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14 Attorneys for Plaintiff
15 *MED et al, Inc.*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MED et al, Inc.,
Plaintiff,
v.
Impresa Products, LLC,
Defendant.

CASE NO. 3:23-cv-3574
**COMPLAINT FOR DESIGN
PATENT INFRINGEMENT**
DEMAND FOR JURY TRIAL

Plaintiff MED et al, Inc. (“Plaintiff” or “MED et al”), by and through its attorneys, files this Complaint for Design Patent Infringement against Defendant Impresa Products, LLC (“Defendant” or “Impresa”) and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 101 *et seq.* MED et al owns exclusive rights in the ornamental design claimed in United States Design Patent No. D813,404, titled “Device for fitting over a thumb to discourage thumb-sucking” (the “’404 Patent”).

1 2. Impresa has used and continues to use the claimed design of the '404 Patent,
2 without MED et al's permission. Specifically, Impresa has made, used, offered for sale, and/or
3 sold in the United States, and/or imported into the United States, competing thumb guards
4 incorporating and embodying the ornamental design claimed in the '404 Patent (the "Infringing
5 Products"), and is continuing to make, use, offer for sale, and/or sell in the United States, and/or
6 import into the United States, the Infringing Products.

7 3. Impresa's willful and deliberate infringement of the '404 Patent has caused and
8 continues to cause MED et al both immeasurable damages and measurable damages.

9 4. MED et al seeks a permanent injunction enjoining Impresa from further
10 infringement of the '404 Patent, damages not less than a reasonable royalty, and/or a disgorgement
11 of Impresa's profits from the Infringing Products, treble damages for Impresa's willful patent
12 infringement, and all other appropriate relief arising from Impresa's willful patent infringement as
13 detailed herein.

14 **THE PARTIES**

15 5. Plaintiff MED et al, Inc. is a corporation organized and existing under the laws of
16 the State of North Carolina with a principal place of business at 1226 Mann Dr., Suite 200,
17 Mathews, North Carolina 28105.

18 6. On information and belief, Impresa Products, LLC is a limited liability company
19 organized and existing under the laws of the State of California with a principal place of business
20 located at 1075 Underhills Road, Oakland, California 94610.

21 **JURISDICTION AND VENUE**

22 7. This Court has original subject matter jurisdiction over this action pursuant to
23 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Patent Laws of the United
24 States, specifically 35 U.S.C. §§ 271 and 281–285. In addition, because the parties are citizens of
25 different states, and the matter in controversy exceeds the sum or value of \$75,000, exclusive of
26 interest and costs, this Court also has subject matter jurisdiction under 28 U.S.C. § 1332.

27 8. This Court has personal jurisdiction over Impresa because Impresa has a principal
28 place of business in the State of California, engages in continuous and systematic contacts with the

1 State of California, and is committing and has committed acts of patent infringement in the State
2 of California, including by making, using, offering for sale, and/or selling in the State of
3 California, and/or importing from outside the United States into the State of California, the
4 Infringing Products that infringe the '404 Patent.

5 9. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400 at least
6 because Impresa resides in this judicial district, has committed acts of patent infringement in this
7 judicial district, and has a regular and established place of business in this judicial district.

8 **DIVISIONAL ASSIGNMENT**

9 10. Pursuant to Civil L.R. 3-5(b) and 3-2(c), MED et al identifies this as an intellectual
10 property case subject to Section D(3) of the Court's Assignment Plan (General Order No. 44),
11 subject to assignment on a district-wide basis, with venue deemed to be proper in any courthouse
12 in this District.

13 **FACTUAL ALLEGATIONS**

14 **A. MED et al**

15 11. MED et al was founded in 1995. Since that time, MED et al has developed, offered,
16 and sold a number of highly successful products used to treat chronic thumb sucking. Under its
17 TGuard® brand (formerly ThumbGuard), MED et al has established itself as a leader in the thumb
18 guard industry. Building upon this success, MED et al designed its AeroThumb® product, for
19 which it filed for and received the '404 Patent, claiming the ornamental design of the
20 AeroThumb®. MED et al started selling the AeroThumb® in 2016, and, since then, the
21 AeroThumb® has become quite successful and well-known in the thumb guard industry.

