

SELTZER CAPLAN McMAHON VITEK  
750 B STREET, SUITE 2100  
SAN DIEGO, CALIFORNIA 92101-8177

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12 INC., a Delaware Corporation

13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 JACKRABBIT MOBILITY, INC., a  
16 Delaware Corporation,

17 Plaintiff

18 v.

19 HIMIWAY ELECTRIC POWER LLC, a  
20 California limited liability company;  
21 HIMIWAY INTELLIGENT  
22 TECHNOLOGY USA, a California  
23 Corporation; HIMIWAY SAN DIEGO  
24 ELECTRIC BIKE, an entity of unknown  
25 form.

26 Defendants.

15 CASE NO.: '23CV0847 RBM DDL

16 **COMPLAINT FOR:**

- 17 **1. TRADE DRESS**
- 18 **INFRINGEMENT (15 U.S.C. §**
- 19 **1125 (a));**
- 20 **2. STATE TRADE DRESS**
- 21 **DILUTION;**
- 22 **3. UNFAIR COMPETITION (15**
- 23 **U.S.C. § 1125(a));**
- 24 **4. UNFAIR COMPETITION (CAL**
- 25 **BUS. & PROF. CODE § 17200 et**
- 26 **seq.);**
- 27 **5. INTENTIONAL**
- 28 **INTERFERENCE WITH**
- PROSPECTIVE ECONOMIC**
- ADVANTAGE; and**
- 6. PATENT INFRINGEMENT (35**
- U.S.C. § 271).**

**JURY TRIAL DEMANDED**

1 Plaintiff JackRabbit Mobility, Inc. (“Plaintiff”) alleges on information and belief  
2 as follows:

3 **I. PARTIES**

4 1. Plaintiff is a corporation organized and existing under the laws of the State  
5 of Delaware, with its principal place in San Diego, California. Plaintiff is the holder of  
6 valuable intellectual property rights covering the design and distinctive look and feel of  
7 its JackRabbit micro ebike (the “JackRabbit”).

8 2. Defendant Himiway Electric Power LLC (“Himiway LLC”) is a Nevada  
9 limited liability company, doing business in California as an electric bike manufacturer,  
10 distributor, and seller, with its principal place of business at 4250 Shirley Ave, El Monte,  
11 CA 91731. As alleged more fully below, Himiway LLC is infringing Plaintiff’s patent  
12 and trade dress rights by manufacturing, selling, or offering to sell a copycat micro ebike,  
13 the Himiway Pony, that is an obvious knockoff of the JackRabbit.

14 3. Defendant Himiway Intelligent Technology USA (“Himiway USA”) is a  
15 corporation organized and existing under the laws of the State of California, doing  
16 business in California as an electric bike manufacturer, distributor, and seller with its  
17 principal place of business at 3641 Norwich Place, Rowland Heights, CA 91748. As  
18 alleged more fully below, Himiway USA is infringing Plaintiff’s patent and trade dress  
19 rights by manufacturing, selling, or offering to sell the Pony, a copycat micro ebike that  
20 is an obvious knockoff of the JackRabbit.

21 4. Defendant Himiway San Diego Electric Bike (“Himiway San Diego”), an  
22 entity of unknown form, operates a retail Himiway store located at 4192 Convoy Street,  
23 San Diego, CA 92111, operates its Facebook page at  
24 <https://www.facebook.com/HimiwaySanDiego>. The Defendants describe Himiway  
25 San Diego as Himiway’s “flagship store.” As alleged more fully below, Himway’s San  
26 Diego Flagship Store is infringing Plaintiff’s patent and trade dress rights by selling or  
27 offering to sell the Pony, a copycat micro ebike that is an obvious knockoff of the  
28 JackRabbit.

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1 Defendants’ actions include making, using, offering to sell, and/or selling their infringing  
2 product, the “Pony Portable Mini Bike” (the “Pony”), to consumers, retailers, and sellers  
3 located in the United States and in California through, among other means, their flagship  
4 store in San Diego, California, more than 300 dealers nationwide, their website,  
5 <https://www.himiwaybike.com>, and online retailers such as Amazon (including at  
6 <https://www.amazon.com/Himiway-Portable-Adjustable-Lightweight>  
7 Certified/dp/B0C36GF9F6/?th=1, including Amazon Standard Identification Numbers  
8 (ASIN) at least as follows: B0C36GF9F6 (5AH pearl white), B0C36GK44P (10AH  
9 midnight forest), B0C36H2SM8 (10AH midsummer), B0C36GZX9Q (10AH mint  
10 green), B0C36H3PQR (10AH pearl white), B0C36JWCZC (10AH space gray)).  
11 Defendants derive revenue from interstate and international commerce, offer the Pony for  
12 sale within this District, and unfairly compete with Plaintiff within this District and  
13 elsewhere, including by selling the Pony nationwide through more than 300 retailers and  
14 through Amazon.

15 11. Venue is proper in this District under 28 U.S.C. § 1391 because Defendants  
16 regularly transact and have an established business within this District and a substantial  
17 part of the events giving rise to this action occurred in this District as, among other things,  
18 Defendants sell or offer to sell the Pony at the Himiway flagship store on Convoy Street  
19 in San Diego, California.

20 **III. COMMON ALLEGATIONS FOR ALL CLAIMS OF RELIEF**

21 **A. Plaintiff’s Business and Intellectual Property**

22 12. Plaintiff is a recognized leader and trendsetter in the burgeoning area of  
23 ultra-portable, micro electric bikes, offering what an Outside Magazine writer called “one  
24 of the most zippy, fun bikes” he hopped on at a "Big Gear Show” at which more than 250  
25 brands were represented. Weighing only 24 pounds and able to be folded down to 7  
26 inches wide, the JackRabbit offers a truly unique alternative to the larger, more expensive  
27 ebikes that thieves love to target. And with and a top speed of 20 miles  
28

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1 per hour, the JackRabbit also offers a safer, more efficient, and more exhilarating  
2 alternative to scooters and other similar means of transportation.

3 13. JackRabbit Mobility was originally founded as an LLC in 2018 and  
4 transitioned into a C Corporation in 2021. From the beginning and throughout, the  
5 JackRabbit Mobility organization was focused on creating a lightweight and short-  
6 wheelbase two-wheeled electric vehicle that had relatively large wheels and bicycle  
7 elements.

8 14. Starting from the core inventive direction of the JackRabbit ebike, there has  
9 been a consistent inventive direction of the JackRabbit micro eBike in the years leading  
10 up to the first commercial version in 2018 and in years since. The JackRabbit has a  
11 consistent and unique design in look and feel. The JackRabbit uses relatively large wheels  
12 in a short wheelbase compared to all other known two wheeled light electric vehicles that  
13 typically have smaller wheels and/or longer wheelbases. The JackRabbit is made further  
14 unique from all known previous vehicles due to the inventing team’s focus on attaining a  
15 product with a combined outcome of being extremely lightweight, low maintenance, able  
16 to be stored and transported in small spaces (such as car trunks, passenger areas of cars,  
17 and in closets), and yet still being fun to ride. The JackRabbit team was able to develop  
18 a product that, until copied by the Himiway Pony, is visually unlike any other product  
19 previously seen and that performs impressively well despite the appearance to some  
20 professionals in the bicycle industry that such a design would have performance  
21 problems. Up until now, this JackRabbit is the only vehicle that uniquely employs two  
22 20-inch diameter wheels in a short wheelbase configuration and in which the rear wheel  
23 is electrically powered, uses fold-down foot pegs instead of operable pedals, utilizes a  
24 rectangularly shaped main frame area, and a single rear brake. Extensive ride testing and  
25 interviews occurred throughout the inventive process and for several years the JackRabbit  
26 was uniquely different from a product impression and performance standpoint.

27 15. Thomas Piszkin, Plaintiff’s Chief Technology Officer and co-founder, is the  
28 core inventor of the JackRabbit Design. Mr. Piszkin filed for a design patent for an

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1 “Electric-Assist Adult Strider” on March 14, 2020. The United States Patent and  
2 Trademark Office issued the patent – Patent No. US D964,218 S (“JackRabbit Patent” or  
3 “218 Patent”) on September 20, 2022. A copy of the JackRabbit Patent is attached as  
4 **Exhibit 1**. Plaintiff is the assignee of the JackRabbit Patent and has the legal right to  
5 assert such patent.

6 16. The JackRabbit Patent covers the ornamental appearance of the design  
7 depicted in its Figures, which is at least the JackRabbit frame. The Himiway Pony  
8 infringes the JackRabbit Patent because each is the same to an ordinary observer.

9 17. Before the filing of this lawsuit, Himiway was informed of its infringement  
10 of the JackRabbit Patent as well as its trade dress infringement. Himiway continues to  
11 infringe nonetheless, including by selling, offering to sell and importing its Pony on its  
12 website, on amazon.com, and by other means.

13 18. Himiway’s Pony website, at [https://himiwaybike.com/products/portable-](https://himiwaybike.com/products/portable-electric-mini-bike)  
14 [electric-mini-bike](https://himiwaybike.com/products/portable-electric-mini-bike), indicates the purchase option “e-bike assembly from \$112.7 with  
15 velotooler”.

16 19. On information and belief, Himiway provides support and instructions,  
17 and/or manuals, regarding the Himiway Pony, including those for full or partial assembly  
18 that, when followed by the end user or customer (or third party such as velotooler), result  
19 in a fully operational Himiway Pony as depicted herein.

20 20. The unique foregoing combination of elements and the trade dress of the  
21 JackRabbit is non-functional. For example, the implementation of a rectangular shaped  
22 central/main frame that is comparatively large to the rest of the vehicle and the presence  
23 of comparatively large wheels for a vehicle of this size add to the unique visual style but  
24 are not necessary for the device to operate; in fact, the visual appearance could be altered  
25 and the device would still operate.

26 21. Plaintiff has achieved extensive exposure and widespread recognition of its  
27 JackRabbit ebike and brand in the United States and abroad through its efforts over the  
28 past several years, resulting in being featured as “Best Micro Ebike” for 2021, 2022, and



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1 2023 by wired.com, “best electric bike under \$1000” for 2022 and 2023 on electrek.com,  
2 and featured as a highly rated product in online and print articles and videos from  
3 publications such as Forbes, Esquire, Rolling Stone, Fast Company, Engadget, Electric  
4 Bike Report, BikeRide, and Outside.

5 22. Plaintiff has conducted substantial and continuous marketing and promotion  
6 since its inception. Since 2018, Plaintiff has spent over \$500,000 in advertising,  
7 promotion, and marketing of the JackRabbit and its unique appearance. Examples of  
8 Plaintiff’s promotional efforts include marketing through its webpage,  
9 <https://www.jackrabbit.bike>, and various social media outlets, including Facebook,  
10 Twitter, Instagram, TikTok, and YouTube, third-party platforms, including Google Ads,  
11 Camper Report, Bass Pro Shops online, Army Airforce Exchange online, and Camping  
12 World online, as well as in print media, such as Southern Boating, Flying, and Boating  
13 Magazine. In addition, Plaintiff has promoted and advertised the JackRabbit at numerous  
14 trade shows and industry events in the United States, including Micromobility Americas,  
15 Outdoor Retailer, The Big Gear Show, Fort Lauderdale International Boat Show, Miami  
16 Boat Show, Palm Beach Boat Show, Electrify Expo, and CABDA.

17 23. Plaintiff has enjoyed considerable commercial success, with thousands of  
18 customers and deals.

19 24. As a result of Plaintiff’s continuous and exclusive use of the JackRabbit  
20 Trade Dress in connection with the sale and marketing of the JackRabbit, the trade dress  
21 enjoys wide acceptance and association with Plaintiff within the industry and has come  
22 to be widely and favorably recognized by those in the industry as an indicator of the origin  
23 of Plaintiff’s goods.

24 25. As a result of Plaintiff’s extensive use and promotion of its JackRabbit Trade  
25 Dress, Plaintiff has built up and now owns valuable goodwill that is symbolized by the  
26 trade dress. The purchasing public, dealers, trade shows, event production companies,  
27 press, advertising entities, business-to-business enterprise customers, athletes, celebrities,  
28 government agencies, and media companies, have all come to associate the JackRabbit

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1 Trade Dress with Plaintiff. This distinctive and non-functional trade dress has achieved  
2 significant secondary meaning. Based on years of nationwide use and reputation,  
3 customers in this District and elsewhere readily recognize the JackRabbit brand and are  
4 aware of the high reputation and quality of Plaintiff’s product. The JackRabbit Trade  
5 Dress has enormous value as a symbol of Plaintiff’s quality products and services.

6 **B. Defendants Intentional and Willful Infringement on the JackRabbit Patent**  
7 **and the JackRabbit Trade Dress**

8 26. On information and belief, in or around early 2022, one or more Defendants  
9 observed Plaintiff presenting the JackRabbit at the Electrify Expo product exhibition  
10 shows in Long Beach, California and later in Austin, Texas, as well as other various bike  
11 shows around the country, including CABDA, Outdoor Retailer, The Big Gear Show, and  
12 Micromobility America.

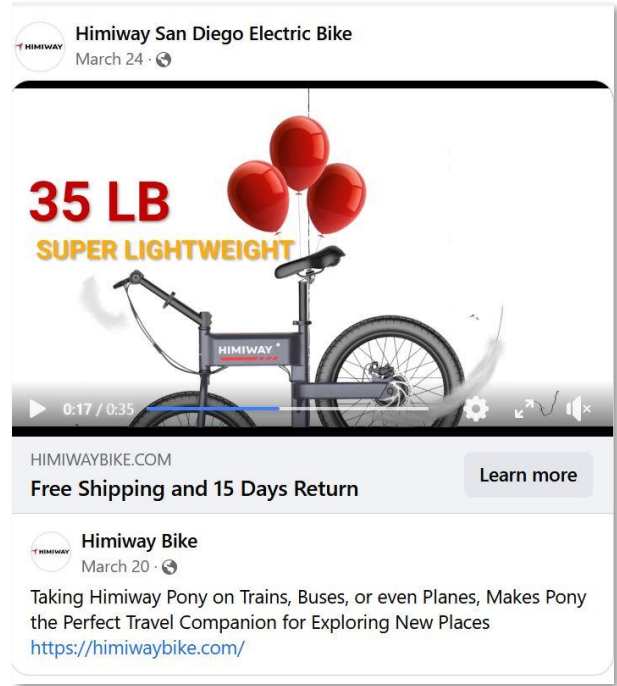
13 27. On information and belief, one or more Defendants thereafter copied the  
14 patented design and distinctive JackRabbit Trade Dress, producing the Pony as a  
15 questionable-quality, less expensive knock-off that it has positioned and marketed to  
16 dealers and consumers as a lower-cost alternative to the JackRabbit.

