

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DAYLINE INNOVATIONS INC.,	§	
Plaintiff,	§	
	§	
v.	§	CASE NO. 2:22-cv-74
	§	
DICK’S SPORTING GOODS, INC.,	§	JURY TRIAL REQUESTED
	§	
Defendant.	§	

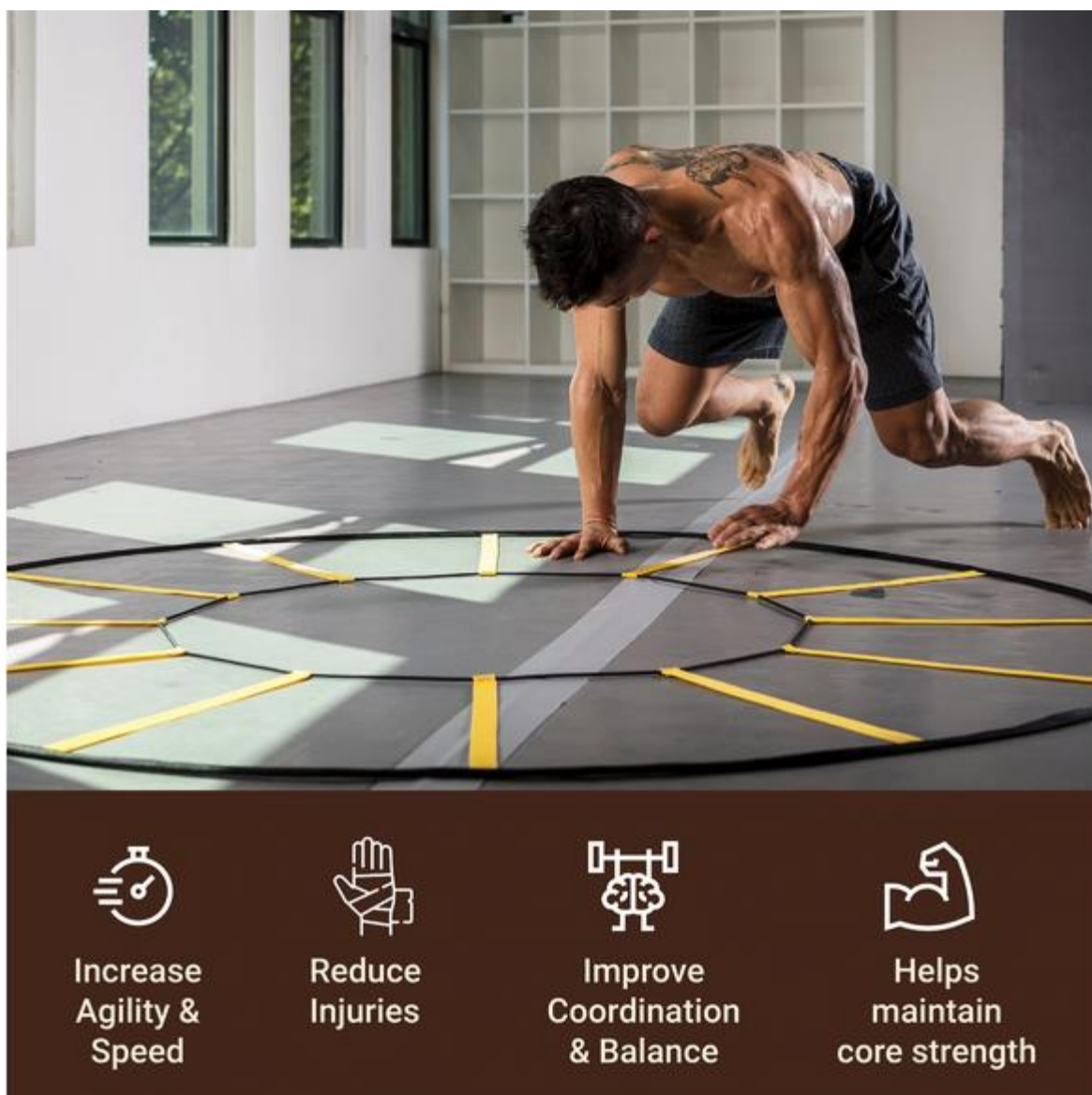
PLAINTIFF’S ORIGINAL COMPLAINT AND JURY DEMAND

Dayline Innovations Inc. (“Dayline”) revolutionized the agility ladder market when it introduced the Webby Agility Trainer. Then it was copied. Dick’s Sporting Goods, Inc. (“Dick’s”) markets and sells in stores and online a copy of Dayline’s innovative product. Dayline files this suit for infringement of U.S. Patent No. 9,855,453 and seeks redress for the damage it has suffered as a result of the Dick’s infringement.

PARTIES

1. Plaintiff and patent owner Dayline Innovations Inc. is a corporation formed under the laws of Canada with a principal place of business at 594 Copper Dr, Britannia Beach, BC V0N 1J0, Canada.

2. Dayline’s pioneering collapsible agility ladder and accompanying training routines improve athlete training while providing equipment ease of use and transportation convenience.



3. Defendant Dick’s Sporting Goods, Inc., is a foreign for-profit corporation with its headquarters at 345 Court Street, Coraopolis, PA 15108. Dick’s Sporting Goods, Inc., may be served with process through its registered agent, Corporation Service Company, at 211 East Seventh Street, Suite 620, Austin, TX 78701.