22 **B. The Asserted Design Patent – U.S. Design Patent No. D813,404**

23 12. MED et al is the owner of United States Design Patent Number D813,404, titled
24 "Device for fitting over a thumb to discourage thumb-sucking". The '404 Patent was filed on
25 November 13, 2015, and was duly and lawfully issued by the United States Patent and Trademark
26 Office on March 20, 2018. The '404 Patent names Mr. David Zilber as the inventor. Attached as
27 **Exhibit 1** is a true and correct copy of the '404 Patent.

1 13. The '404 Patent claims the ornamental design as shown and described in the patent,
2 including the ornamental design for a device for fitting over a thumb to discourage thumb-sucking
3 pictured below:¹

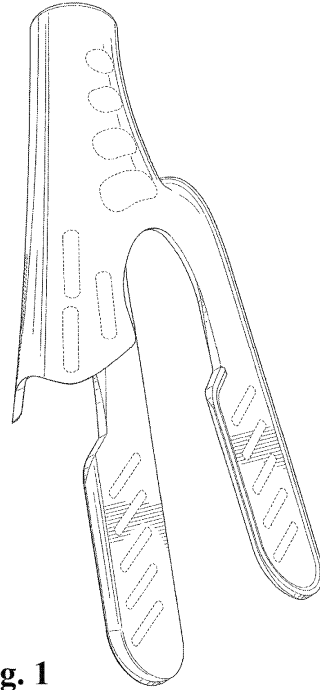


Fig. 1

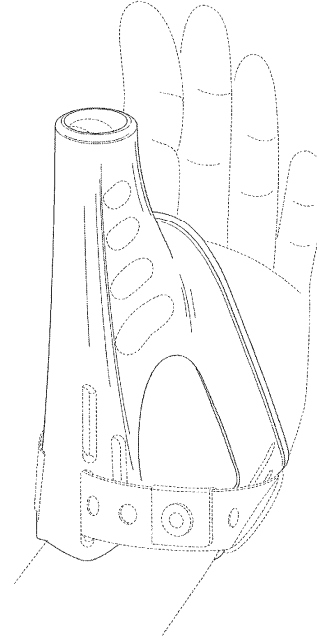


Fig. 9

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16 14. MED et al is the owner of the entire right, title, and interest in the '404 Patent and
17 has the exclusive rights to make, use, sell, and offer for sale in the United States, and to import
18 into the United States, products covered by the '404 Patent, and has the right to sue and recover
19 for past, present, and future infringement of the '404 Patent.

20 15. For many years, MED et al has designed, developed, made, and sold medical
21 devices, including thumb guards.

22 16. MED et al makes and sells certain thumb guards, including the AeroThumb®, that
23 incorporate and embody the ornamental design claimed in the '404 Patent. Photographs of MED
24 et al's AeroThumb® are attached as **Exhibit 2** to this Complaint.

25 17. MED et al's '404 Patent, including its claimed ornamental design, is presumed
26 valid pursuant to 35 U.S.C. § 282.

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¹ Figure 1 and Figure 9 of the '404 Patent. See **Exhibit 1**.

1 **C. The Infringing Products**

2 18. On information and belief, Dragonfly Group Inc. is a corporation organized and
3 existing under the laws of the State of Delaware with a principal place of business at 177
4 Huntington Ave., Floor 17, Boston, Massachusetts 02115 that uses the name Dragonfly
5 Commerce to transact business in Massachusetts (“Dragonfly”).

6 19. On information and belief, Dragonfly is an active acquirer and developer of
7 ecommerce businesses.

8 20. On information and belief, Zephyr Companies LLC (“Zephyr”) is a limited liability
9 company organized and existing under the laws of the State of Delaware with a principal place of
10 business at 177 Huntington Ave., Floor 17, Boston, Massachusetts 02115.