17 28. Defendants make, use, sell, and offer to sell the Pony through their website,  
18 <https://www.himiwaybike.com>, their flagship store in San Diego, more than 300 dealers  
19 nationwide, and online retailers such as Amazon. Defendants promote, advertise, exhibit,  
20 and market the Pony on and through their website, YouTube and other social media, and  
21 at trade shows, exhibitions, and industry events around the country. To further their  
22 scheme to profit from Plaintiff’s intellectual property, Defendants have deliberately  
23 targeted their marketing at Plaintiff’s dealers and customers, unfairly suggesting that the  
24 Pony is a lower cost version of the JackRabbit. In fact, Defendants have purposefully  
25 copied Plaintiff’s marketing materials and marketing strategy to further sow dealer and  
26 customer confusion over the origin of the Pony. Below are examples of such copying:  
27  
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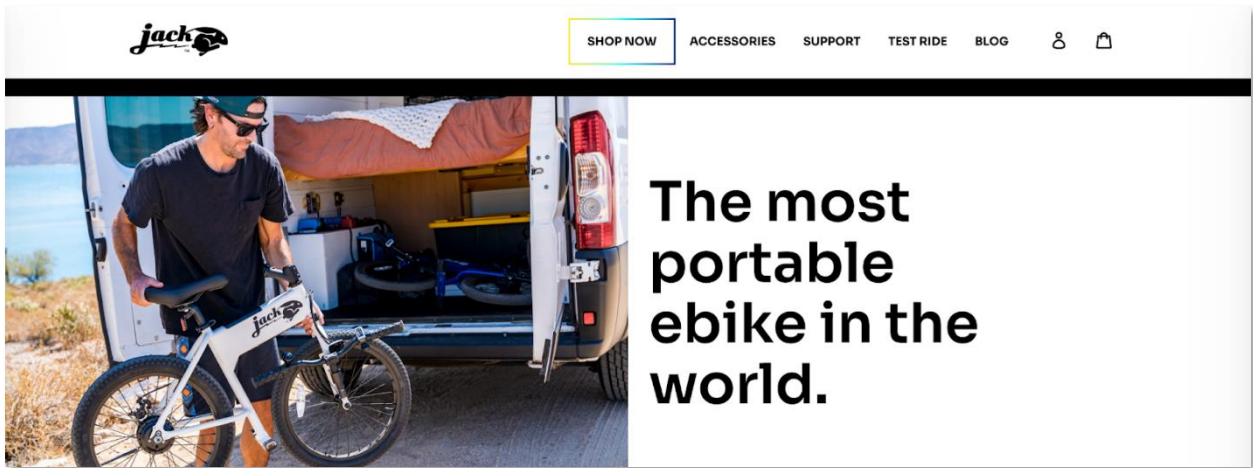
Earlier JackRabbit Post

Later Post by Himiway San Diego Electric Bike



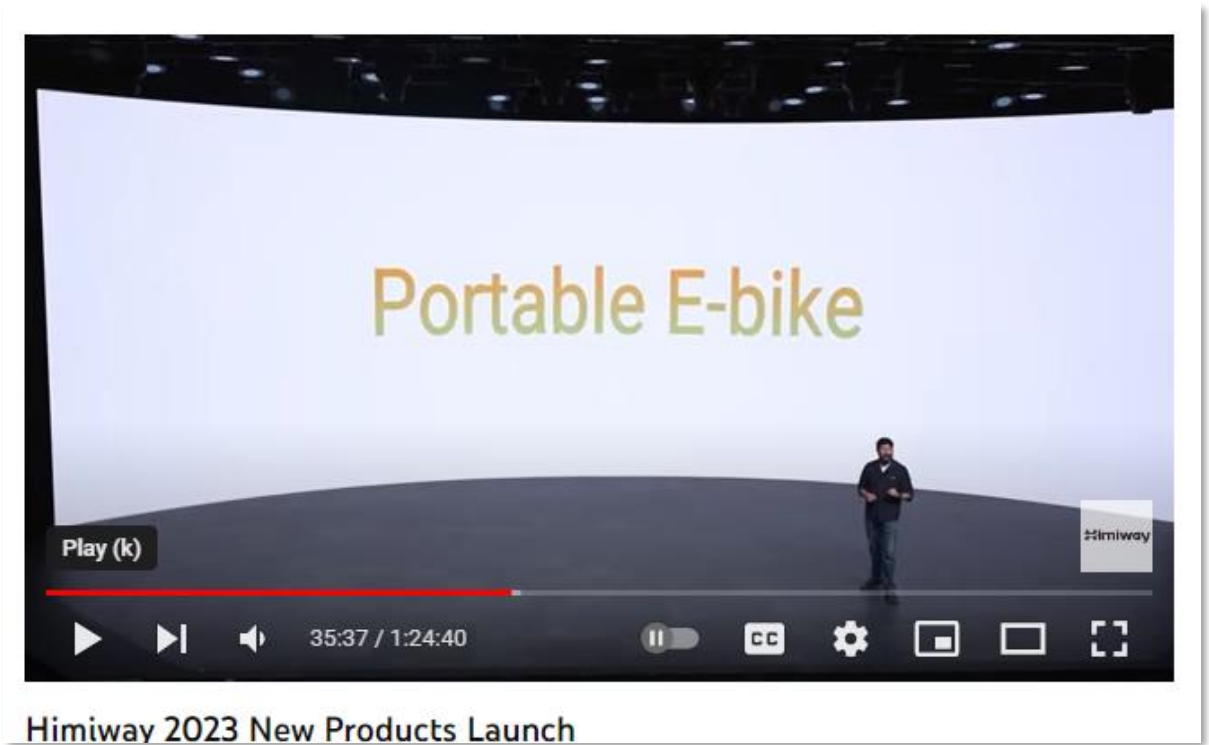
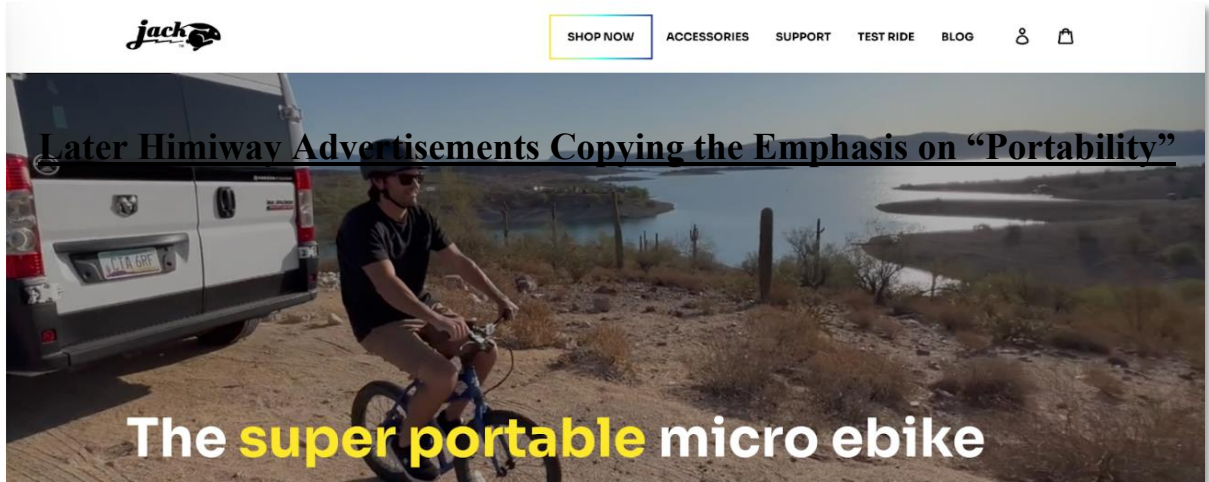
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Earlier JackRabbit Advertisements Emphasizing the JackRabbit as "Portable"



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1 **Earlier JackRabbit Advertisements Emphasizing the JackRabbit as a “Mini**  
2 **eBike”**

3 **RV Livin' with JackRabbit** ▶ Play all

4

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7 **JackRabbit mini eBike Grocery Run** **JackRabbit RV mini eBike Beach Life**

8 **JackRabbit Micro eBike** **JackRabbit Micro eBike**

9 **1.9K views • 2 years ago** **881 views • 2 years ago**

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14 **JackRabbit mini eBike Loves Curbs, Elevators, and More** **JackRabbit mini eBike Trolley Subway Bus Train...**

15 **JackRabbit Micro eBike** **JackRabbit Micro eBike**

16 **Later Himiway Advertisements Referring to the Pony as a “Mini Bike” and “Mini**  
17 **E-Bike”**

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**MINI E-BIKE WITH ENDLESS FUN**

**PONY**  
NEW PRODUCT RELEASE

**Himiway Pony Portable Mini Electric Bike - A Comprehensive Review**

f Share    t Tweet    p Pin it

TIPS & KNOWLEDGE    MAR 24, 2023

To meet the demand of commuters who have to navigate crowded streets or take public transportation to

**Earlier JackRabbit Advertisements Emphasizing “No Pedals,” “Pedal Free,” and “Easy Riding”**

jack

SHOP NOW    ACCESSORIES    SUPPORT    TEST RIDE    BLOG    [User Icon]    [Cart Icon]

**No pedals and proud.**

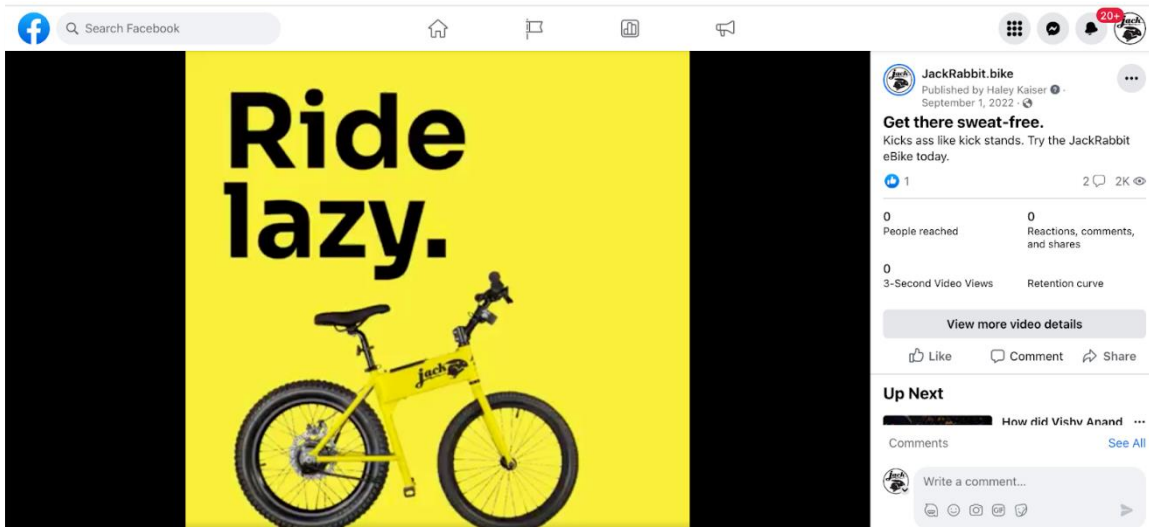
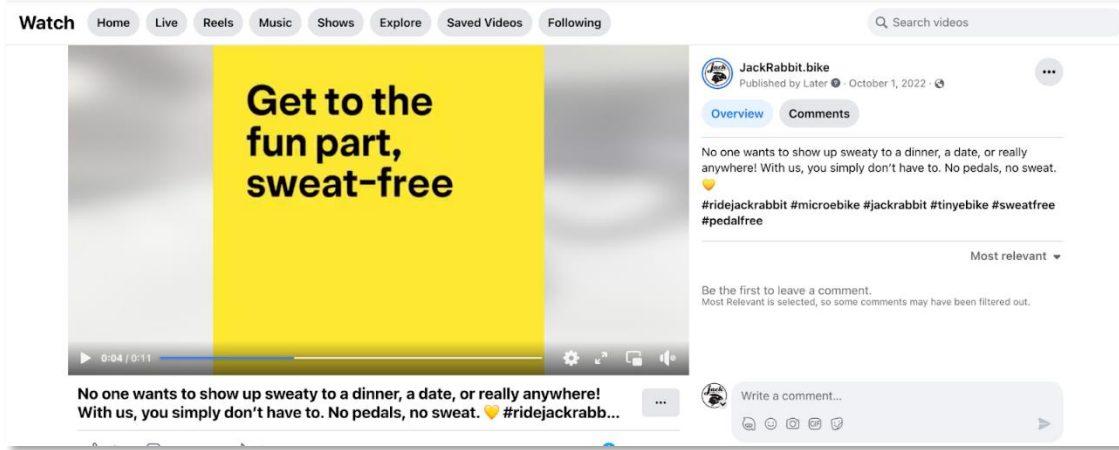
The JackRabbit is perfect for all those times you need to get somewhere, sweat-free: to work, to the store or to a nice seafood dinner.

LEARN MORE ABOUT OUR SPECS

Rewards

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YouTube  
[https://www.youtube.com > watch](https://www.youtube.com/watch)

### JackRabbit Lightweight Pedal-Free Mini eBike - YouTube



JackRabbit: The grab and get going micro eBike! <https://jackrabbit.bike/>  
 JackRabbit is the perfect sidekick: 20mph of pure electric power, ...

YouTube · JackRabbit Micro eBike · Dec 1, 2021

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## Later Himiway Advertisements Copying the Emphasis on “Easy Riding” and “Pedal-Free”

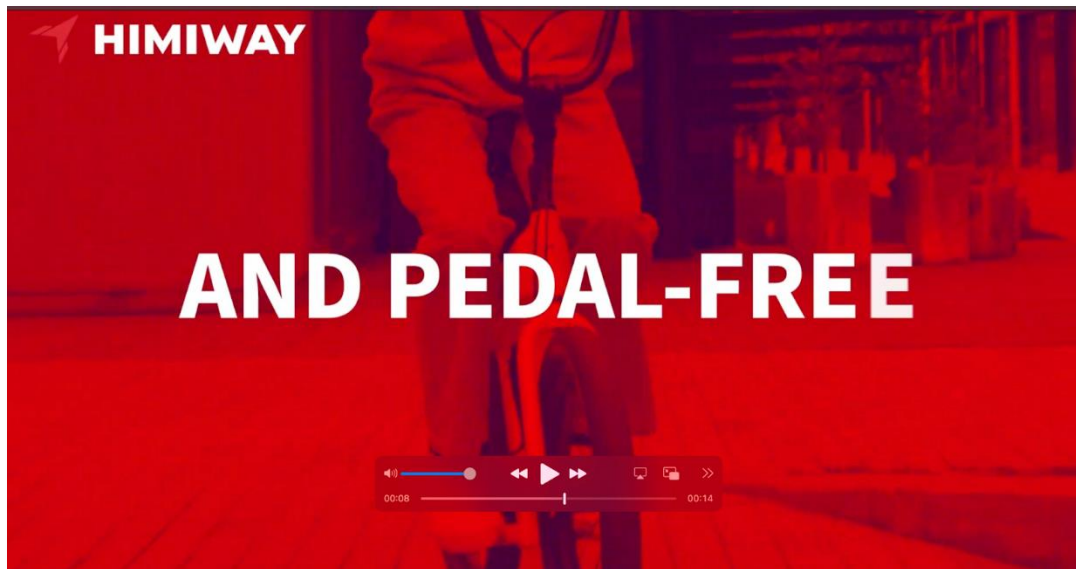
**HIMIWAY**

SUPPORT ▾ HELP CENTER ▾ DEALER ▾

has a 160MM mechanical disc rear brake. Unlike other e-bikes, the Pony has no front brake to prevent riders from flipping over the handlebars at high speeds.