4. Defendant Dick’s Sporting Goods, Inc., owns and operates Dick’s Sporting Goods stores in this district and throughout Texas. Dick’s Sporting Goods, Inc. sells the

infringing product in stores and through the Dick's Sporting Goods website (www.DicksSportingGoods.com).

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. § 1 *et seq.*

6. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 (a).

7. This Court has personal jurisdiction over the Defendant under the laws of the State of Texas, due at least to its substantial business in Texas and in this judicial district, including: (a) at least part of its infringing activities alleged herein; and (b) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods sold and services provided to Texas residents.

8. Venue is proper in this judicial district under 28 U.S.C. § 1400(b).

9. Dick's operates retail stores in this district including at 3500 McCann Road, Suite K101, Longview, Texas 75605, and 4701 S Broadway Ave, Tyler, TX 75703.

10. Dick's retail stores in the district are regular and established physical places of business through which Dick's transacts business involving the accused products.

11. Dick's distributes the infringing product to residents of the district who place orders through Dick's Websites.

12. Dick's markets, sells, and delivers the infringing product embodying the asserted patent to customers in this district.

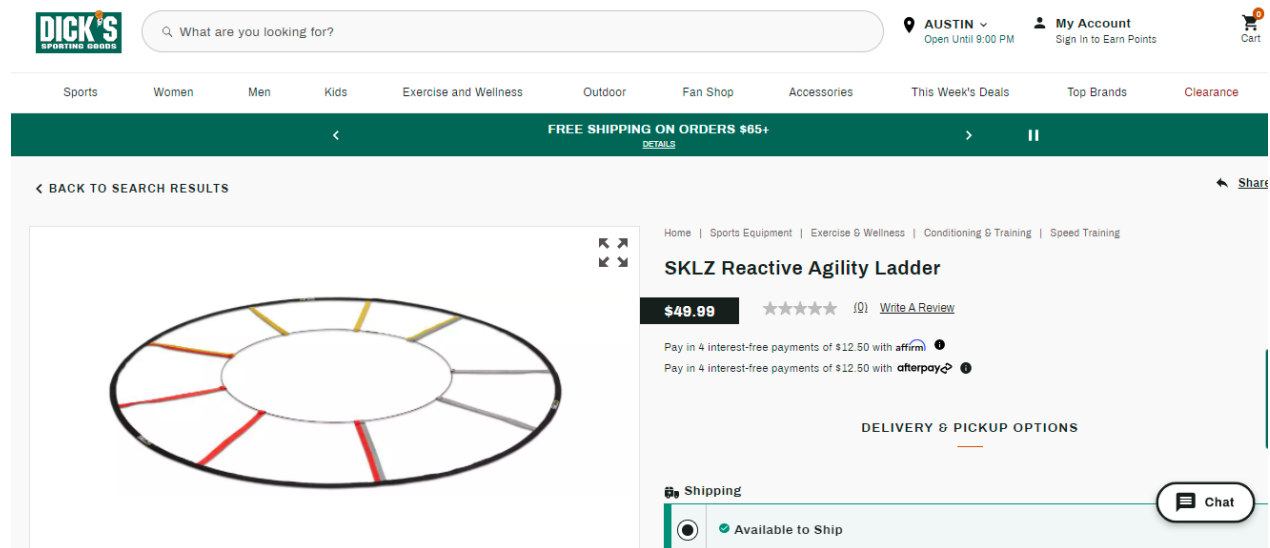
13. Customers wishing to return the infringing product purchased through