11 21. On information and belief, Dragonfly owns all or substantially all of Zephyr.

12 22. On information and belief, on or around April 12, 2021, Zephyr acquired all or
13 substantially all of Impresa, including its registered trademarks.

14 23. On April 13, 2021, Evan Schwed, a growth investor with Dragonfly, contacted
15 MED et al by email stating that Dragonfly was impressed with MED et al’s reviews on
16 www.amazon.com and, in particular, its TGuard® brand products, and indicated that Dragonfly
17 wished to acquire MED et al in order to acquire the AeroThumb®. See **Exhibit 3**.

18 24. On April 14, 2021, Evan Schwed again contacted MED et al by email, inquiring
19 into whether MED et al was interested in having an introductory call with Dragonfly regarding
20 Dragonfly’s acquisition of MED et al and TGuard®. See **Exhibit 4**.

21 25. On July 28, 2021, Evan Schwed contacted MED et al by email yet again and
22 reiterated that Dragonfly was interested in acquiring MED et al and TGuard®. See **Exhibit 5**.

23 26. On October 19, 2021, Evan Schwed contacted MED et al a fourth time and again
24 indicated that Dragonfly was interested in acquiring MED et al and TGuard®. See **Exhibit 6**.

25 27. MED et al did not sell itself, TGuard®, or the AeroThumb® to Dragonfly.

26 28. Following Dragonfly’s failed attempt to acquire MED et al, TGuard®, and/or the
27 AeroThumb®, Impresa began to, without MED et al’s authorization, make, use, offer for sale,
28 and/or sell in the United States, including, on information and belief, in the State of California,

1 and/or import into the United States, the Infringing Products, which are competing thumb guards
2 incorporating and embodying the ornamental design claimed in the '404 Patent. An image of
3 Impresa's thumb guard on Impresa's website, <https://impresaproducts.com/>, is attached as
4 **Exhibit 7** to this Complaint.

5 29. Indeed, not only does Impresa continue to directly and willfully infringe the
6 patented design of the '404 Patent, but Impresa also directly, willfully, and blatantly copied the
7 *entirety* of the AeroThumb®, including its distinctive bracelet, the soft blue and white color
8 scheme of the bracelet, and the unique Instalock component holding the product together. Table 1
9 and Table 2 below illustrate Impresa's infringement by comparing images of the AeroThumb®
10 with images of the Infringing Products.

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Table 1: Comparison of the AeroThumb® with the Infringing Products




MED et al's AeroThumb®	Impresa's Infringing Product
 <p data-bbox="852 892 876 924">2</p>	 <p data-bbox="1429 892 1453 924">3</p>
MED et al's Bracelet	Impresa's Bracelet
 <p data-bbox="852 1428 876 1459">4</p>	 <p data-bbox="1510 1428 1534 1459">5</p>

² Image of the AeroThumb® taken from www.tguard.com. See **Exhibit 8**.

³ Image of the Infringing Product taken from <https://impresaproducts.com/>. See **Exhibit 7**.

⁴ Image of the AeroThumb®'s distinctive bracelet taken from www.tguard.com. See **Exhibit 8**.

⁵ Image of the bracelet on the Infringing Product taken from <https://impresaproducts.com/>. See **Exhibit 7**.

Table 2: Comparison of the AeroThumb® with the Infringing Products	
MED et al's Instalock	Impresa's Device copying the Instalock
 <p style="text-align: right;">6</p>	 <p style="text-align: right;">7</p>
Instalock as used in the AeroThumb®	Device as used in the Infringing Product
 <p style="text-align: right;">8</p>	 <p style="text-align: right;">9</p>

30. Impresa is continuing to make, use, sell, and/or offer for sale the Infringing Products in the United States, including, on information and belief, in the State of California, and/or to import the Infringing Products into the United States.

⁶ Image of the Instalock taken from www.tguard.com. See **Exhibit 9**.

⁷ Photograph taken by Plaintiff of the device used to hold together the Infringing Product. See **Exhibit 10**.