### Benefits of Himiway Pony

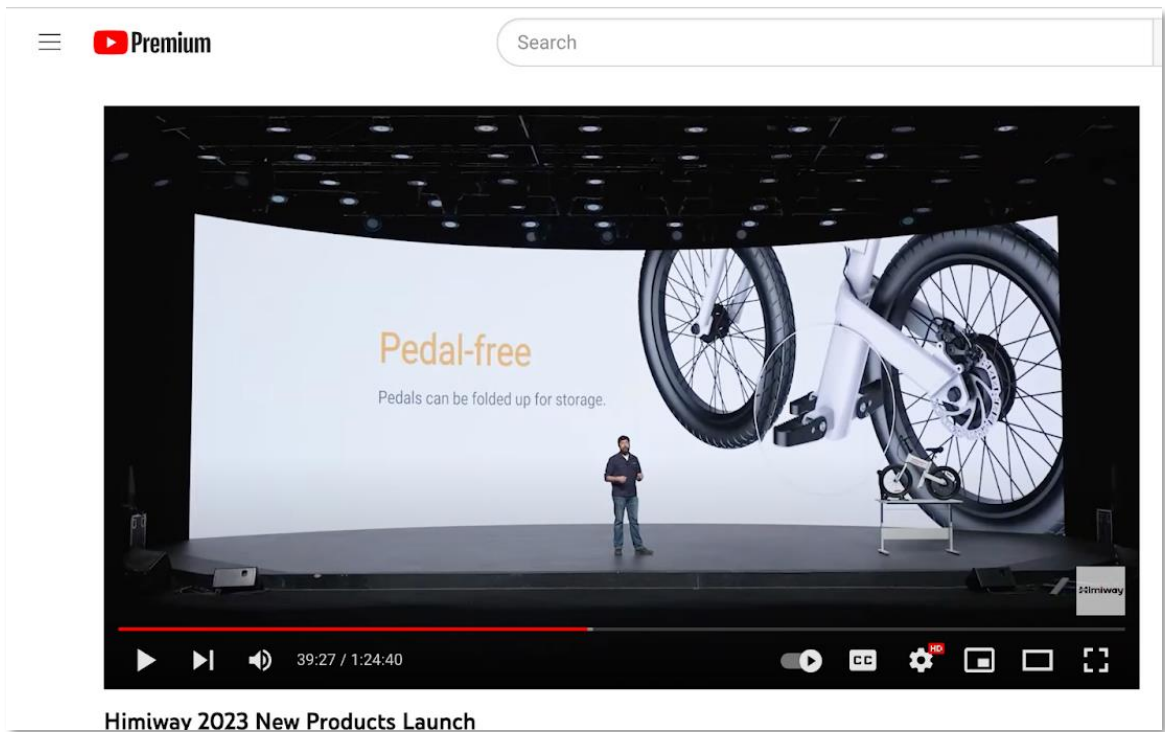
The Himiway Pony's design allows young adults to commute to work or travel around the city in their free time. One of the best things about this e-bike is that it can be easily transported on buses and subways or fit into the trunk of a car. It also doesn't require any pedaling, making it **easy to ride** and avoiding arriving drenched in sweat. Plus, the powerful 300-watt motor allows cruising at 20 mph, and the bike's 36-volt, 360 wh battery provides up to 22 miles of travel on just the throttle alone.





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Himiway 2023 New Products Launch

**Earlier JackRabbit Trade Shows Emphasizing the Small JackRabbit by Placing it on a Table**



**Later Himiway Advertisement Copying JackRabbit by Placing the Pony on a Table**



**Earlier JackRabbit Advertisements Showing the JackRabbit Fits in a Car's Trunk**



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1 And a quick life hack: because JackRabbit is so compact, you can keep one in your car. Park far away from a big  
2 event where it's easier to park, and simply JackRabbit the rest of the way!

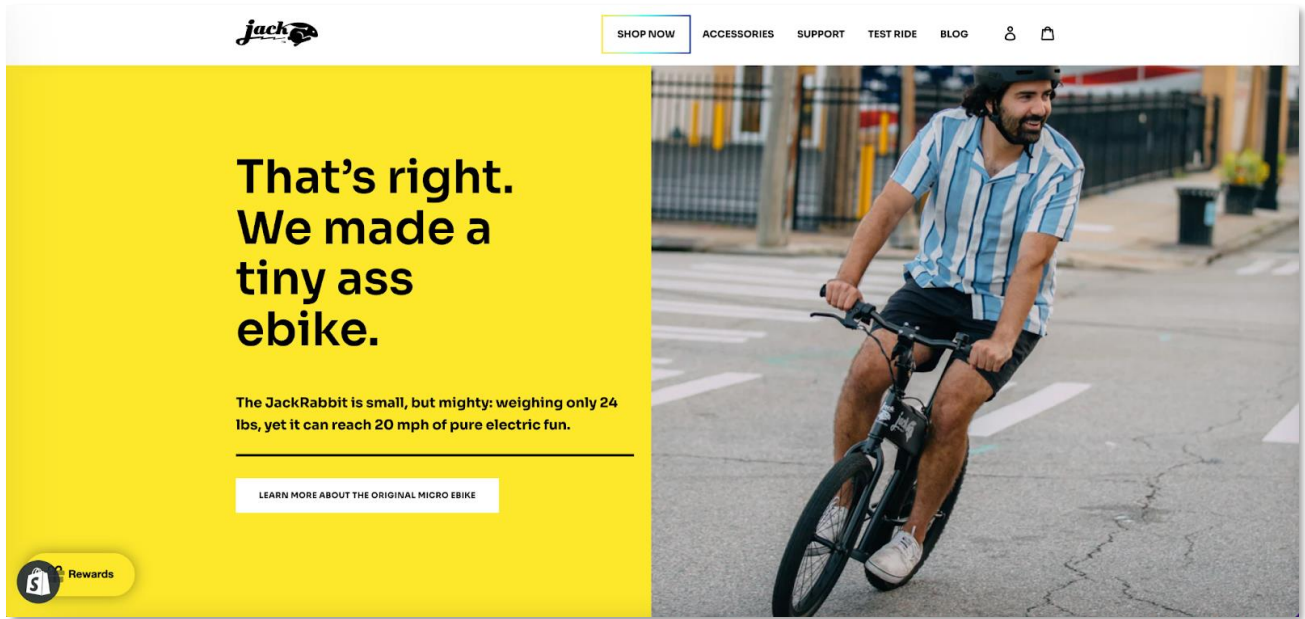


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14 **Later Himiway Advertisements Showing the Pony in a Car's Trunk**

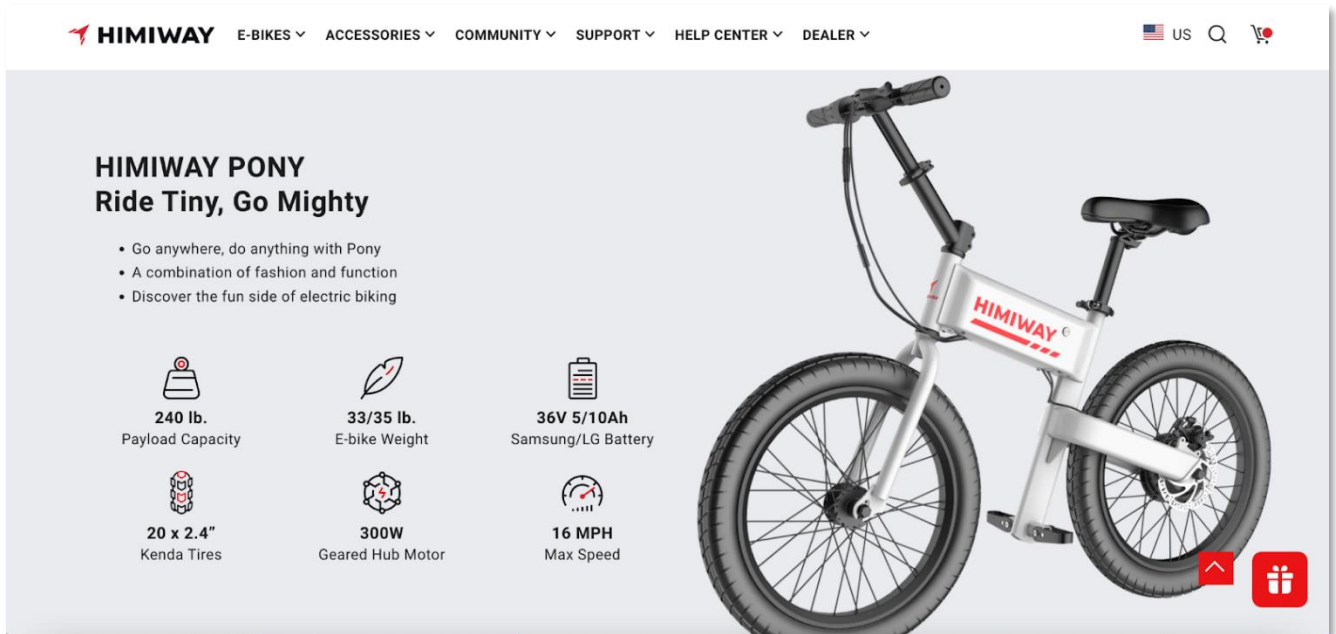


25  
26 **All you need to know about Himiway Pony:**  
27 **Unraveling the Origin and Concept**  
28

**Earlier JackRabbit Advertisements Referring to the JackRabbit as “Small” and “Mighty”**



**Later Himiway Advertisements Copying the Emphasis on the Pony as “Tiny” and “Mighty”**



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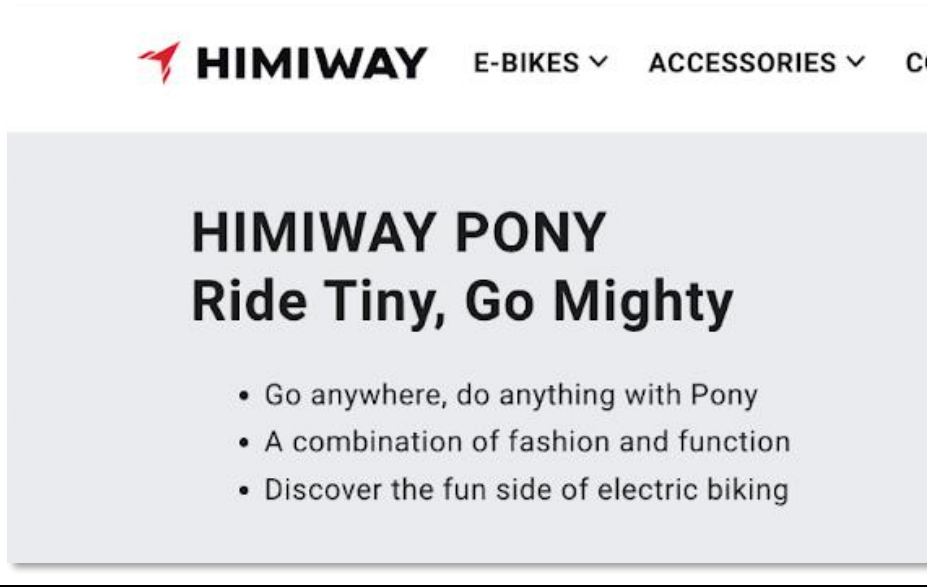
Earlier JackRabbit Advertisements Emphasizing the Portability of the JackRabbit and That it “Goes Anywhere”

YouTube video player interface showing a JackRabbit advertisement. The video title is "JackRabbit New 2021 mini eBike is here!". The video content shows a man in a black shirt and white shorts, wearing a white helmet, pushing a white JackRabbit mini eBike through a grocery store aisle. The eBike has a basket on the front containing a box of "Fat Tire" beer. The text "SIMPLE. Goes Anywhere!" is overlaid on the video. The video player includes a search bar, a "Premium" logo, and a progress bar showing 0:44 / 3:09.

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**Later Himiway Advertisements Copying the Emphasis on the Pony Stating it Can “Go anywhere”**



**Earlier JackRabbit Advertisements Referring to the JackRabbit as a “Head Turner”**





**Later Himiway Advertisements Stating that the Pony Will “Turn Heads”**

**HIMIWAY** E-BIKES ▾ ACCESSORIES ▾ COMMUNITY ▾ SUPPORT ▾ HELP CENTER ▾ DEALER ▾

US 🔍 🛒

### A Perfect Combination of Fashion and Function

A sleek and stylish mode of transportation that's sure to turn heads. With its bold and vibrant colors, it's impossible not to notice this little machine zipping down the street.

**20 Miles**  
Range up to

**16 MPH**  
Max Speed

🔼 📺 📱 📺 📱

### A Perfect Combination of Fashion and Function

A sleek and stylish mode of transportation that's sure to turn heads. With its bold and vibrant colors, it's impossible not to notice this little machine zipping down the street.