www.DicksSportingGoods.com may do so at a Dick's store.

14. Dayline Innovations Inc. has suffered damages in this district due to Dick's infringing conduct including lost sales of its own patented product.

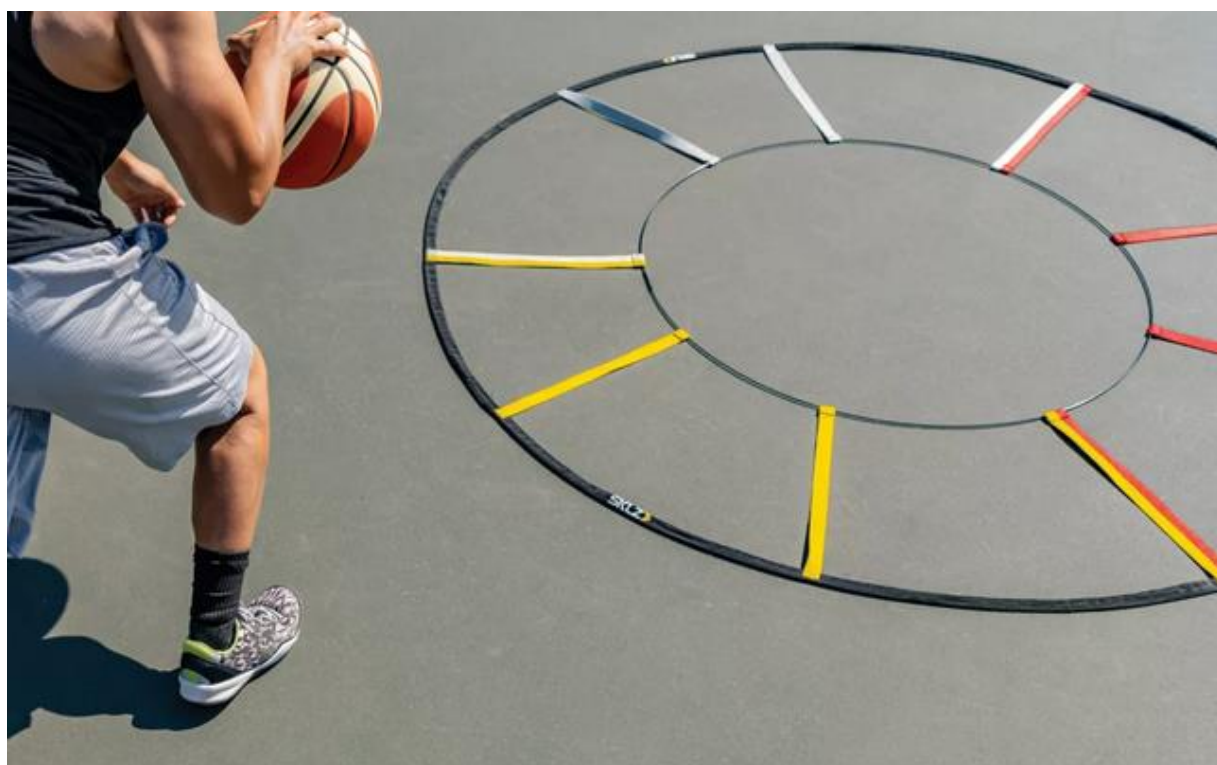
ACCUSED PRODUCT

15. Defendant markets and sells the infringing accused product, the SKLZ Reactive Agility ladder, which is manufactured for Dick's by Pro Performance Sports, LLC d/b/a SKLZ:



