UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CRICKET PRODUCTIONS, INC. and DTR ADVERTISING FAR EAST, LTD., Plaintiffs, v. VIATEK CONSUMER PRODUCTS GROUP, INC. Defendant.	**CIVIL ACTION NO.:**

COMPLAINT AND DEMAND FOR JURY TRIAL

INTRODUCTORY STATEMENT

This is a civil action for patent infringement and declaratory relief resulting from the Defendant Viatek Consumer Products Group, Inc.'s ("Viatek" or the "Defendant") direct patent infringement of U.S. Patent Nos. 6,729,744 and 6,808,288 owned by Plaintiff DTR Advertising Far East, Ltd. and licensed to Plaintiff Cricket Productions, Inc. (collectively referred to herein as the "Plaintiffs").

PARTIES

1. The Plaintiff DTR Advertising Far East, Ltd. ("DTR Far East") is a company qualified to do business under the laws of Hong Kong with its registered office located at 7/F., Allied Kajima Building, 138 Gloucester Road, Wanchai, Hong Kong.

2. The Plaintiff Cricket Productions, Inc. ("Cricket") is a Massachusetts corporation having its principal place of business located at 225 Cedar Hill Street, Third Floor, Marlborough, Middlesex County, Commonwealth of Massachusetts. Cricket is an affiliate of DTR Far East.

3. Based on information and belief, the Defendant Viatek Consumer Products Group, Inc. is a Florida corporation having a principal place of business located at 6881 Kingspointe Parkway, Suite 7, Orlando, Florida, 32819.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1338 as this case arises under the patent laws of the United States, Title 35, United States Code. Further, the Court has subject matter jurisdiction over this case pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202.

5. This exercise of *in personam* jurisdiction over the Defendants comports with the laws of the Commonwealth of Massachusetts and the constitutional requirements of due process because the tortious acts of the Defendant and/or its agents have caused harm within the Commonwealth of Massachusetts. Further, upon information and belief, Defendants and/or their agents transact business and/or offer to transact business within the Commonwealth of Massachusetts.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(c).

FACTUAL BACKGROUND

7. On May 4, 2004, the Commissioner for Patents with the United States Patent and Trademark Office issued U.S. Patent No. 6,729,744 ("the '744 Patent") to Pat Y. Mah for

a "Faraday Flashlight". A true and correct copy of the '744 Patent is attached hereto as *Exhibit A.*

8. On October 26, 2004, the Commissioner for Patents with the United States Patent and Trademark Office issued U.S. Patent No. 6,808,288 ("the '288 Patent") to Pat Y. Mah for a "Faraday Flashlight". The '744 and '288 Patents are collectively referred to herein as the "Faraday Flashlight Patents" or the "Patents-in-Suit". A true and correct copy of the '288 Patent is attached hereto as *Exhibit B.*

9. Daka Research, Inc., a previous owner of the Patents-in-Suit with the U.S. Patent and Trademark Office, and DTR Far East entered into an Agreement Regarding Joint Ownership of Patents, and Sales, Marketing and Distribution of Products (the "Joint Agreement"), on or about October 24, 2005.

10. The Joint Agreement "assign[ed] DTR an equal, undivided interest in the [patents-in-suit]" and stated that "Daka Research and [DTR] are joint owners of the [patents-in-suit]".

11. Daka Research, Inc. and DTR Far East executed an Assignment of Patents, on or about February 14, 2006.

12. The Assignment of Patents assigns and transfers to DTR Far East all of Daka Research, Inc.'s rights in the patents-in-suit, including "all of its proprietary rights, titles, interests and benefits over the [patents-in-suit]."

13. Under the Assignment of Patents, Daka Research, Inc. assigned DTR Far East "the right to sue and recover for, and the right to profits or damages due or accrued arising out of or in connection with, any and all, past and future infringements of the [patents-in-suit]."

14. The Assignment of Patents was recorded with the United States Patent and Trademark Office on or about April 11, 2006.

15. Cricket, an affiliate of DTR Far East, possesses the right to sell, market and distribute the products under the Faraday Flashlight Patents.

16. The Patents-in-Suit are directed to: a light generating device utilizing "a large centrally located magnet which is mounted to slide past a magnet pickup or current induction wire."

17. Upon information and belief, at all material times, Viatek has been engaged in the business of marketing, distributing and selling various retail products.

18. Specifically, Viatek manufactures, sells, offers to sell, imports and/or markets certain renewable energy flashlights, including, but not limited to the "Viatek Shake It Flashlight".

19. The Defendant sells, offers to sell, imports and/or markets certain renewable energy flashlights, including, but not limited to the "Viatek Shake It Flashlight", throughout the United States, including within the Commonwealth of Massachusetts.

20. Inspection of the "Viatek Shake It Flashlights" indicates that the "Viatek Shake It Flashlight" infringes upon one or more claims of the Faraday Flashlight Patents either literally or under the doctrine of equivalents.

21. The Defendant has manufactured, sold, offered for sale, imported and/or marketed the "Viatek Shake It Flashlight" with full knowledge of the claims of the '744 and '288 Patents, and with full knowledge of the Plaintiffs' rights therein.

22. In or around December 2006, Cricket became aware that the Defendants were manufacturing, distributing and selling infringing renewable energy flashlights via direct to retail marketing and through various retail locations.