**20 Miles**  
Range up to

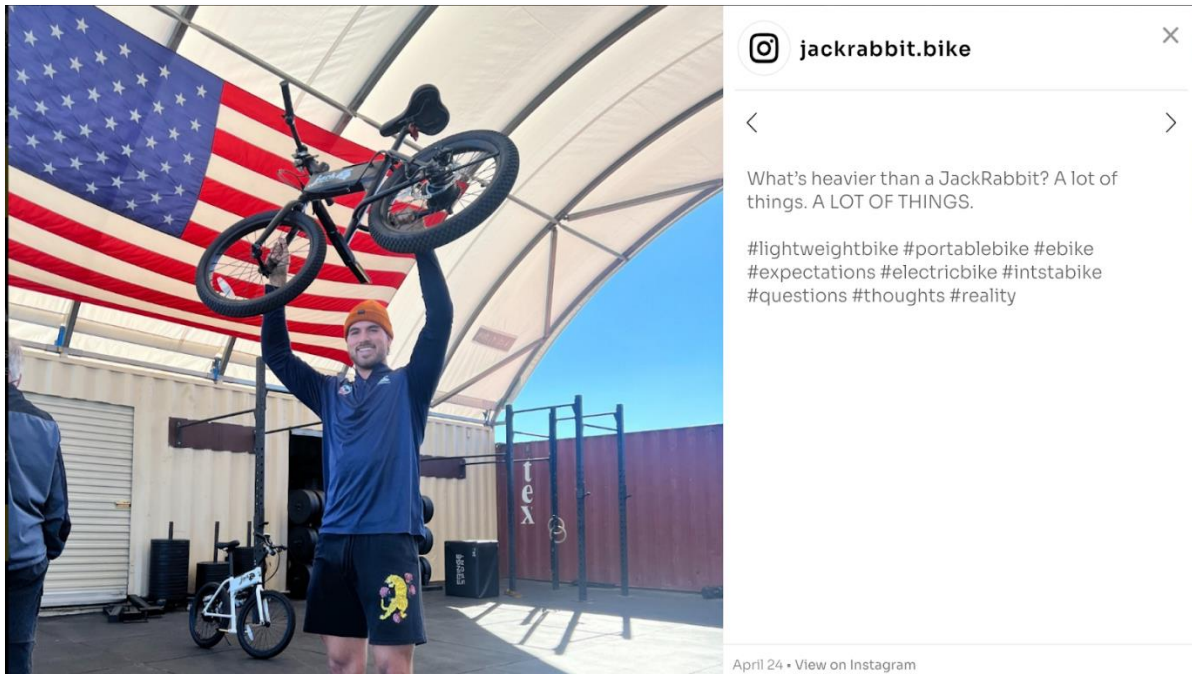
**16 MPH**  
Max Speed

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1 **Earlier JackRabbit Advertisement of a Person Lifting the JackRabbit Above His**  
2 **Head to Show its Lightweight and Portability**



16 **Later Himiway Advertisement Copying JackRabbit and Showing Someone Lifting**  
17 **the Pony Above Their Head**

Sports & Outdoors › Sports › Cycling › Bikes

**Himiway Pony Portable Electric Bike for Adults Teenager 300W 36V 5Ah/10Ah, Mini E-Bike with Adjustable Seat, 20 Inches Tires, Lightweight Electric Bicycles, UL Certified**

**Portable & Lightweight**

Total Length		Bike Weight	
Pony:	49 inches	Pony:	33 pounds
Normal eBikes:	75 inches	Normal eBikes:	90 pounds

Visit the Himiway Store

**\$499<sup>00</sup>**

Thank you for being a Prime member. Get a \$150 Gift Card: Pay \$349.00 upon approval for Prime Visa. No annual fee.

Color: 5Ah Pearl White

\$599.00  
 \$599.00  
 \$599.00  
 \$599.00  
 \$599.00  
 **\$499.00**

**Purchase options and add-ons**

**Payment plans**

\$34.76/mo (18 mo) at example APR of 30% (rates from 10-30% APR)

Roll over image to zoom in

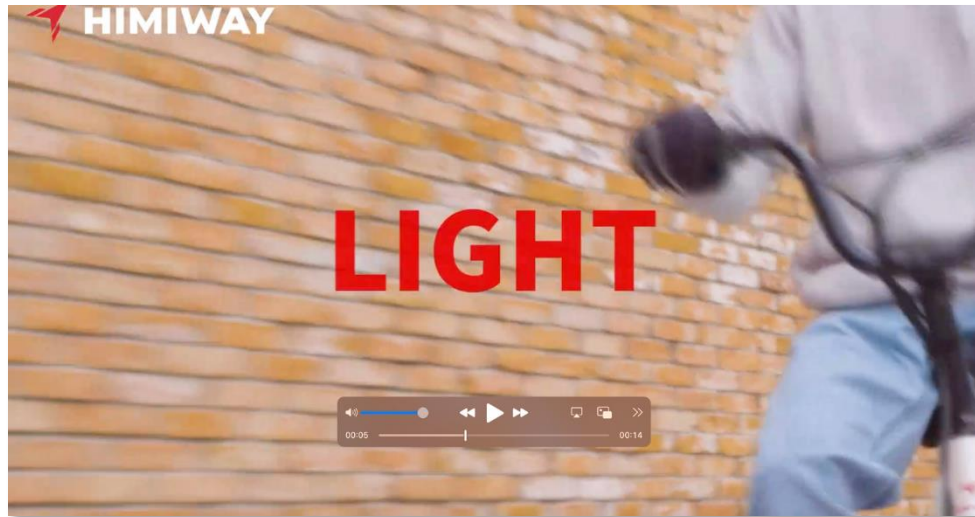
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1 **Earlier JackRabbit Advertisement with a Distinct Advertising Style and Referring**  
2 **to the JackRabbit as “SIMPLE,” “LIGHT,” and “SAFE”**





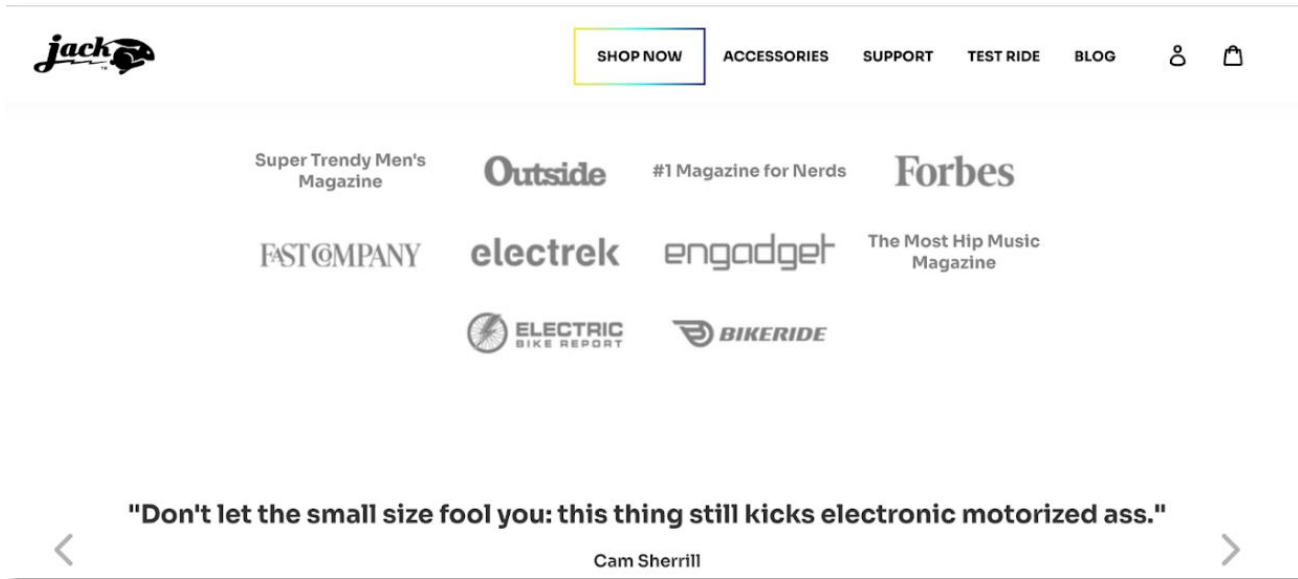
1 Later Himiway Advertisements Copying JackRabbit's Distinct Style of  
2 Advertising



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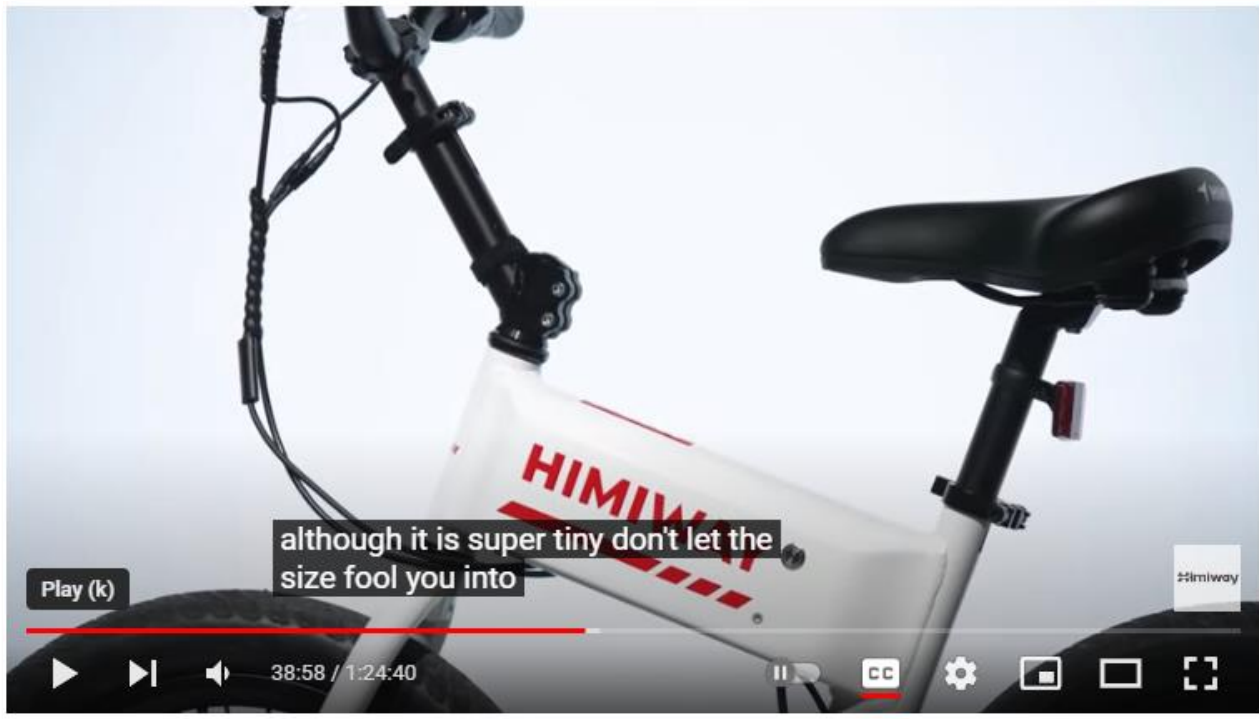
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1 **Earlier JackRabbit Advertisement Stating Do Not Let the Small Size “fool you”**

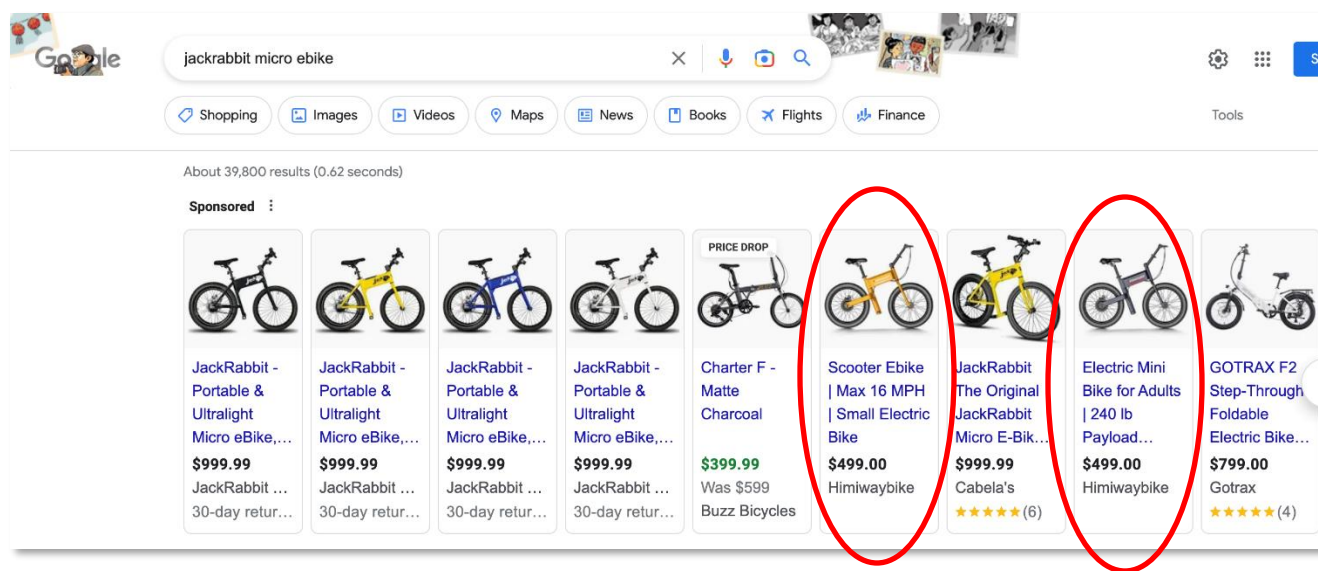


12

13 **Later Himiway Advertisement Copying JackRabbit and Stating “don’t let the size fool you”**



29. Defendants' intentional copying of the JackRabbit Trade Dress and of Plaintiff's marketing strategies will further mislead Consumers because the Pony comes up in Google search ads when you search for "JackRabbit Ebike" and/or "JackRabbit Micro Ebike," including options to purchase the Pony. Thus, consumers easily could and will confuse the Pony for a JackRabbit and purchase the Pony instead of the JackRabbit thinking they are the same the product. Since Himiway announced the Pony, Plaintiff has seen a significant increase in the cost of brand terms (i.e., "cost per click" or "CPC") and a decrease in revenue attributed to Google Search advertisements specific to brand terms (otherwise known as "ROAS," or "return on ad spend").



30. Defendants unfair targeting of Plaintiff's existing and past customers and dealers has already resulted in tangible harm to Plaintiff, as one of Plaintiff's customers recently informed Plaintiff they would be purchasing an order of Pony bikes over the JackRabbit because the Pony is a cheaper version of the same bike.

31. That the Pony is an obvious copycat or knockoff of the JackRabbit has been duly noted by numerous bloggers, online commentators, dealers, and consumers.

32. For example, in an online article on electrek.co headlined, "Himiway launches 3 new electric bikes including a silly little \$499 model," the author concluded that the Pony is a "**downright rip-off**" of the JackRabbit and a "**straight up Jackrabbit**



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1 **copycat.**” It is noted that the Electrek article incorrectly uses the “2018” date under the  
2 image of the JackRabbit. The image shown was of the 2020 JackRabbit.