<https://www.dickssportinggoods.com/p/sklz-reactive-agility-ladder-21slzarctvglylddeac/21slzarctvglylddeac>

16. Dick's sells, offers for sale, makes, imports, uses, and/or distributes the infringing Reactive Agility Ladder that meets each and every limitation of the asserted claims of the '453 Patent:



17. For example, claim 1 of the '453 Patent recites:

What is claimed is:

1. An exercise device comprising:
an outer ring having a diameter of at least 4 ft;
an inner ring located within the outer ring, the inner ring
having a diameter of at least 2 ft; and
more than 6 spokes connecting the inner ring and the outer
ring;

wherein at least one of the inner ring and the more than 6 spokes are elastic and configured to urge the more than 6 spokes into a radial configuration, wherein the device is configured such that a human user can step from any position within a region defined by an inner surface of the inner ring to any region of a plurality of regions defined by the outer ring, the more than 6 spokes and the inner ring, and wherein the outer ring is resiliently deformable. 5

2. The device of claim 1, wherein the inner ring is elastic and the more than 6 spokes are flexible. 10

3. The device of claim 1, wherein the more than 6 spokes are elastic and the inner ring is flexible.

4. The device of claim 1, wherein the outer ring comprises an internal ring support encased in a sheath. 15

5. The device of claim 4, wherein the more than 6 spokes are connected to the sheath.

6. The device of claim 1, wherein each spoke of the more than 6 spokes has a non-adjustable length.

7. The device of claim 1, wherein the more than 6 spokes consists of at most 16 spokes. 20

8. The device of claim 1, wherein the more than 6 spokes consists of 12 spokes.

9. The device of claim 1, wherein the outer ring has a circular shape. 25

18. The Dick's Agility Ladder features an outer ring having a diameter of approximately 72 inches.



<https://www.dickssportinggoods.com/p/sklz-reactive-agility-ladder-21slzarctvglylddeac/21slzarctvglylddeac>

19. The Dick's accused product has an inner ring located within the outer ring.



20. The Dick's Agility Ladder has an inner ring with a diameter of approximately 36 inches.



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21. The Dick's Agility Ladder has 9 spokes connecting the inner ring and the

outer ring.



22. At least one of the inner ring, composed of a fiberglass material, and the more than 6 spokes are elastic and configured to urge the spokes into a radial configuration:



23. In normal operation and use, the Dick's Agility Ladder is configured such that a user can step from any position within a region defined by the outer ring, the inner ring, and the 9 spokes to any other position within a similar region.



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24. The Dick's Agility Ladder has an outer ring that is resiliently deformable.

STORAGE



1. Pick up ladder and place both hands on the inner black ring on opposite sides of one another.



2. Twist your right hand in, going across your body.



3. Twist your left hand, in going across your body and over the top of your right hand, forming two smaller rings.



4. Holding the two smaller rings together, grab both of the outer rings and pull them in as well.



5. Holding the four rings with one hand, grab the opposite side of the outer rings and repeat steps two and three by twisting in your right hand across your body and your left hand over the top.