⁸ Image of the Instalock as used in the AeroThumb®, taken from www.tguard.com. See **Exhibit 8**.

⁹ Image of the device used to hold the Infringing Product together, taken from <https://impresaproducts.com/>. See **Exhibit 7**.

1 31. On information and belief, prior to and during its acts of infringement, Impresa
2 acted despite an objectively high likelihood that its actions constituted patent infringement of the
3 ‘404 Patent.

4 32. On information and belief, prior to and during its acts of infringement, the risk of
5 Impresa infringing the ‘404 Patent was either known to Impresa or was so obvious that it should
6 have been known to Impresa.

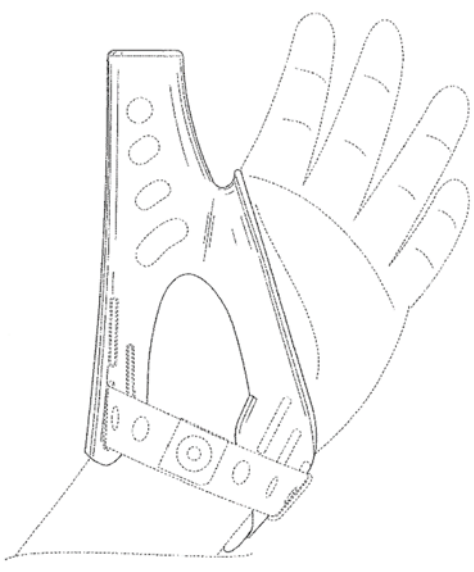

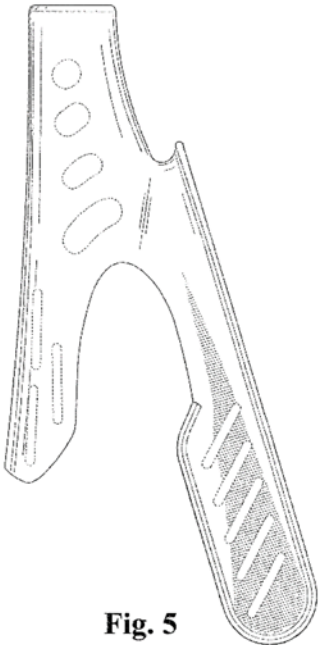

7 33. Impresa has sold and offered for sale, and continues to sell and offer for sale, the
8 Infringing Products directly to end-user customers through its e-commerce website. *See* **Exhibit 7**,
9 showing the Infringing Products offered for sale on Impresa’s website,
10 www.impresaproducts.com.

11 34. Impresa has sold and offered for sale, and continues to sell and offer for sale, the
12 Infringing Products to end-user consumers through third-party e-commerce websites and/or
13 resellers. *See* **Exhibits 11–12**, showing the Infringing Products offered for sale on
14 www.amazon.com and www.walmart.com.

15 35. The overall appearance of the design of the ‘404 Patent and the corresponding
16 design of the Infringing Products are substantially the same.

17 36. An ordinary observer will perceive the overall appearance of the design of the ‘404
18 Patent and the corresponding design of the Infringing Products to be substantially the same.

19 37. Table 3 below illustrates Impresa’s infringement by comparing figures from the
20 ‘404 Patent with images of the Infringing Products. The Infringing Products include key
21 ornamental features from and are virtually identical to the ornamental design claimed in the ‘404
22 Patent.

Table 3: Comparison of the '404 Patent with the Infringing Products	
The '404 Patent	The Infringing Products
<p data-bbox="194 199 235 940">1 2 3 4 5 6 7 8 9 10 11 12</p>  <p data-bbox="470 861 584 913">Fig. 13</p> <p data-bbox="787 903 828 934">10</p>	 <p data-bbox="1388 808 1429 840">11</p>
<p data-bbox="194 955 235 1623">13 14 15 16 17 18 19 20 21 22 23</p>  <p data-bbox="527 1564 617 1606">Fig. 5</p> <p data-bbox="779 1585 820 1617">12</p>	 <p data-bbox="1339 1585 1380 1617">13</p>

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38. An ordinary observer or purchaser would find the overall design of the '404 Patent and the Infringing Products substantially similar and mistakenly purchase the Infringing Products.

