

**IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

ERICO INTERNATIONAL CORPORATION	)	Civil Action No. 1:05CV2924
34600 Solon Road	)	
Solon, Ohio 44139	)	
	)	
Plaintiff,	)	JUDGE O'MALLEY
	)	
v.	)	<b><u>AMENDED COMPLAINT</u></b>
	)	
DOC'S MARKETING, INC.	)	<b><u>(JURY DEMAND)</u></b>
5158 Goldman Avenue, Suite A	)	
Moorpark, California 93021, and	)	
	)	
JOHN DOE COMPANY	)	
People's Republic of China	)	
	)	
Defendants.	)	
	)	

For its amended Complaint against Doc's Marketing, Inc. ("Doc's Marketing") and John Doe Company ("John Doe") (collectively, "Defendants"), Plaintiff ERICO International Corporation ("ERICO") states as follows:

### **THE PARTIES**

1. Plaintiff ERICO is a corporation organized and existing under the laws of the State of Ohio and having a place of business at 34600 Solon Road, Solon, Ohio 44139.

2. Doc's Marketing, Inc. is a corporation located in the State of California, having its headquarters and principal place of business at 5158 Goldman Avenue, Suite A, Moorpark, California 93021 and doing business in this state and judicial district by offering its products for sale.

3. John Doe Company is a yet to be identified foreign company that, on information and belief, is located and doing business in the People's Republic of China and doing business in this state and judicial district by importing its products and offering its products for sale.

### **FACTUAL BACKGROUND**

4. ERICO is the leading manufacturer and developer of a variety of fasteners for use in the installation of electrical and communications cable, utilities and other infrastructures in buildings. The fasteners ERICO manufactures and sells include cable supports known as J-Hooks.

5. ERICO has established a preeminent place in the market by protecting its intellectual property, requiring a rigorous quality assurance program and employing unmatched customer service. In addition, ERICO products are carefully load-rated, subjected to exacting treatment and corrosion resistance standards, and carefully designed and manufactured to meet both code requirements and regulations as well as specific application requirements.

6. ERICO has also developed a strong intellectual property portfolio including United States patent 5,740,994 (“the ‘994 Patent”) protecting its inventive J-Hook cable support. A copy of the ‘994 Patent is attached as Exhibit A.

7. Doc’s Marketing advertises, manufactures, distributes, uses, sells and/or offers for sale J-Hooks, such as those illustrated in the attached Exhibits B and C. End users of Doc’s Marketing’s J-Hooks use Doc’s Marketing’s J-Hooks in ways that Doc’s Marketing advertises.

8. Doc’s Marketing imports knock-off J-Hook products from a John Doe Company, an unknown manufacturing and importing company, located in the People’s Republic of China.

9. Since as early as 1951, ERICO has used the trademark CADDY<sup>®</sup> to promote its electrical and telecommunication cabling and accessories. Since as early as 1996, ERICO has used the trademark CADDY<sup>®</sup> to promote its J-Hooks.

10. The CADDY<sup>®</sup> trademark is broadly recognized both within electrical and telecommunications industry and among the general public as the brand identifier for ERICO’s products. ERICO owns multiple incontestable, valid federal trademark registrations issued for CADDY<sup>®</sup> by the United States Patent and Trademark Office including 0757140 and 2914155. Copies of the 0757140 and 2914155 registrations are attached as Exhibits D and E, respectively. The fame and goodwill associated with the CADDY<sup>®</sup> trademark is a valuable ERICO corporate asset.

11. Doc’s Marketing has offered for sale and/or sold non-ERICO J-Hooks bearing ERICO’s CADDY<sup>®</sup> trademark or an the ERICO CADDY<sup>®</sup> trademark partially obscured by X’s.

**JURISDICTION AND VENUE**

12. This action arises under the Patent Laws of the United States, Title 35, United States Code. This Court has jurisdiction under 28 U.S.C. § 1338(a).

13. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (d) and 1400(b).

**COUNT I: INDUCING INFRINGEMENT OF THE ‘994 PATENT**

14. ERICO incorporates by reference herein the allegations of Paragraphs 1-14 of this Complaint.

15. ERICO is the owner by assignment of United States Patent No. 5,740,994 entitled CABLE SUPPORT AND METHOD. The ‘994 Patent was duly and legally issued by the United States Patent and Trademark Office (“USPTO”) on April 21, 1998 and subject to a reexamination certificate, issued on September 23, 2003. The ‘994 Patent is still in force and effect and is presumed valid under the U.S. patent laws.

16. Defendants have been and still are indirectly infringing the ‘994 Patent under 35 U.S.C. § 271(b) by actively inducing direct infringement by other persons who use products that embody one or more of the claims of the ‘994 Patent when Defendants had knowledge of the ‘994 Patent, knew or should have known that its actions would induce direct infringement by others and intended that its actions would induce direct infringement by others. Defendants will continue to induce infringement unless enjoined by this court.

17. ERICO has provided Doc’s Marketing with written notice of its infringement.

18. Defendants have knowingly and willfully infringed the ‘994 Patent.

19. As a result of Defendants' infringement, ERICO has suffered monetary damages in an amount not yet determined, and will continue to suffer irreparable harm in the future unless Defendants' infringing activities are enjoined by this Court.