SKLZ Reactive Agility Ladder user manual

25. The Dick's Agility Ladder contains an outer ring encased in a nylon sheath.



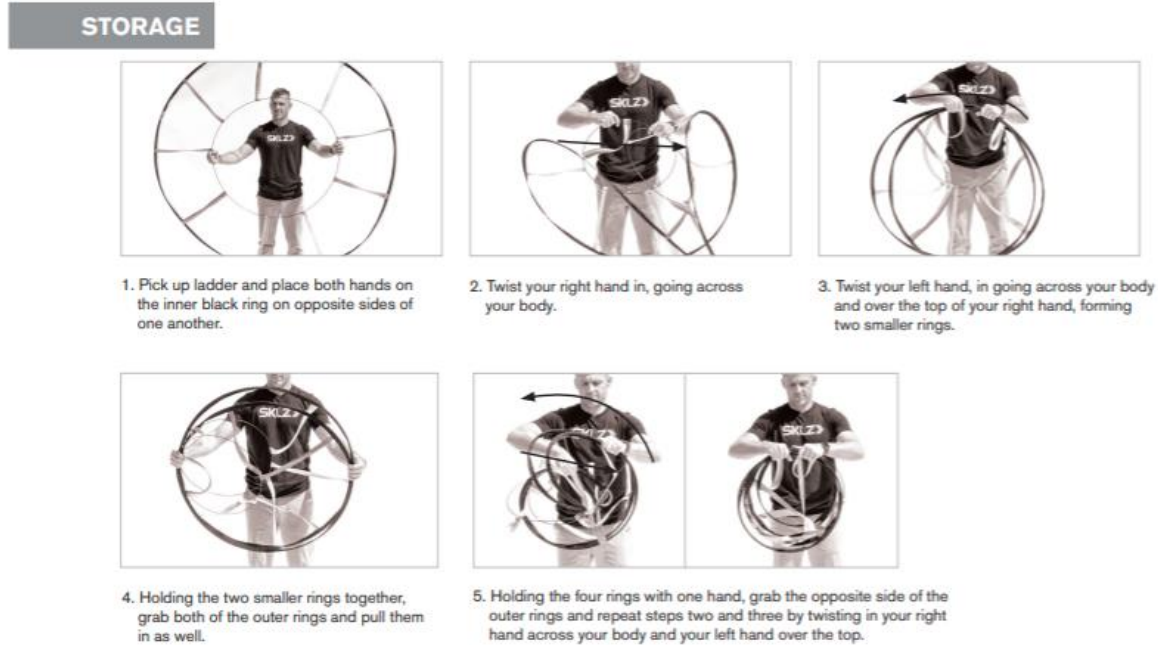
26. The Dick's Agility Ladder has 9 spokes connected to the nylon sheath.



27. The Dick's Agility Ladder has a circular outer ring composed of a fiberglass material.



28. The outer ring of the Dick's Agility Ladder is twistable into 4 smaller circular rings for easier storage and transportation.



SKLZ Reactive Agility Ladder User Manual

29. Dick's provides users with packaged instructions and online content instructing them on how to use the accused product.

PRODUCT FEATURES:

- Improves acceleration, lateral speed, change of direction and reaction time by combining mental and physical training
- Includes exclusive online programming and content designed by certified trainers
- Circular shape helps train footwork and agility patterns in all directions
- Includes 8 cones in four colors to enhance random response and memory sequencing patterns
- Sets up and folds down instantly with an included carry bag for portability
- For more versatile training use with the Switched On training app

<https://www.dickssportinggoods.com/p/sklz-reactive-agility-ladder-21slzarctvglylddeac/21slzarctvglylddeac>