3 33. TopCarNews republished the Electrek article, which can be found at  
4 [https://topcarnews.net/himiway-launches-3-new-electric-bikes-including-a-silly-little-](https://topcarnews.net/himiway-launches-3-new-electric-bikes-including-a-silly-little-499-model-s220924.html)  
5 [499-model-s220924.html](https://topcarnews.net/himiway-launches-3-new-electric-bikes-including-a-silly-little-499-model-s220924.html).

6 34. An online article on EVehicleTrip reached the same conclusion. The  
7 EVehicleTrip article can be found at [https://evehicletrip.com/himiway-e-bikes-three-e-](https://evehicletrip.com/himiway-e-bikes-three-e-bikes-you-should-know-about/)  
8 [bikes-you-should-know-about/](https://evehicletrip.com/himiway-e-bikes-three-e-bikes-you-should-know-about/).

9 35. Similarly, a video posted on an “Electric Rides” YouTube channel with  
10 almost 3,000 subscribers used a clip of Marty McFly from *Back to the Future* to mock  
11 the Pony as an obvious ripoff of the JackRabbit, saying “I’ve seen this one” when shown  
12 a picture of the Pony. Electric Rides’ YouTube clip can be viewed at  
13 <https://www.youtube.com/watch?v=jsqb648d3f0>.

14 36. Side-by-side comparisons showing the JackRabbit’s distinctive trade dress  
15 and Defendants’ Pony replica are below. The side-by side comparison shows the Pony  
16 copies the non-functional product design trade dress, including the distinctive non-  
17 functional wide frame in the center of the JackRabbit and the exact same location for the  
18 non-functional placement of JackRabbit logo on the wide frame in the center of the  
19 JackRabbit. The distinctive large wheels for the size of the overall bike and the close  
20 configuration of the wheels to each other (i.e., the wheel size and wheels placement ratio)  
21 compared to other bikes. The same seat tube angle and folding foot peg approach. The  
22 same forward angled handlebars and removable handlebar approach.

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**JackRabbit**

**Pony**



37. While the look and feel of the Pony is identical to the JackRabbit, the quality of the Pony is, on information and belief, lower. The Pony’s specifications indicate it is heavier and the electric components appear less reliable. Its price indicates that, on information and belief, cost-cutting measures were likely employed in its design. If Defendants’ sale of a less-expensive, questionable quality knockoff is not halted, it will cause irreparable harm to the goodwill and brand reputation that Plaintiff has built over the history of its exclusive use. The striking similarities between the JackRabbit and Pony shows beyond doubt that Defendants’ misconduct is intentional. Their clear copying of the JackRabbit’s distinctive design, look and feel, together with their use of numerous confusingly similar marketing materials and strategies targeted at JackRabbit’s customers and dealers, leaves no doubt as to their intention. Quite simply, Defendants are attempting to unlawfully profit from Plaintiff’s hard-earned goodwill and positive reputation, and to wrongfully deceive potential customers and observers alike into believing that Defendants’ lower quality goods are associated with Plaintiff, when they are not.

38. Plaintiff has been and will continue to be irreparably harmed by Defendants’ wrongful activities and many violations of Plaintiff’s rights. Defendants’ actions have caused and will continue to cause Plaintiff to suffer loss of market share and access to customers, strained business relationships with third parties, price erosion, and loss of

1 goodwill and reputation. Plaintiff lacks an adequate remedy at law to compensate it for  
2 the harm that it has suffered, and, absent the requested preliminary relief, will continue to  
3 suffer unless and until Defendants’ illegal activities are enjoined.

4 39. Defendants’ infringing acts severely undermine Plaintiff’s significant  
5 investment in the JackRabbit (including its trade dress) and reputation. Plaintiff brings  
6 this action seeking damages and injunctive relief to remedy the harm that it has suffered  
7 and continues to suffer as a result of Defendants’ wrongful acts.

8 **FIRST CLAIM FOR RELIEF**

9 **(Trade Dress Infringement – 15 U.S.C. § 1125(a))**

10 40. Plaintiff incorporates by reference the allegations set forth in paragraphs 1-  
11 39.

12 41. Plaintiff owns all rights and title to the distinctive and non-functional  
13 JackRabbit Trade Dress, which it has continuously used in commerce since at least 2020.  
14 As alleged above, the JackRabbit Trade Dress has acquired distinctiveness throughout the  
15 country and enjoys secondary meaning among consumers, identifying Plaintiff as the  
16 source of the JackRabbit.

17 42. Plaintiff never authorized Defendants or consented to Defendants’ use of the  
18 JackRabbit Trade Dress in connection with the Pony, nor did Plaintiff ever give  
19 Defendants permission or authorization to use Plaintiff’s technical product information.

20 43. Defendants have misappropriated the JackRabbit Trade Dress by mimicking  
21 a combination of each element of that trade dress, including non-functional aspects such  
22 as the frame, wheel locations and sizes, the overall size, and other items. Defendants’ use  
23 of its confusingly similar Pony knockoff has caused and is likely to continue to cause  
24 confusion, deception, and mistake among customers and dealers by creating the false and  
25 misleading impression that Defendants’ goods are manufactured or distributed by  
26 Plaintiff, or are affiliated, connected, or associated with Plaintiff, or have the sponsorship,  
27 endorsement, or approval of Plaintiff.  
28

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1 44. Defendants’ actions constitute unfair competition and false designation of  
2 origin, in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

3 45. Defendants knew of the JackRabbit Trade Dress when it designed the Pony  
4 and copied the JackRabbit Trade Dress for the express purpose of causing confusion  
5 among Plaintiff’s customers and dealers. Thus, Defendants’ infringement has been and  
6 continues to be intentional, willful, and without regard to the JackRabbit Trade Dress.

7 46. Defendants’ activities have caused and, unless and until enjoined by this  
8 Court, will continue to cause, a likelihood of confusion and deception among members of  
9 the trade and public and, additionally, injury to Plaintiff’s goodwill and reputation as  
10 symbolized by the JackRabbit Trade Dress.

11 47. Plaintiff has been and will continue to be irreparably harmed and damaged  
12 by Defendants’ conduct. Plaintiff lacks an adequate remedy at law to compensate for this  
13 harm and damage.

14 48. Defendants have gained profits by virtue of their infringement of the  
15 JackRabbit Trade Dress.

16 49. Plaintiff has also sustained damages as a direct and proximate result of  
17 Defendants’ infringement of the JackRabbit Trade Dress, in an amount of be proven at  
18 trial.

19 50. Because Defendants’ actions have been and continue to be willful, Plaintiff  
20 is entitled to treble its actual damages or Defendants’ profits, whichever is greater, and to  
21 an award of costs, and this being an exceptional case, reasonable attorneys’ fees pursuant  
22 to 15 U.S.C. § 1117(a).

23 **SECOND CLAIM FOR RELIEF**

24 **(State Trade Dress Dilution and Injury to Business Reputation)**

25 51. Plaintiff incorporates by reference the allegations set forth in paragraphs 1-  
26 50.

27  
28

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1 52. Plaintiff has extensively and continuously promoted and used the JackRabbit  
2 Trade Dress throughout the United States and the JackRabbit Trade Dress has become a  
3 distinctive and well-known symbol of Plaintiff’s company and products.

4 53. Defendants’ unauthorized use of the JackRabbit Trade Dress dilutes the  
5 distinctiveness of the trade dress by eroding the public’s exclusive identification of the  
6 distinctive JackRabbit Trade Dress with Plaintiff and tarnishing and degrading the  
7 positive associations and prestigious connotations thereof.

8 54. Defendants are causing and will continue to cause irreparable injury to  
9 Plaintiff’s goodwill and business reputation, and dilution of the distinctiveness and value  
10 of the JackRabbit Trade Dress in violation of the anti-dilution laws, codified by statutes  
11 at Cal. Bus. & Prof. Code § 14200 *et seq.*

12 55. Plaintiff is therefore entitled to injunctive relief, damages, and costs, as well  
13 as, if appropriate, enhanced damages and reasonable attorneys’ fees.

14 **THIRD CLAIM FOR RELIEF**

15 **(Unfair Competition – 15 U.S.C. § 1125(a))**

16 56. Plaintiff incorporates by reference the allegations set forth in paragraphs 1-  
17 55.

18 57. The JackRabbit Trade Dress has become uniquely associated with, and hence  
19 identifies, Plaintiff. The JackRabbit Trade Dress is wholly associated with Plaintiff due  
20 to Plaintiff’s longstanding, exclusive use of the JackRabbit Trade Dress, and as such,  
21 Plaintiff is entitled to have the JackRabbit Trade Dress adequately protected with respect  
22 to the conduct of its business.

23 58. Defendants’ use of the JackRabbit Trade Dress in connection with the  
24 marketing and sales of the Pony constitutes federal unfair competition because customers  
25 and/or would-be customers are likely to be confused, and have already been confused,  
26 about the origin of the goods using the JackRabbit Trade Dress in the marketplace, as well  
27 as the existence of an affiliation, connection, or association between JackRabbit and  
28 Himiway. Defendants copying and use of advertising and marketing materials and

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1 strategies that are confusingly similar to JackRabbit’s advertising and marketing materials  
2 furthers the confusion among consumers and dealers. The continued unauthorized use of  
3 the JackRabbit Trade Dress will also lead consumers and potential consumers to  
4 erroneously believe that Defendants’ Pony is being placed into the market with Plaintiff’s  
5 consent and authority. Defendants continued use of the JackRabbit Trade Dress has  
6 caused, and unless and until restrained, will continue to cause serious and irreparable harm  
7 to Plaintiff.

8 59. Defendants, in using the JackRabbit Trade Dress for the Pony, have acted  
9 willfully and with full knowledge of Plaintiff’s rights in the JackRabbit Trade Dress.  
10 Thus, Defendants’ acts constitute unfair competition in violation of section 43(a) of the  
11 Lanham Act, 15 U.S.C. § 1125(a).

12 60. Defendants’ purpose and goal of the aforementioned conduct was and is to  
13 divert sales from Plaintiff and thereby injure Plaintiff to enrich themselves. Defendants’  
14 conduct already has damaged Plaintiff’s relationships with customers and dealers and  
15 caused Plaintiff to lose customers and dealers, including New Life EBike Co. in Winter  
16 Park, Florida.

17 61. Plaintiff has thus sustained damages as a direct and proximate result of  
18 Defendants’ infringement of the JackRabbit Trade Dress, in an amount to be proven at  
19 trial.

20 62. By reason of Defendants’ unfair competition, Plaintiff has suffered and will  
21 continue to suffer irreparable injury unless and until this Court enters an order enjoining  
22 Defendants from any further acts of unfair competition. Defendants’ continuing acts of  
23 unfair competition, unless enjoined, will cause irreparable damage to Plaintiff in that  
24 Plaintiff will have no adequate remedy to compel the infringement to stop. Plaintiff will  
25 be compelled to prosecute a multiplicity of actions, one each time that Defendants commit  
26 such acts, and in each action it will be extremely difficult to ascertain the amount of  
27 compensation that will afford Plaintiff adequate relief. For that reason, Plaintiff requests  
28



1 that the Court issue a preliminary injunction and permanent injunction that enjoins  
2 Defendants from engaging in their wrongful conduct.

3 **FOURTH CLAIM FOR RELIEF**

4 **(Unfair Competition – California Bus. & Prof. Code § 17200 *et seq.*)**

5 63. Plaintiff incorporates by reference the allegations set forth in paragraphs 1-  
6 62.

7 64. Plaintiff brings this cause of action under California’s Unfair Competition  
8 Law (“UCL”), Cal. Bus. and Prof. Code § 17200 *et seq.*, which prohibits businesses from  
9 engaging in unlawful, unfair, or fraudulent business acts or practices.

10 65. The foregoing acts of unfair competition alleged above constitute unfair  
11 business practices under the UCL, for which Plaintiff is entitled to restitution and  
12 injunctive relief.

13 66. As a direct and proximate result of the aforementioned acts of unfair business  
14 practices, Defendants have received ill-gotten gains at Plaintiff’s expense. For this  
15 reason, Plaintiff is entitled to restitution and disgorgement from Defendants with respect  
16 to those ill-gotten gains.

17 67. In addition, Plaintiff has suffered and will continue to suffer irreparable  
18 injury unless and until this Court enters an order enjoining Defendants from any further  
19 acts of unfair business practices. Defendants’ continuing acts of unfair competition,  
20 unless enjoined, will cause irreparable damage to Plaintiff in that Plaintiff will not have  
21 an adequate remedy to compel Defendants to cease such acts. Plaintiff is therefore  
22 entitled to a preliminary injunction and a permanent injunction against Defendants further  
23 infringing and unfairly competitive conduct.

24 **FIFTH CLAIM FOR RELIEF**

25 **(Intentional Interference with Prospective Economic Advantage)**

26 68. Plaintiff incorporates by reference the allegations set forth in paragraphs 1-  
27 67.

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1           69. Plaintiff has existing and prospective business relationships with numerous  
2 companies, retailers, and customers throughout the nation and particularly in Southern  
3 California.

4           70. Defendants knowingly and with bad faith have offered, and continue to offer,  
5 Plaintiff's current and prospective customers and dealers infringing products, i.e., the  
6 Pony, at a lower cost. For example, Defendants have contacted at least three of Plaintiff's  
7 current dealer customers, Last Mile SF, in San Francisco, California, EV Motion, in Red  
8 Bank, New Jersey, and Rides N Motion, in Scottsdale, Arizona, which is especially  
9 notable because these are relatively small dealers without a large retail or online presence  
10 and would likely not have been found or contacted unless Defendant purposefully visited  
11 the "Dealer Locator" on Plaintiff's website and then purposefully targeted these  
12 customers. In these instances, the Plaintiff's customers proactively contacted the Plaintiff  
13 to inform the Plaintiff that Defendants contacted them to offer what they deemed to be a  
14 low quality and low-cost knockoff of the Plaintiff's product. An additional example  
15 involves a current end customer of the Plaintiff, Vicki F., that viewed the Defendants'  
16 activities on the internet and then contacted the Plaintiff to inform the Plaintiff that "You  
17 guys are being knocked off." A further example involves Plaintiff's prospective dealer  
18 customer, David Mickelsen, Owner of New Life EBike Co., in Winter Springs, Florida,  
19 who sent an email to Plaintiff stating "Thank you but not interested. We have the Himiway  
20 Pony coming in which is very similar & a lot better price."

21           71. As a direct result of Defendants' actions, the Plaintiff has a clear statement  
22 of lost sales from a prospective customer, New Life EBike, and thereby indication of  
23 additional lost business from other current and prospective dealer customers and  
24 individual consumer customers. Thus, Plaintiff was damaged in an amount according to  
25 proof due to the loss of sales and interference with Plaintiff's existing business  
26 relationships and with interference with prospective clients.

