Add to Cart	Add to Cart	Add to Cart	Add to Cart
Customer Rating	 (17)	 (3808)	 (1070)	 (326)	 (326)	 (2028)		
Price	Unavailable	\$32 ⁹⁹	\$19 ⁹⁹	\$26 ⁹⁹	\$19 ⁹⁹	\$16 ⁹⁹		
Sold By	—	INSPIRED PRODUCTS	Samstore619	VEAMOR Store	Janisse US store	MSST		

Product description

USUALLY, THE FORMAL LIVING ROOM AND DINING ROOM tend to be gathering places in the home and often make the first impression. These are great spaces to have a happy feel filled with light and air and elegance.

JameselyCR kit makes your life easy when it comes to hanging up frames, pictures, artwork, and more on your wall with our 225 pieces kit of hooks, nails, picture hangers, SAWTOOTH, and wire. Picture hanging used to be a complicated job with this tool, it makes you do the job like a pro, everything is perfectly organized. We've matched all of the correct nails with their hooks that make you spend more time hanging and less time wondering which nails go with the hook.

Picture Hanging Kit you name it as All in One. PACKAGE INCLUDES (225 Pieces
1x Picture Level Tool

1x Hardware Kit
1x Hammer

Heavy duty picture hanging
Original picture hanger Hang and
level picture hanging
Hang it perfect picture hanging supplies

HOW DOES IT WORK

STEP 1

WORKS WITH SAWTOOTH & D-RING HANGERS

A- INSERT MAGNEKEYS - Remove the Magne Keys and insert them into sawtooth, Precision hanger, or D-Hook.

B- LEVEL & MARK HOLES - Place the removable level on top of the frame. Position and level frame on the wall then push to mark your nail holes.

C-INS

STEP 2

WORKS WITH WIRE HANGERS

A- EXTEND & HOOK - Press the center button to extend go hang it. Suspend the frame wire on the built-in hooks, then position and level picture.

B- MARK HOLES - Press firmly against the wall. Remove your frame. Locate the removable push pin (under the level) and mark your nail holes through the hooks.

C- INSTALL HARDWARE / HANG PI

Product Information

Technical Details

Additional Information

Manufacturer	JameslyCR
Item Weight	1.61 pounds
Product Dimensions	11.85 x 4.13 x 2.64 inches
Size	Large Standard
Color	Pin Up Tools!
Batteries Included?	No
Batteries Required?	No

Customer Reviews

3.8 out of 5 stars

17 ratings

Best Sellers Rank

#510,339 in Tools & Home Improvement (See Top 100 in Tools & Home Improvement)

#1,834 in Picture Hanging Hardware

Date First Available

January 22, 2021

Feedback

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Videos



Jah

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Products related to this item

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TOPZEA Picture Hanging Kit, 282 Pieces Picture Frame Hanger Hardware Include Picture Hanger Hardware and Picture Hanging Tools
★ ★ ★ ★ 24 \$15.99 prime



Go Hang It! Pro - The Original All-in-One Picture Hanging & Leveling Kit | Zero Measuring Required
★ ★ ★ ★ 3.807 \$32.99 prime



Fastenex 1650pc Premium Picture Hanging Kit with Picture Hanging Tool and Picture Hanging Hooks
★ ★ ★ ★ 114 \$38.00 prime



160Pcs Picture Hangers Kit, Including 80Pcs Black Sawtooth Picture Frame Hanging Hangers and 80Pcs Picture Hanging Hooks
★ ★ ★ ★ 534 \$8.99 prime



Picture Hanging Kit 230 PCS Picture Hanging Tool with Photo Hanging Wire, Hooks, Nails, and Screws
★ ★ ★ ★ 1,347 \$12.99 prime



Photo Frame Hanging Tool Picture Hanging Kit 104 Pieces Wall Hanging Tools
★ ★ ★ ★ 12 \$14.99 prime



Beehive Picture Hangers Heavy Duty Adjustable Wall Hanging Kit for Mounting Photo Frames
★ ★ ★ ★ 31 \$34.95 prime



Picture Hanging Kit with 225 Pieces Accessories Tool + Easy Level Ruler
★ ★ ★ ★ 67 \$24.48 prime

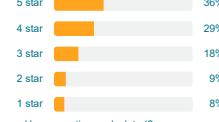
Customer Questions & Answers

See questions and answers

Customer reviews

★ ★ ★ ★ 3.8 out of 5

17 global ratings



Top reviews from the United States

James

★ ★ ★ ★ Waste of money!!
Reviewed in the United States on August 22, 2021
Verified Purchase

It's would be great for hanging small frame on a wooden wall. But still the hanging tool is not good at all for larger frames. If you want to waste money go ahead get.

Helpful | Report abuse

Doreen

★ ★ ★ ★ Works well
Reviewed in the United States on September 11, 2021
Verified Purchase

Easy to use and help install pictures
One person found this helpful

Helpful | Report abuse