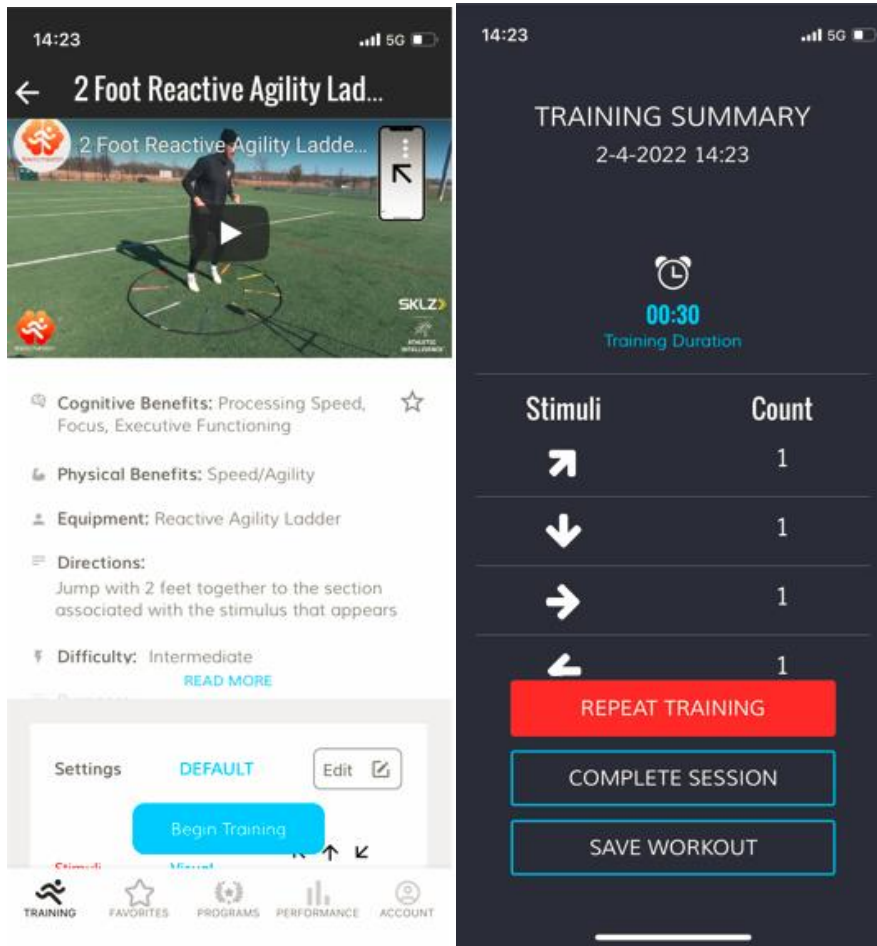
30. Dick's encourages users to download the SwitchedOn training app that is used to improve the versatility of training with the infringing Agility Ladder.

PRODUCT FEATURES:

- Improves acceleration, lateral speed, change of direction and reaction time by combining mental and physical training
- Includes exclusive online programming and content designed by certified trainers
- Circular shape helps train footwork and agility patterns in all directions
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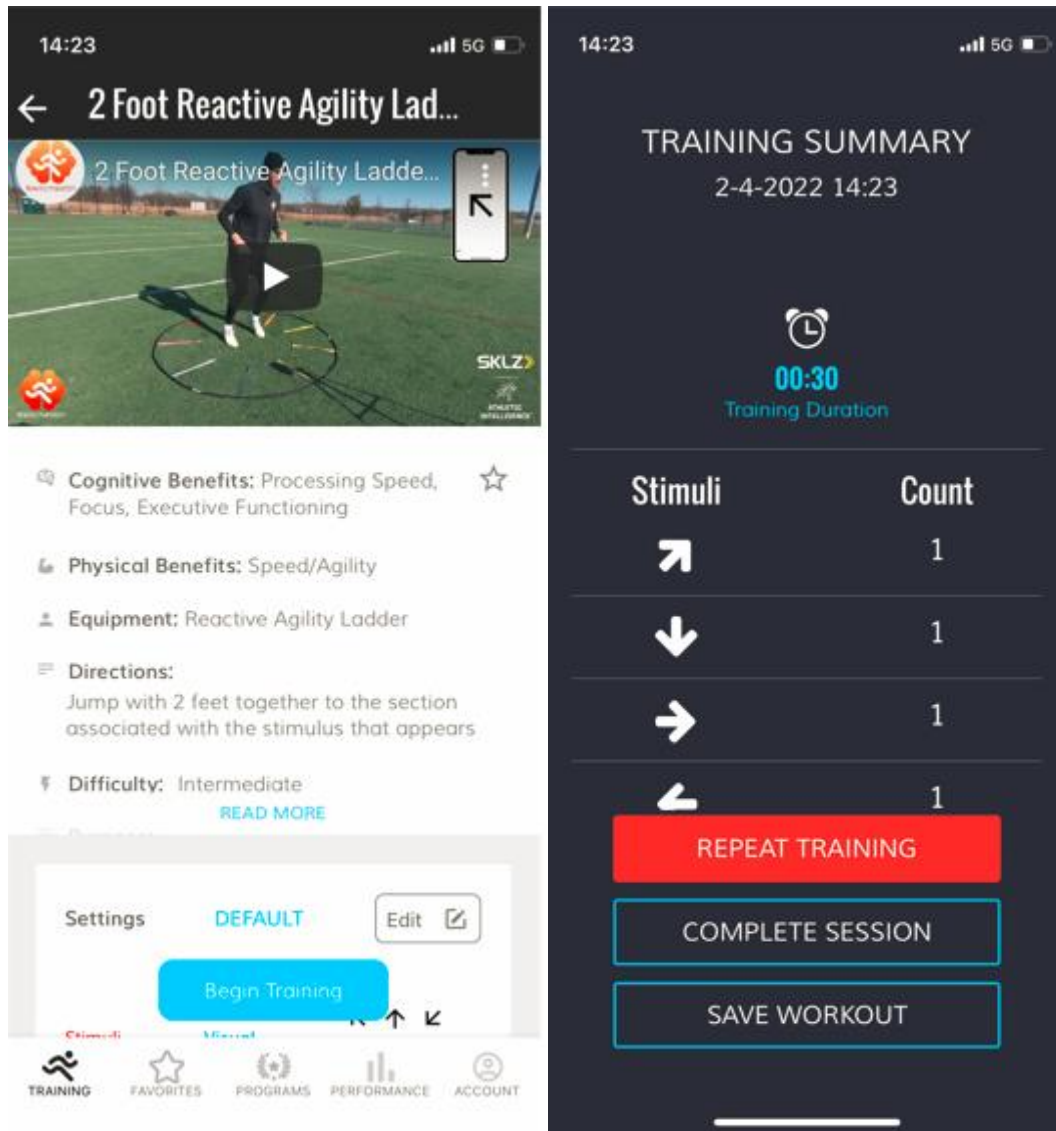
<https://www.dickssportinggoods.com/p/sklz-reactive-agility-ladder-21slzarctvglylddeac/21slzarctvglylddeac>