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¹⁰ Figure 13 of the '404 Patent. See **Exhibit 1**.

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¹¹ Mirror image of the Infringing Product as advertised on Impresa's website, taken from <https://impresaproducts.com/>. See **Exhibit 7**.

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¹² Figure 5 of the '404 Patent. See **Exhibit 1**.

¹³ Image of the Infringing Product, taken from <https://impresaproducts.com/>. See **Exhibit 7**.

1 39. Upon information and belief, Impresa was aware of the AeroThumb® and the
2 ornamental design claimed by the '404 Patent prior to and during Impresa's acts of patent
3 infringement. Through its brand, TGuard®, MED et al has established itself as a leading member
4 in the thumb guard industry, offering a variety of successful and well-known products since at
5 least 1995. MED et al's AeroThumb® has been widely sold throughout the world since at least
6 2016, and has been and continues to be offered for sale and sold throughout the internet, including,
7 but not limited to, on MED et al's website, www.tguard.com, and on large, widely accessible e-
8 commerce websites such as www.walmart.com and www.amazon.com. See **Exhibits 8, 13–14**.
9 After copying the ornamental features of MED et al's product, Impresa now also sells its
10 Infringing Products on the same www.walmart.com and www.amazon.com e-commerce websites.

11 40. MED et al put Impresa on notice of Impresa's patent infringement at least as early
12 as October 28, 2022. See **Exhibit 15**. Since then, Impresa has continued to willfully and
13 deliberately make, use, offer for sale, and/or sell in the United States, and/or import into the
14 United States, the Infringing Products in direct and willful violation of MED et al's federal patent
15 rights.

16 41. Impresa has been selling the Infringing Products for about half the price of MED et
17 al's AeroThumb®. See **Exhibit 16**, showing the Infringing Products and the AeroThumb® sold
18 side-by-side on www.amazon.com. By offering a product that infringes the design claimed by the
19 '404 Patent and directly competes with AeroThumb®, MED et al's product incorporating and
20 embodying the '404 Patent, Impresa has unlawfully diverted and continues to unlawfully divert
21 sales of MED et al's product to Impresa. MED et al has and continues to lose sales as a result of
22 Impresa's willful patent infringement.

COUNT ONE

(Direct Patent Infringement)

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25 42. MED et al restates and incorporates by reference each of the allegations of
26 Paragraphs 1 through 41 as though fully stated herein.

27 43. The '404 Patent is presumed valid and enforceable.

28 44. Impresa does not have a license to practice the designs claimed in the '404 Patent.

1 45. Impresa, without authorization from MED et al, has made, used, offered for sale,
2 and/or sold in the United States, and/or imported into the United States, and continues to make,
3 use, offer for sale, and/or sell in the United States, and/or import into the United States, thumb
4 guards having designs that are substantially similar to the ornamental designs claimed in the '404
5 Patent; thus, Impresa directly or indirectly infringes, either literally or under the doctrine of
6 equivalents, the '404 Patent in violation of 35 U.S.C. § 271(a).

7 46. On information and belief, Impresa has made, used, offered for sale, and/or sold the
8 Infringing Products in this Judicial District.

9 47. Impresa has, and continues to, without license of MED et al, apply the patented
10 design of the '404 Patent, or a colorable imitation thereof, to the Infringing Products for the
11 purpose of sale and/or has, and continues to, without license of MED et al, sell or expose for sale
12 the Infringing Products to which the patented design of the '404 Patent, or a colorable imitation
13 thereof, has been applied.

14 48. Impresa's acts of infringement of the '404 Patent have been, and continue to be
15 knowing, intentional, and willful. Impresa has disregarded an objectively high likelihood of
16 infringing the '404 Patent, and has acted, and continues to act, willfully, wantonly, and in
17 deliberate disregard of MED et al's rights.