23. By way of letter, dated February 7, 2007 (the "Cease and Desist Letter"), Cricket requested that the Defendant Viatek refrain from selling, offering to sell, importing and/or marketing renewable energy flashlights that infringe upon the '744 and/or '288 Patents. A true and correct copy of the Cease and Desist Letter is attached hereto as *Exhibit C*.

24. Notwithstanding Cricket's letter, the Defendant continues to sell, offers to sell, imports and/or markets certain renewable energy flashlights, including but not limited to the "Viatek Shake It Flashlight", thereby knowingly and willfully infringing upon the '288 and '744 Patents.

COUNT I
(Patent Infringement-35 U.S.C. § 271(a))

25. The Plaintiffs incorporate by reference herein the allegations contained within Paragraphs 1-24, as though fully set forth herein.

26. The Defendant Viatek has manufactured, sold, offered for sale, imported and/or marketed, and continue to manufacture, sell, offer for sale, import and/or market certain renewable energy flashlights, including but not limited to the "Viatek Shake It Flashlight".

27. The "Viatek Shake It Flashlight" infringes one or more claims of the '744 and '288 Patents.

28. The Defendant's infringement of the '744 and '288 Patents has been knowing and wilful.

29. As a result of the Defendant's direct infringement of the Plaintiffs' rights in the '744 and '288 Patents, the Plaintiffs have suffered and will continue to suffer damages in an amount to be shown at trial.

30. The Defendant's willful infringement of the Plaintiffs' rights warrants an award of treble damages under 35 U.S.C. § 284.

31. The Defendant's willful infringement of Plaintiffs' rights in the '744 and '288 Patents makes this an exceptional case warranting an award of the Plaintiffs' reasonable attorneys' fees and costs under 35 U.S.C. § 285.

32. As a result of the Defendant's continuing infringement of the Plaintiffs' rights in the '744 and '288 Patents, the Plaintiffs are suffering irreparable harm. As a result, the Plaintiffs are entitled to preliminary and permanent injunctive relief pursuant to 35 U.S.C. § 283.

WHEREFORE, the Plaintiffs demand judgment as follows:

a. Preliminary and Permanent injunction barring the Defendants, their officers, agents, servants, employees, attorneys, privies, representatives, successors and assigns and all other persons acting in concert or participation with or under authority of the Defendant, from manufacturing, producing, using, offering to sell, selling, exporting, and/or importing any products that infringe the Plaintiffs' rights in the '744 and '288 Patents;

b. Monetary damages adequate to compensate for the infringement, including but not limited to its lost profits or a reasonable royalty;

c. Damages resulting from Defendant's knowing and willful infringement;

d. Reasonable attorneys' fees pursuant to 35 U.S.C. § 285;

e. An assessment of interest and costs; and

f. Such other and further relief as this Court deems just and proper.

COUNT II
(Declaratory Judgment of Infringement)

33. The Plaintiffs incorporate by reference herein the allegations contained within Paragraphs 1 – 32 as though fully set forth herein.

34. An actual and serious controversy has arisen between the Plaintiffs and the Defendant as to the following:

a. Whether or not certain renewable energy flashlights, including, but not limited to the "Viatek Shake It Flashlight" infringe upon the '744 and '288 Patents; and

b. Whether or not the Defendant, by selling, offering to sell, importing and/or marketing certain renewable energy flashlights, including but not limited to the "Viatek Shake It Flashlight", directly infringed upon the '744 and '288 Patents and the Plaintiffs' rights therein.

35. Unless these controversies are resolved promptly, the Plaintiffs are likely to suffer additional immediate and irreparable harm due to the Defendant's conduct.

36. The Plaintiffs cannot settle the existing controversy without the aid of this Court's judgment.

WHEREFORE, the Plaintiffs request this Court to:

a. Enter a declaratory judgment that U.S. Patent No. 6,729,744 and U.S. Patent No. 6,808,288 have been directly infringed upon by the conduct of the Defendant;

b. Enter a declaratory judgment that the Defendant must destroy any and all infringing flashlights in its control, including but not limited to the "Viatek Shake It Flashlight".

c. Enter a declaratory judgment that the Defendant must, at its own expense, recall the infringing flashlights, including but not limited to the "Viatek Shake It Flashlight", from any vendors, distributors or others to whom such products have been distributed, and that the Defendant destroy or deliver up to the Plaintiffs for destruction all such products returned to them;

d. Enter a declaratory judgment that the Defendant must account to the Plaintiffs for, and disgorge and pay to the Plaintiffs, all the gains, profits, savings, and advantages realized by the Defendant from its acts of patent infringement described above;

e. And grant such further relief as the Court may deem equitable and just under the circumstances.

THE PLAINTIFFS DEMAND A JURY TRIAL ON ALL CLAIMS SO TRIABLE.

Respectfully submitted,
CRICKET PRODUCTIONS, INC.,
and DTR ADVERTISING FAR EAST, LTD.,
By their Attorneys,

Gregory J. Aceto, Esq.
(BBO# 558556)
Erin J. Brennan, Esq.
(BBO# 660097)
JOHNSON & ACETO, LLP
67 Batterymarch Street, Suite 400
Boston, MA 02110
(617) 728-0888

Dated: March 27, 2007