27           72. Defendants knew of the existing and prospective business relationship  
28 between Plaintiff and Last Mile SF in San Francisco, California and Rides n Motion in

1 Scottsdale, Arizona and intentionally interfered with Plaintiff’s current and prospective  
2 business advantage by manufacturing, offering for sale, and/or selling the Pony to  
3 Plaintiff’s current and prospective customers and dealers, thereby undercutting Plaintiff  
4 and its profits.

5 **SIXTH CLAIM FOR RELIEF**

6 **(PATENT INFRINGEMENT – 35 U.S.C § 271)**

7 73. Plaintiff incorporates by reference the allegations set forth in paragraphs 1-  
8 72.

9 74. On March 14, 2020, the United States Patent and Trademark Office duly and  
10 legally issued the JackRabbit Patent to Mr. Piszkin, who assigned the JackRabbit Patent  
11 to Plaintiff on March 24, 2023. A copy of the JackRabbit Patent is attached as **Exhibit 1**.

12 75. The JackRabbit Patent carries a presumption of validity under 35 U.S.C. §  
13 282 (a) and is enforceable.

14 76. Plaintiff is the owner of the entire right, title, and interest in the JackRabbit  
15 Patent by assignment and possesses the right to sue for and obtain equitable relief and  
16 damages for infringement of the JackRabbit Patent.

17 77. Defendants have infringed and continue to infringe the JackRabbit Patent by  
18 making, using, selling, and offering for sale in the United States, and/or importing into  
19 the United States the Pony, which embodies the design of the JackRabbit Patent, without  
20 authority or license from Plaintiff.

21 78. Additionally, Defendants have infringed and continue to infringe the  
22 JackRabbit Patent by applying the patented design, or a colorable imitation thereof, to an  
23 article of manufacture, such as the Pony, for the purpose of sale and/or by selling, offering,  
24 or exposing for sale an article of manufacture, such as the Pony, to which the design of  
25 the JackRabbit Patent or a colorable imitation thereof has been applied. Thus,  
26 Defendants’ actions violate 35 U.S.C. §§ 271(a) and 289.

1           79. The Pony comprises the following design, which is a “clone,” “knockoff”  
 2 or “copycat” of the JackRabbit. As shown below, the JackRabbit (top left) and a figure  
 3 of the design patent (top right) are compared to the Pony (bottom center) from a side  
 4 perspective.



18           80. As alleged above, in the eye of the ordinary observer, the ornamental  
 19 appearance of the JackRabbit, JackRabbit Patent and the design of the Pony are  
 20 substantially the same, such that the ordinary observer would be deceived into believing  
 21 that the design of the Pony is the same design as the JackRabbit and JackRabbit Patent.  
 22 Indeed, as alleged more fully above, numerous “ordinary observers” already have  
 23 concluded that the Pony is a “downright rip-off,” a “straight up Jackrabbit copycat,” an  
 24 “exact knock-off of the JackRabbit,” and a “JackRabbit clone.” Thus, the Pony infringes  
 25 the JackRabbit Patent.

26           81. Although only a side perspective is shown herein, the other perspectives  
 27 (shown in the JackRabbit Patent Figures) lead to the same conclusion and result, with  
 28 even more resemblance, such that, as a whole, there is infringement.

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1           82. Upon information and belief, the assembly of the accused Himiway Pony in  
2 accordance with Defendants’ support and/or instructions for the normal assembly  
3 procedure infringes the JackRabbit Patent. Defendants have induced infringement and  
4 continue to induce infringement of such claims either literally or under the doctrine of  
5 equivalents, by encouraging others, including end purchasers or contractors to assemble  
6 and use the Himiway Pony. By providing support and instructions, Defendants have  
7 intentionally encouraged and will continue to intentionally encourage acts of direct  
8 infringement by others, including customers, retailers, and manufacturers with knowledge  
9 of the JackRabbit Patent and with knowledge that their acts are encouraging infringement,  
10 in violation of 35 U.S.C. § 271(b).

11           83. The accused Pony constitutes a material part of the invention of the  
12 JackRabbit Patent and is not a staple article or commodity of commerce suitable for  
13 substantial noninfringing use; the Pony is especially made or adapted for infringement in  
14 violation of 35 U.S.C. §271(c). Defendants have contributorily infringed and continue to  
15 contributorily infringe the JackRabbit Patent, either literally or under the doctrine of  
16 equivalents, by promoting the making and use, and/or assembly and use of the accused  
17 product in accordance with its support and/or directions for assembly in the United States  
18 and in this District by others, including customers and contractors.

19           84. Defendants’ past and present continued infringement, active inducement,  
20 and contributory infringement of the JackRabbit Patent has been willful and deliberate,  
21 with full knowledge, and in blatant disregard for Plaintiff’s exclusive patent rights.  
22 Defendants have been aware of the JackRabbit Patent since at least April 4, 2023. The  
23 harm to Plaintiff arising from Defendants’ acts of infringement of the JackRabbit Patent  
24 is not fully compensable by monetary damages because Plaintiff has suffered and  
25 continues to suffer irreparable harm that has no adequate remedy at law, which will  
26 continue unless and until Defendants’ conduct is enjoined.

27           85. Defendants have gained profits by virtue of their infringement of the  
28 JackRabbit Patent.

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1 86. Plaintiff has suffered and is continuing to suffer damages as a direct and  
2 proximate result of Defendants’ infringement of the JackRabbit Patent, and Plaintiff is  
3 entitled to compensation and other monetary relief to the fullest extent allowed by law,  
4 including attorneys’ fees under 35 U.S.C. §§ 284 and 285.

5 87. Plaintiff has suffered injury, including irreparable injury, as a result of  
6 Defendants’ infringement of the JackRabbit Patent. Plaintiff is therefore entitled to  
7 preliminary and permanent injunctive relief restraining and enjoining Defendants from  
8 infringing the JackRabbit Patent.

9 88. Defendants should also be required to pay Plaintiff’s attorneys’ fees,  
10 expenses, and costs, including treble damages, for Defendants’ willful and blatant  
11 disregard of Plaintiff’s patent rights.

12 **IV. COMMON ALLEGATIONS FOR ALL CLAIMS OF RELIEF**

13 89. Plaintiff hereby demands a trial by jury on all issues so triable in this Action.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff respectfully requests the following relief:

- 16 1. Judgment that Defendants have infringed the JackRabbit Trade Dress;
- 17 2. Judgment that Defendants have infringed the JackRabbit Patent;
- 18 3. Judgment against Defendants for Defendants’ total profits for any article of  
19 manufacture to which the design of the JackRabbit Patent has been applied as a result of  
20 Defendants’ infringement of the JackRabbit Patent in an amount to be determined at trial  
21 as provided under 35 U.S.C. § 289 and for money damages sustained as a result of  
22 Defendants’ infringement of the JackRabbit Patent in an amount to be determined at trial  
23 under U.S.C. § 284, whichever is greater;
- 24 4. An award of preliminary and permanent injunctions, enjoining Defendants,  
25 their agents, servants, officers, directors, employees, and persons or entities acting in  
26 concert with Defendants from infringing the JackRabbit Trade Dress and from engaging  
27 in any further acts of infringement and unfair competition under 15 U.S.C. § 1125(a) and  
28 Cal. Bus. and Prof. Code § 17200 *et seq.*;



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- 1           5. Actual damages suffered by Plaintiff as a result of Defendants’ unlawful
- 2 conduct, in an amount to be proven at trial;
- 3           6. An accounting of Defendants’ profits under 15 U.S.C. § 1117 and/or 35
- 4 U.S.C. § 289;
- 5           7. A judgment trebling any damages award under 15 U.S.C. § 1117;
- 6           8. Punitive damages in an amount to be proven at trial;
- 7           9. Disgorgement of Defendants’ profits which have arisen from their wrongful
- 8 conduct;
- 9           10. Restitution of the amounts by which Defendants have been unjustly
- 10 enriched;
- 11           11. Judgment that Defendants have directly infringed the JackRabbit Patent;
- 12           12. Judgment that Defendants have induced infringement of the JackRabbit
- 13 Patent;
- 14           13. Judgment that Defendants have committed contributory infringement of the
- 15 JackRabbit Patent;
- 16           14. An award of preliminary and permanent injunctions, enjoining Defendants
- 17 and their agents, servants, officers, directors, employees, and persons or entities acting in
- 18 concert with Defendants from committing any further acts of infringement of Plaintiff’s
- 19 patent rights (directly, contributorily, or by inducement), including manufacturing,
- 20 importing, using, exporting, offering to sell, and selling the Pony (or products colorably
- 21 similar thereto), or aiding or abetting or assisting others in such infringing activities;
- 22           15. An order seizing and impounding all Pony ebikes and all manufacturing
- 23 supplies in Defendants’ possession, custody, or control;
- 24           16. An order directing Defendants to file with this Court and to serve on Plaintiff
- 25 within thirty (30) days after service on Defendants of the injunction granted herein, or
- 26 such extended period as the Court may direct, a report in writing, under oath, setting forth
- 27 in detail the manner and form in which Defendants have complied with and are continuing
- 28 to comply with the injunction and order of this Court;

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750 B STREET, SUITE 2100  
SAN DIEGO, CALIFORNIA 92101-8177

1 17. Damages to fully compensate Plaintiff for Defendants’ infringement of the  
2 JackRabbit Patent, but in no event less than a reasonable royalty for Defendants’ use of  
3 the patented invention;

4 18. An award of treble damages under 35 U.S.C. § 284 and a finding that  
5 Defendants’ infringement of the JackRabbit Patent is and was willful and deliberate;

6 19. An award of attorneys’ fees under 35 U.S.C. § 285 and a finding that this is  
7 an exceptional case;

8 20. Pre-judgment and post-judgment interest;

9 21. Costs of suit and Plaintiff’s attorneys’ fees under 35 U.S.C. § 285; and

10 22. Any other and further relief, both general and special, at law or in equity, to  
11 which Plaintiff is entitled.

12  
13  
14 Dated: May 8, 2023

Respectfully submitted,

SELTZER CAPLAN McMAHON VITEK  
A Law Corporation

15  
16  
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18  
19  
20  
21 Dated: May 8, 2023

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## EXHIBIT 1 TO THE COMPLAINT



US00D964218S

(12) **United States Design Patent** (10) **Patent No.:** **US D964,218 S**  
**Piszkin** (45) **Date of Patent:** **\*\* Sep. 20, 2022**

(54) **ELECTRIC-ASSIST ADULT STRIDER**

FOREIGN PATENT DOCUMENTS

(71) Applicant: **Thomas Martin Piszkin**, Santee, CA (US)  
 (72) Inventor: **Thomas Martin Piszkin**, Santee, CA (US)

CN 205499234 U \* 8/2016 ..... B62K 3/04  
 KR 100935324 B1 \* 1/2010  
 WO WO-2017015121 A1 \* 1/2017 ..... B62K 3/02

(\*\*) Term: **15 Years**  
 (21) Appl. No.: **29/727,965**

OTHER PUBLICATIONS

TotGuard Electric Bike, Published Sep. 29, 2021 [online], [retrieved on Oct. 17, 2021]. Retrieved from the Internet: [https://www.amazon.com/Electric-TotGuard-Foldable-Bicycles-Suspension/dp/B09GLSQNF4/ref=sr\\_1\\_1?dchild=1&keywords=B09GLSQNF4&qid=1634533267&sr=8-1&th=1](https://www.amazon.com/Electric-TotGuard-Foldable-Bicycles-Suspension/dp/B09GLSQNF4/ref=sr_1_1?dchild=1&keywords=B09GLSQNF4&qid=1634533267&sr=8-1&th=1) (Year: 2021).\*

(22) Filed: **Mar. 14, 2020**  
 (51) **LOC (13) Cl.** ..... **12-11**  
 (52) **U.S. Cl.**  
 USPC ..... **D12/111**  
 (58) **Field of Classification Search**  
 USPC ..... D12/107, 110, 111, 114, 117, 118, 119;  
 D21/419, 423, 424, 432  
 CPC . B62K 3/00; B62K 3/005; B62K 3/02; B62K  
 3/04; B62K 3/06; B62K 3/10; B62K  
 9/00; B62K 19/00; B62K 19/02; B62K  
 19/04; B62K 19/06; B62K 19/30  
 See application file for complete search history.

\* cited by examiner

*Primary Examiner* — Cary M Robinson  
*Assistant Examiner* — Adam C Mager

(74) *Attorney, Agent, or Firm* — Withrow & Terranova, PLLC

(56) **References Cited**

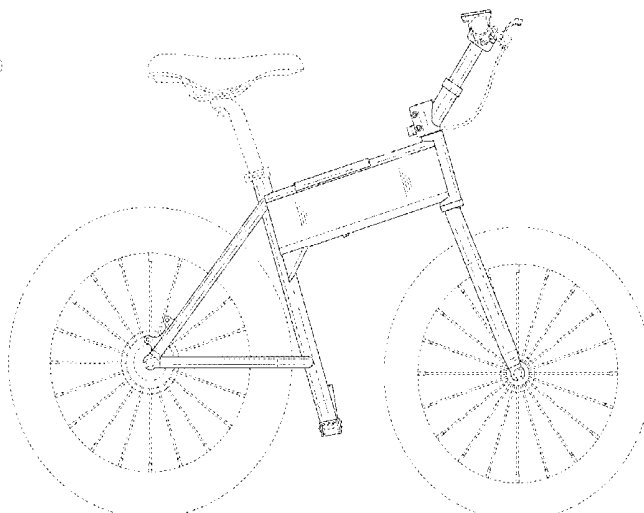
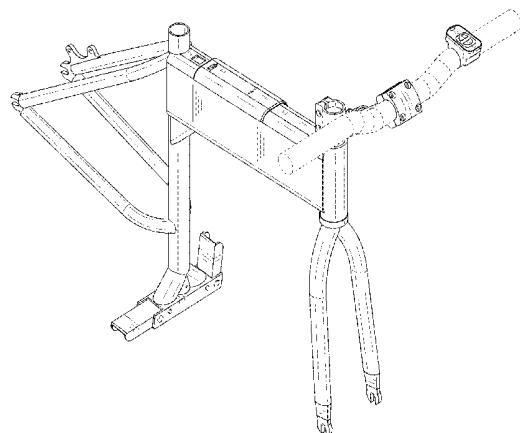
U.S. PATENT DOCUMENTS

D43,625 S \* 2/1913 Meiser ..... D12/110  
 5,474,148 A \* 12/1995 Takata ..... B60L 50/52  
 180/206.2  
 7,490,842 B1 \* 2/2009 Ulrich ..... B62K 15/006  
 280/278  
 D636,298 S \* 4/2011 Yang ..... D12/111  
 D727,215 S \* 4/2015 Yang ..... D12/111  
 D826,102 S \* 8/2018 Lefort ..... D12/111  
 D833,916 S \* 11/2018 Yu ..... D12/111  
 D924,732 S \* 7/2021 Lin ..... D12/111  
 D925,404 S \* 7/2021 Lin ..... D12/111  
 D925,405 S \* 7/2021 Lin ..... D12/111  
 2003/0209875 A1 \* 11/2003 Groendal ..... B62K 19/00  
 280/275  
 2013/0075175 A1 \* 3/2013 Vollmer ..... B62K 3/02  
 180/206.2  
 2017/0001682 A1 \* 1/2017 Hayslett ..... B60W 10/08

DESCRIPTION

FIG. 1—Right side orthographic view of patent subject  
 FIG. 2—Front elevation view of patent subject  
 FIG. 3—Rear elevation view of patent subject  
 FIG. 4—Right side elevation view of patent subject  
 FIG. 5—Left side elevation view of patent subject  
 FIG. 6—Top plan view of patent subject  
 FIG. 7—Bottom plan view of patent subject; and,  
 FIG. 8 is a right side elevation view of the electric-assist adult strider shown in a different broken line environment. The broken lines shown in the drawings illustrate portions of the electric-assist adult strider in which the design is embodied and forms no part of the claimed design.