31. The SwitchedOn training app directs the user to follow a series of steps between the regions of the infringing Agility Ladder:



32. The SwitchedOn training app times a user of the infringing Agility Ladder

as they perform the sequence of steps in a training exercise:



33. Dick’s markets the accused product as an agility ladder and emphasizes its ability to improve a user’s acceleration and ability to rapidly change movement directions by performing step sequences just as described in the claimed subject matter of the ’453 Patent. *See* Exhibit A, Column 3, lines 27-31:

The device is useful for exercise. For example, but without limitation, the device may be used for agility training or any other exercise method in which a user performs a sequence of steps into and out of the regions 30 defined by the device. The user may alternatively or additionally place other body parts (e.g. hands, knees and/or elbows) in the regions defined by the device.

PRODUCT FEATURES:

- Improves acceleration, lateral speed, change of direction and reaction time by combining mental and physical training
- Includes exclusive online programming and content designed by certified trainers
- Circular shape helps train footwork and agility patterns in all directions
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34. Dick's infringes Dayline Innovation's '453 Patent directly and indirectly.

**COUNT 1
INFRINGEMENT OF U.S. PATENT NO. 9,855,453**

35. Dayline Innovations incorporates the preceding paragraphs herein by reference.

36. Dayline Innovations Inc., is the owner, by assignment, of U.S. Patent No. 9,855,453 (the "'453 Patent") titled "Exercise Device and Method." A true and correct copy of the '453 Patent is attached as Exhibit A.

37. The '453 Patent is valid and enforceable.

38. The '453 Patent was duly issued by the United States Patent Office upon finding that it fully complied with Title 35 of the United States Code.

39. Dick's has no consent or authorization to practice the '453 Patent.

40. Dick's directly infringes one or more claims of the '453 Patent, including at least claims 1, 2, 3, 4, 5, 7, 9, 10, 11, 13, and 14 under 35 U.S.C. § 271(a) by making, using, offering for sale, importing, distributing, and/or selling the accused product, and aiding and abetting its normal use.

41. At least as of the service of this Complaint, Dick's is on notice of the '453 Patent, that the products that infringe the '453 Patent, and of how they infringe. Dick's is thus liable for contributory and/or inducing infringement.

42. For example, Dick's is liable under 35 U.S.C §271(b) for knowingly inducing others (namely end users and customers) to infringe by encouraging, aiding, and abetting the use and setup of the accused agility ladders.