18 49. This case is exceptional and, therefore, MED et al is entitled to an award of
19 attorney fees and costs pursuant to 35 U.S.C. § 285.

20 50. Impresa's acts of infringement of the '404 Patent have caused and will cause both
21 immeasurable and measurable damage to MED et al.

22 51. Impresa's acts of infringement of the '404 Patent have caused and will continue to
23 cause Plaintiff damages for which MED et al is entitled to compensation pursuant to 35 U.S.C.
24 §§ 284 or 289.

25 52. Impresa has been on notice of the '404 Patent, and its infringement has been, and
26 continues to be, willful and egregious, entitling MED et al to enhanced damages in accordance
27 with 35 U.S.C. § 284.

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1 53. Impresa’s acts of infringement of the ’404 Patent have caused and will continue to
2 cause MED et al immediate and irreparable harm unless such infringing activities are enjoined by
3 this Court pursuant to 35 U.S.C. § 283.

4 54. MED et al has no adequate remedy at law.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff requests judgment against Impresa as follows:

7 1. That Impresa has infringed and continues to infringe the ’404 Patent in violation of
8 35 U.S.C. § 271(a);

9 2. That Impresa, its employees, agents, officers, directors, attorneys, successors,
10 affiliates, subsidiaries and assigns, and all of those in active concert and participation with any of
11 the foregoing persons or entities, shall be permanently enjoined from infringing, contributing to
12 the infringement of, or inducing infringement of the ’404 Patent;

13 3. That Impresa must account and pay damages adequate to compensate MED et al
14 for Impresa’s infringement of the ’404 Patent, including for any infringing acts not presented at
15 trial, and in no event less than a reasonable royalty, under §§ 284 and/or 289;

16 4. That MED et al, as the prevailing party, shall recover from Impresa all taxable costs
17 of court;

18 5. That Impresa must pay to MED et al all pre-judgment and post-judgment interest
19 on the damages award, calculated at the highest interest rates allowed by law;

20 6. That Impresa’s conduct was willful and that MED et al should therefore recover
21 treble damages, including attorneys’ fees, expenses, and costs incurred in this action under 35
22 U.S.C. § 284;

23 7. That this case exceptional and awarding MED et al its reasonable attorneys’ fees
24 and other recoverable expenses, under 35 U.S.C. § 285; and

25 8. That MED et al shall recover such other and further relief as this Court deems just
26 and proper.

27 **JURY DEMAND**

28 Impresa MED et al requests a trial by jury regarding all issues triable herein.

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Dated: July 19, 2023

Respectfully submitted,

/s/ Aaron R. Hand

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Local Counsel, Civil L.R. 11-3(a)(3)

Counsel for Plaintiff
MED et al, Inc.

EXHIBIT LIST

Exhibit 1 – U.S. Design Patent No. D813,404

Exhibit 2 – Images of the AeroThumb®

Exhibit 3 – April 13, 2021 Email from Dragonfly to MED et al

Exhibit 4 – April 14, 2021 Email from Dragonfly to MED et al

Exhibit 5 – July 28, 2021 Email from Dragonfly to MED et al

Exhibit 6 – October 19, 2021 Email from Dragonfly to MED et al

Exhibit 7 – Impresa’s Infringing Products on www.impresaproducts.com

Exhibit 8 – The AeroThumb® on www.tguard.com

Exhibit 9 – The Instalock on www.tguard.com

Exhibit 10 – Photograph of Device used in Infringing Products

Exhibit 11 – Impresa’s Sale of Infringing Products on www.amazon.com

Exhibit 12 – Impresa’s Sale of Infringing Products on www.walmart.com

Exhibit 13 – MED et al’s sale of the AeroThumb® on www.walmart.com

Exhibit 14 – MED et al’s sale of the AeroThumb® on www.amazon.com

Exhibit 15 – October 25, 2022 Letter from MED et al to Impresa Putting Impresa on Notice of Infringement of U.S. Design Patent No. D813,404

Exhibit 16 – The Infringing Products and the AeroThumb® sold side-by-side on www.amazon.com