**1 Claim, 8 Drawing Sheets**



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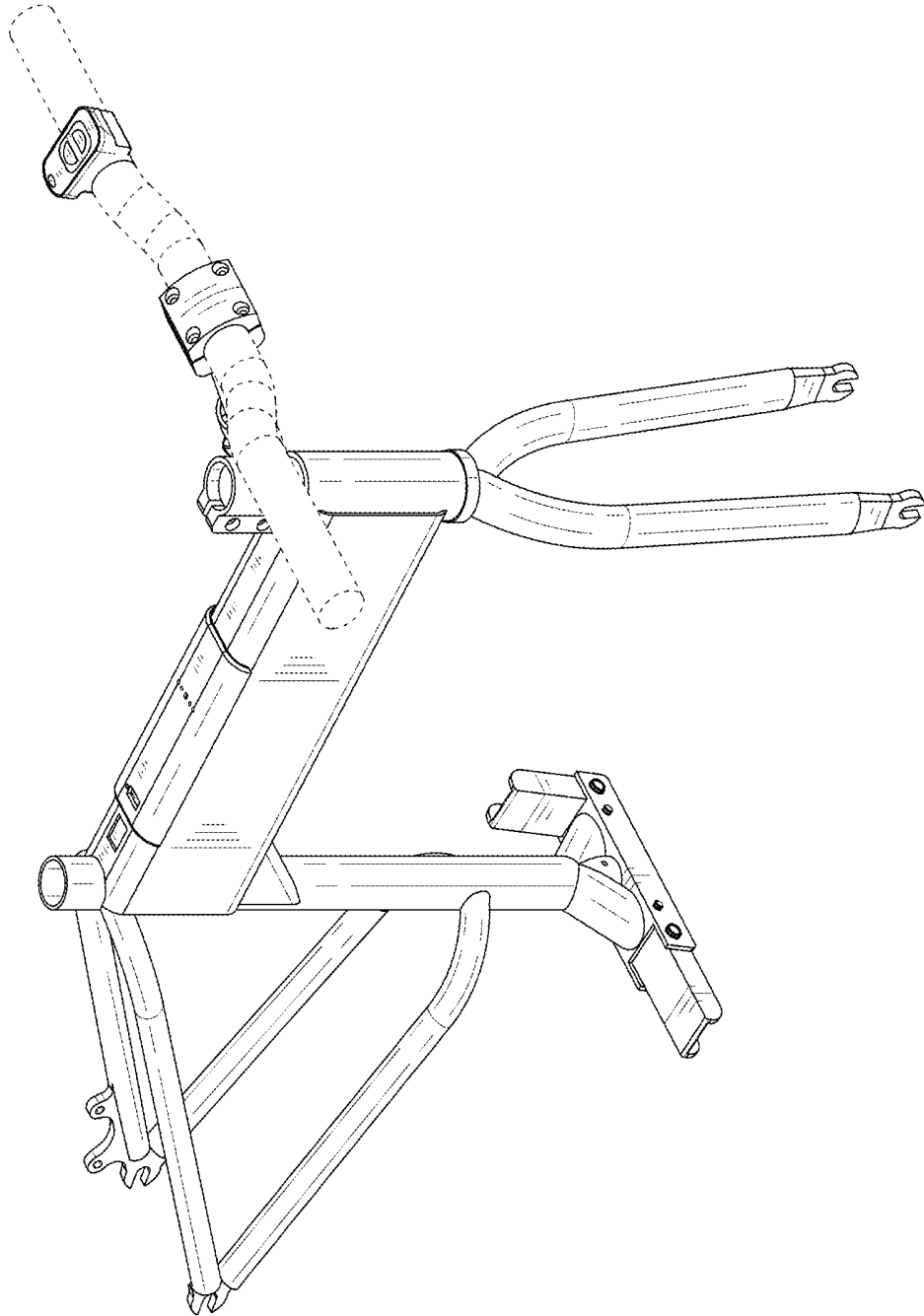