43. Dick's maintains an interactive website with a "Chat Now" feature upon which prospective customers ask questions that Dick's and its agents answer in furtherance of their knowing inducement of others' use of the '453 Accused Product.

44. Dayline Innovations has been damaged as a result of Defendant's infringing conduct. Defendant is thus liable to Plaintiff in an amount that adequately compensates it for Defendant's infringement, which compensation by law cannot be less than a reasonable royalty together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

SECTION 287 NOTICE

45. Dayline Innovations has complied with 35 U.S.C. § 287 by marking its products.

NOTICE OF REQUIREMENT OF LITIGATION HOLD

46. Defendant is hereby notified they are legally obligated to locate, preserve,

and maintain all records, notes, drawings, documents, data, communications, materials, electronic recordings, audio/video/photographic recordings, and digital files, including edited and unedited or “raw” source material, and other information and tangible things that Defendant knows, or reasonably should know, may be relevant to actual or potential claims, counterclaims, defenses, and/or damages by any party or potential party in this lawsuit, whether created or residing in hard copy form or in the form of electronically stored information (hereafter collectively referred to as “Potential Evidence”).

47. As used above, the phrase “electronically stored information” includes without limitation: computer files (and file fragments), e-mail (both sent and received, whether internally or externally), information concerning e-mail (including but not limited to logs of e-mail history and usage, header information, and deleted but recoverable e-mails), text files (including drafts, revisions, and active or deleted word processing documents), instant messages, audio recordings and files, video footage and files, audio files, photographic footage and files, spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files, and all other information created, received, or maintained on any and all electronic and/or digital forms, sources and media, including, without limitation, any and all hard disks, removable media, peripheral computer or electronic storage devices, laptop computers, mobile phones, personal data assistant devices, Blackberry devices, iPhones, video cameras and still cameras, and any and all other locations where electronic data is stored. These sources may also include any personal electronic, digital, and storage devices of any and all of Defendant’s agents, resellers, or employees if Defendant’s electronically stored information resides there.

48. Defendant is hereby further notified and forewarned that any alteration, destruction, negligent loss, or unavailability, by act or omission, of any Potential Evidence may result in damages or a legal presumption by the Court and/or jury that the Potential Evidence is not favorable to Defendant's claims and/or defenses. To avoid such a result, Defendant's preservation duties include, but are not limited to, the requirement that Defendant immediately notify their agents and employees to halt and/or supervise the auto-delete functions of Defendant's electronic systems and refrain from deleting Potential Evidence, either manually or through a policy of periodic deletion.

JURY DEMAND

Dayline Innovations hereby demands a trial by jury on all claims, issues and damages so triable.

PRAYER

Dayline Innovations prays for the following relief:

- i. That Dick's Sporting Goods, Inc., be summoned to appear and answer;
- ii. That the Court enter an order declaring that Dick's Sporting Goods, Inc., has infringed the '453 Patent;
- iii. That this is an exceptional case under 35 U.S.C. § 285;
- iv. That the Court grant Plaintiff judgment against Dick's Sporting Goods, Inc. for all actual, consequential, special, punitive, exemplary, increased, and/or statutory damages pursuant to 35 U.S.C. § 284 including, if necessary, an accounting of all damages; pre- and post-

judgment interest as allowed by law; and reasonable attorney's fees, costs, and expenses incurred in this action;

- v. That the Court enjoin Dick's Sporting Goods, Inc., from further acts of infringement; and
- vi. Such further relief to which Dayline Innovations may show itself justly entitled.

Filed: March 8, 2022

Respectfully submitted,

By: 

Cabrach J. Connor
State Bar No. 24036390
Email: cab@clands.com
Jennifer Tatum Lee
Texas Bar No. 24046950
Email: jennifer@clands.com
CONNOR LEE AND SHUMAKER PLLC
609 Castle Ridge Road, Suite 450
Austin, Texas 78746
512.646.2060 Telephone
888.387.1134 Facsimile
**ATTORNEYS FOR DAYLINE
INNOVATIONS INC.**