FIG. 1



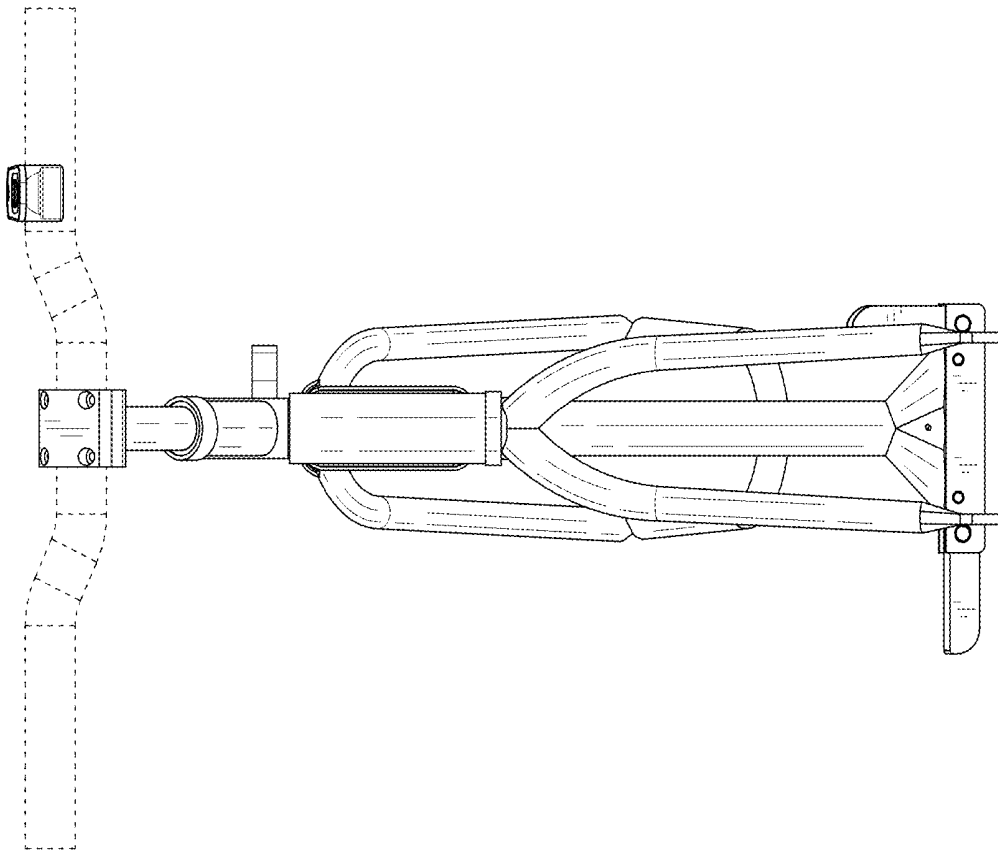


FIG. 2

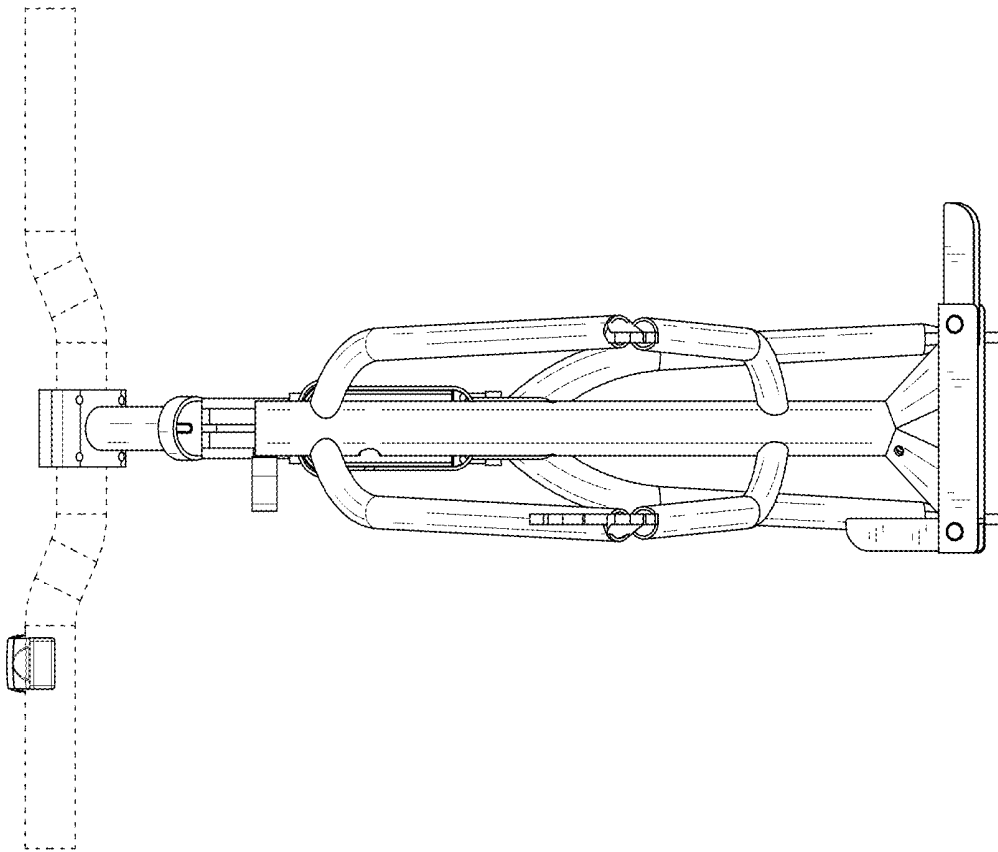


FIG. 3

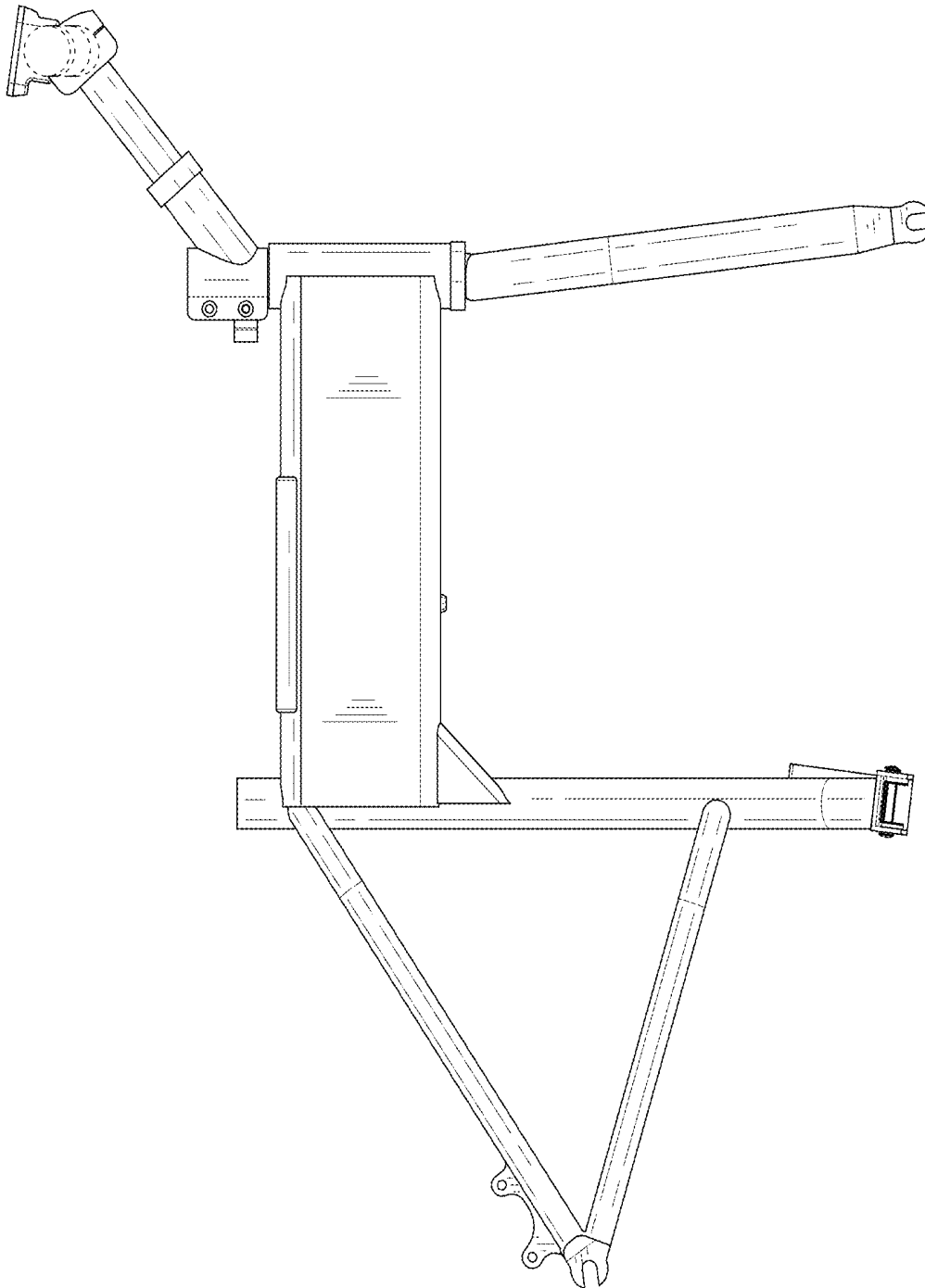


FIG. 4

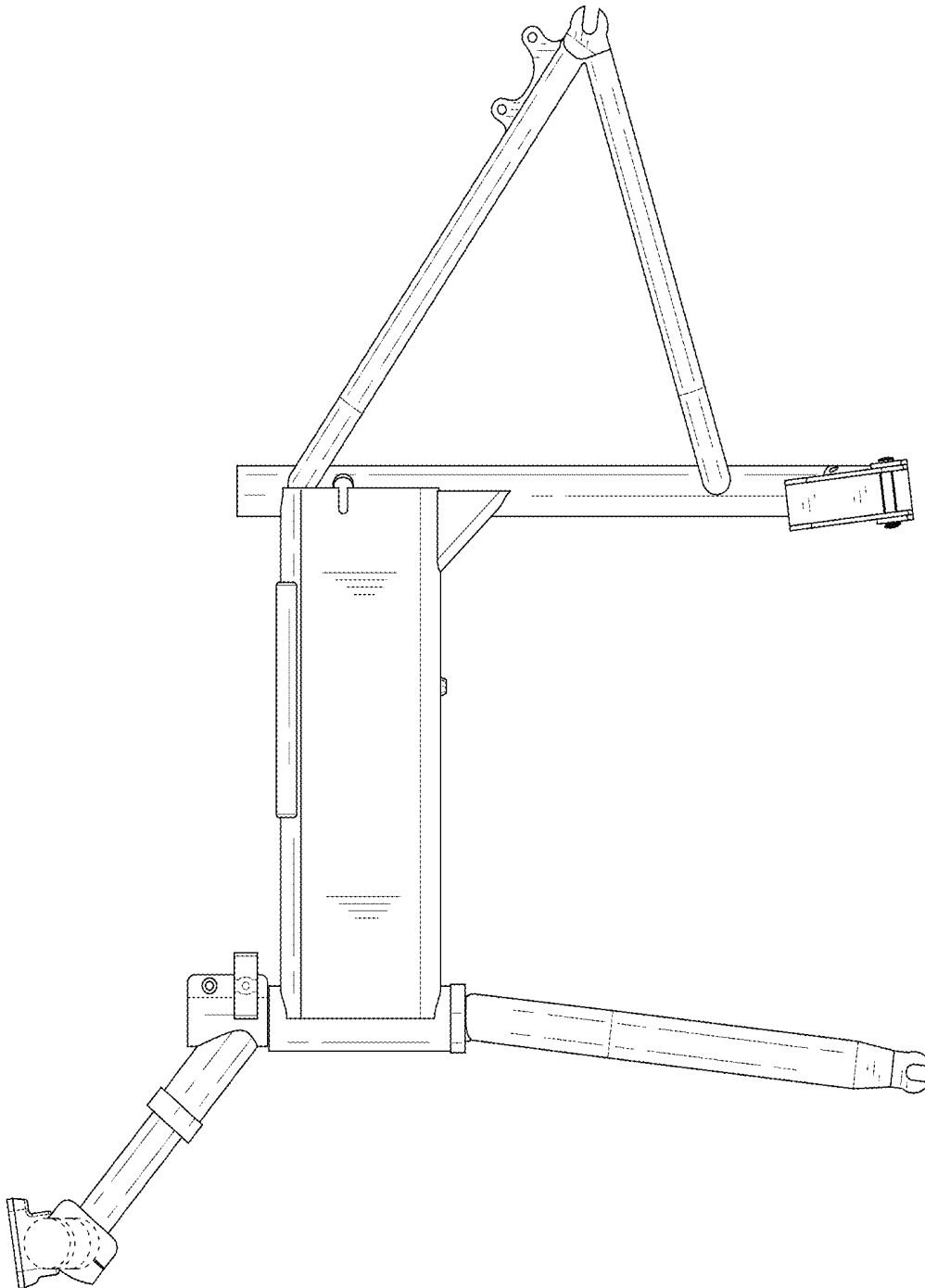


FIG. 5

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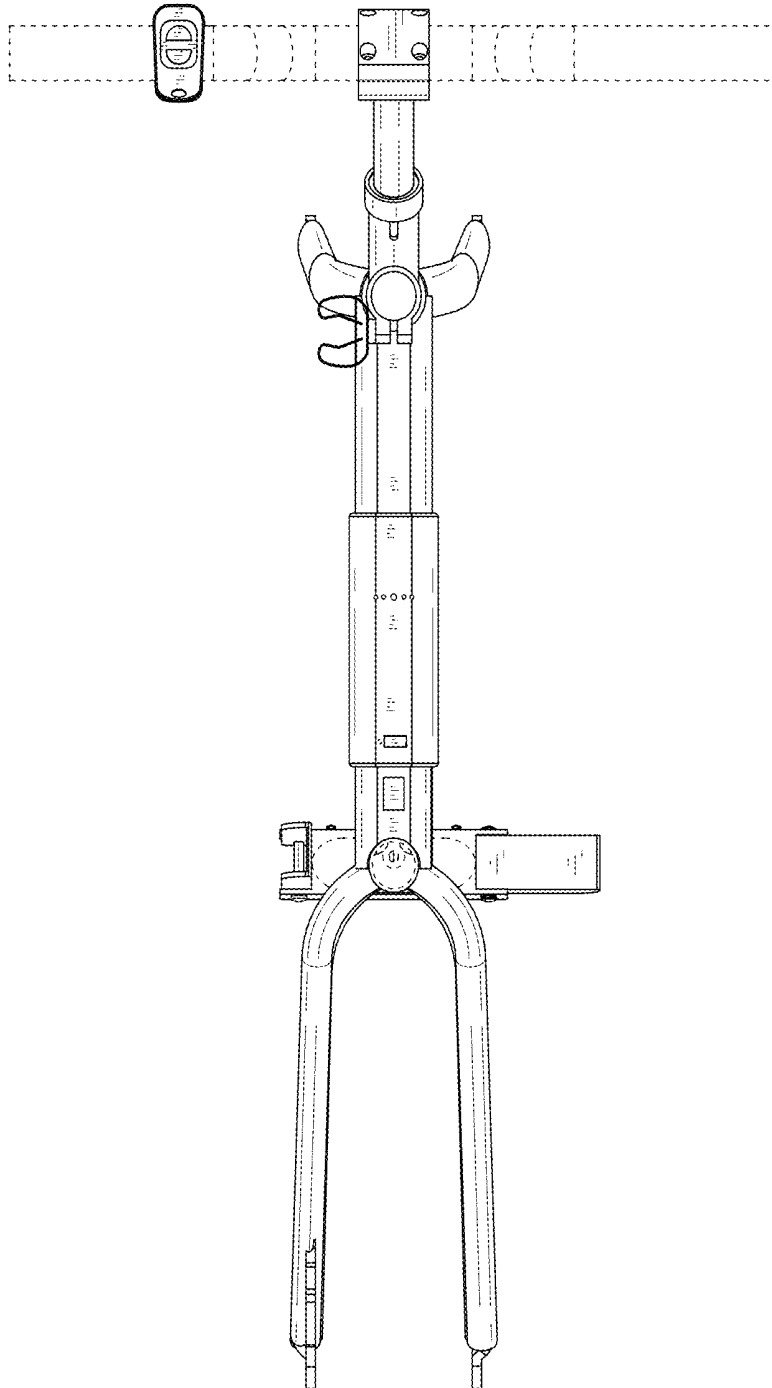


FIG. 6



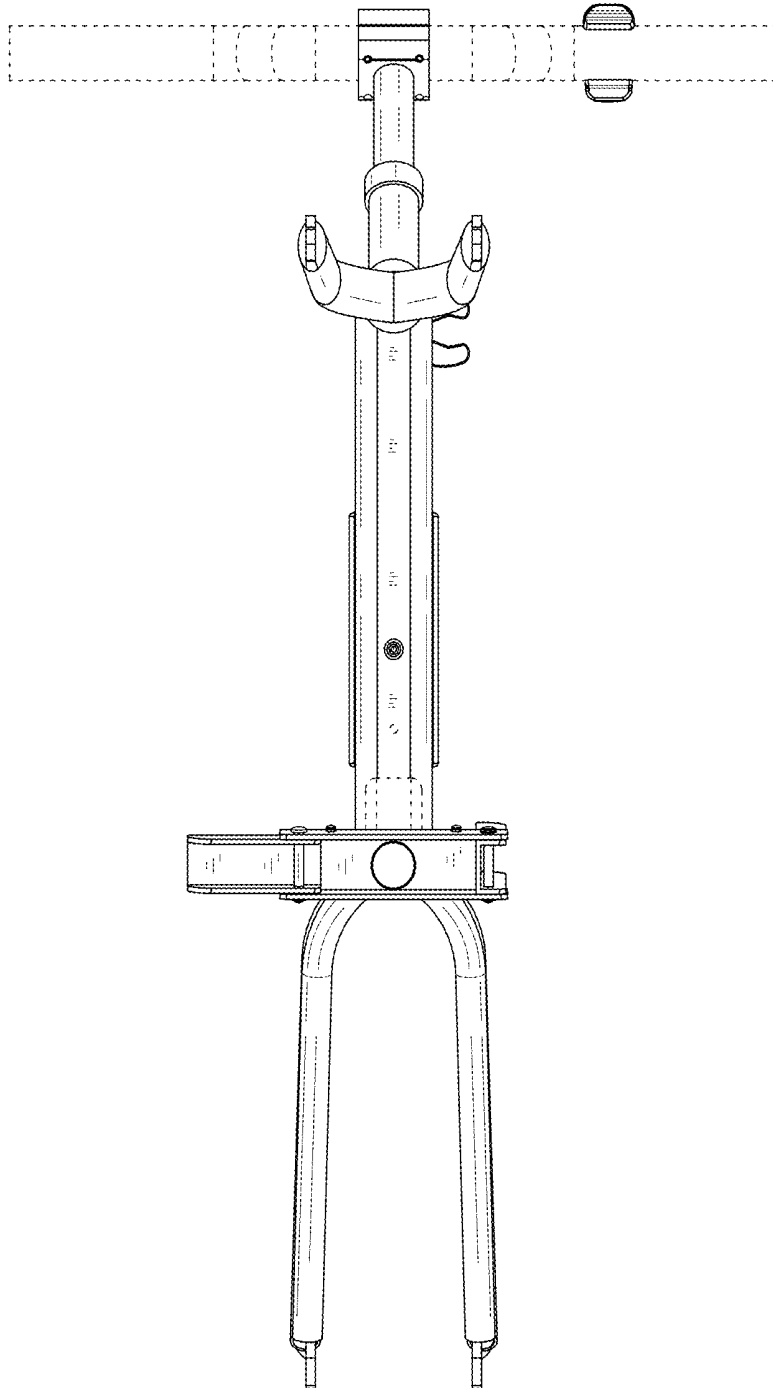


FIG. 7

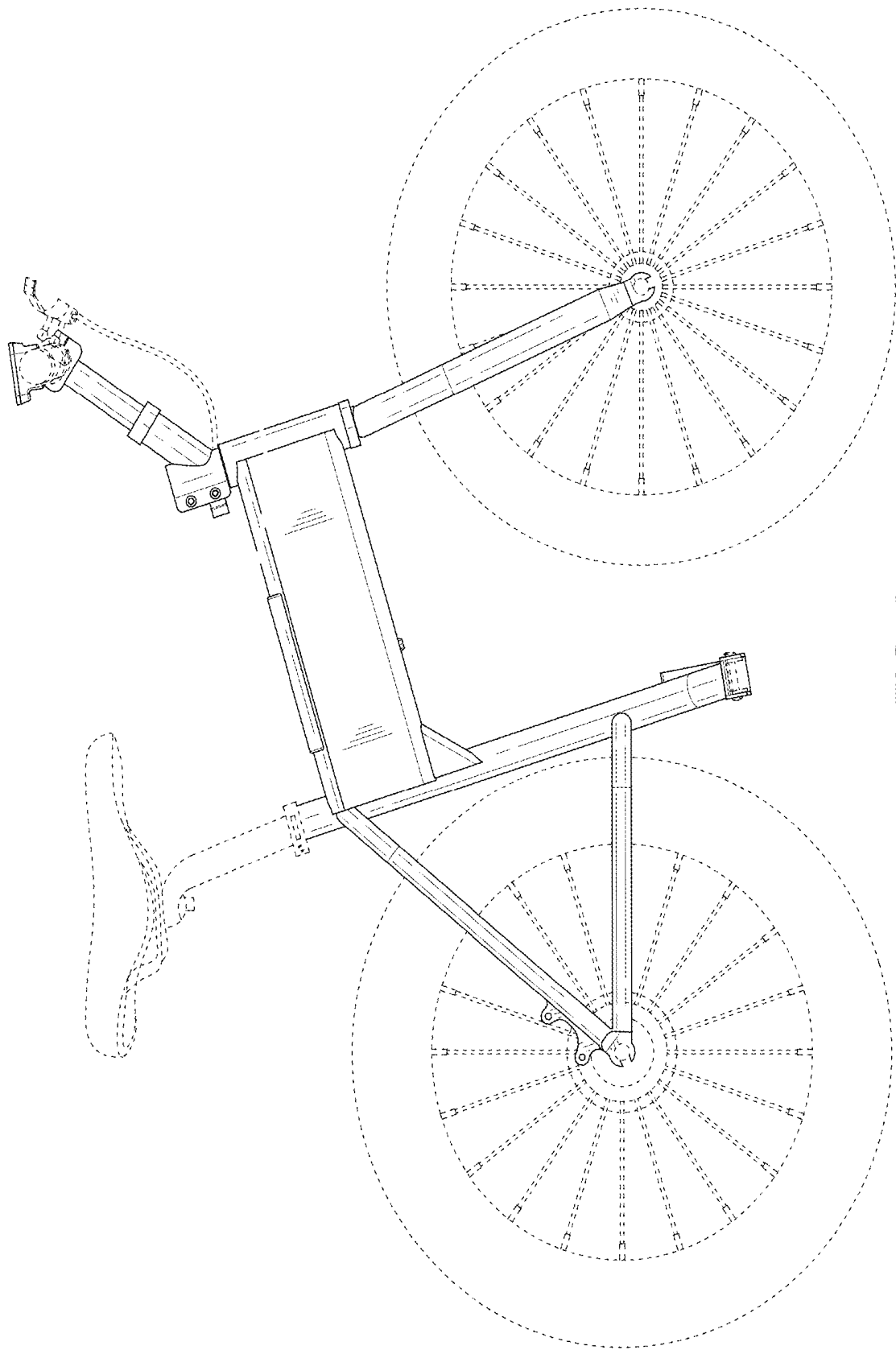


FIG. 8