20. ERICO will be greatly and irreparably harmed unless preliminary and permanent injunctions are issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, and all others acting on its behalf from infringing the '994 Patent.

**COUNT II: CONTRIBUTORY INFRINGEMENT OF THE '994 PATENT**

21. ERICO incorporates by reference herein the allegations of Paragraphs 1-20 of this Complaint.

22. Defendants have been and still are indirectly infringing the '994 Patent under 35 U.S.C. § 271(c) by contributory infringement by providing non-staple articles of commerce to others for use in an infringing system with knowledge of the '994 Patent and knowledge that these non-staple articles of commerce are used as a material part of the claimed inventions of the '994 Patent. Defendants will continue to infringe unless enjoined by this court.

23. ERICO has provided Doc's Marketing with written notice of its infringement.

24. Defendants have knowingly and willfully infringed the '994 Patent.

25. As a result of Defendants' infringement, ERICO has suffered monetary damages in an amount not yet determined, and will continue to suffer irreparable harm in the future unless Defendants' infringing activities are enjoined by this Court.

26. Unless preliminary and permanent injunctions are issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, and all others acting on its behalf from infringing the '994 Patent, ERICO will be greatly and irreparably harmed.

**COUNT III: DIRECT INFRINGEMENT OF THE '994 PATENT**

27. ERICO incorporates by reference herein the allegations of Paragraphs 1-26 of this Complaint.

28. Defendants have directly infringed the '994 Patent under 35 U.S.C. § 271(a).

29. ERICO has provided Doc's Marketing with written notice of its infringement.

30. Defendants have knowingly and willfully infringed the '994 Patent.

31. As a result of Defendants' infringement, ERICO has suffered monetary damages in an amount not yet determined, and will continue to suffer irreparable harm in the future unless Defendants' infringing activities are enjoined by this Court.

32. Unless preliminary and permanent injunctions are issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, and all others acting on its behalf from infringing the '994 Patent, ERICO will be greatly and irreparably harmed.

**COUNT IV: TRADEMARK INFRINGEMENT**

33. ERICO incorporates by reference herein the allegations of Paragraphs 1-32 of this Complaint.

34. Doc's Marketing is selling J-Hooks bearing a counterfeit of ERICO's registered trademark CADDY<sup>®</sup> that is at best partially obscured.

35. Defendants' use of CADDY<sup>®</sup> in the United States constitutes trademark infringement under 15 U.S.C. § 1114(1)(a).

36. As a result of Defendants' acts, ERICO has been damaged by Defendants' infringement, and will continue to be damaged in the future unless Defendants' activities are enjoined by this Court.

**COUNT V: FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION**  
**UNDER SECTION 43(a) OF THE LANHAM ACT**

37. ERICO incorporates by reference herein the allegations of Paragraphs 1-36 of this Complaint.

38. Doc's Marketing is selling J-Hooks bearing ERICO's registered trademark CADDY<sup>®</sup> that is at best partially obscured, but still provides an immediate commercial impression that Defendants' J-Hooks are associated with and emanate from the same source as CADDY<sup>®</sup>, namely ERICO.

39. Defendants' use of CADDY<sup>®</sup> in the United States constitutes a false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and is designated to deceive customers and prospective customers into believing Defendants' J-Hooks are manufactured by ERICO and, as a consequence, are likely to divert and have diverted customers away from ERICO.

40. Defendants' acts tend to falsely represent Defendants and their knock-off J-Hooks bearing ERICO's CADDY<sup>®</sup> trademark as being affiliated, connected or associated with, or sponsored or approved by, ERICO in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

41. As a result of Defendants' acts, ERICO has been damaged by Defendants' false designations of origin, and will continue to be damaged in the future unless Defendants' activities are enjoined by this Court.

**PRAYER FOR RELIEF**

Plaintiff ERICO prays for the following relief:

- (a) A judgment that Defendants have directly infringed and/or indirectly infringed by contributory infringement and/or inducement, and continue to infringe the '994 Patent;
- (b) A judgment that Defendants' infringement of the '994 Patent has been willful;
- (c) A judgment against Defendants awarding ERICO damages suffered pursuant to 35 U.S.C. § 284 on account of Defendants' infringement of the '994 Patent;
- (d) A judgment that ERICO's damages be trebled pursuant to 35 U.S.C. § 284 and that punitive damages be assessed against Defendants;
- (e) A temporary restraining order and preliminary injunction against Defendants and any entity acting in concert with Defendants, pursuant to 35 U.S.C. § 283, preventing Defendants and any such entity, from infringing the '994 Patent;
- (f) A permanent injunction against Defendants and any entity acting in concert with Defendants, pursuant to 35 U.S.C. § 283, preventing Defendants and any such entity, from infringing the '994 Patent;
- (g) A judgment that this is an exceptional case and that ERICO be awarded reasonable attorney fees pursuant to 35 U.S.C. § 285;
- (h) A judgment that Defendants have infringed ERICO's CADDY<sup>®</sup> trademark in violation of 15 U.S.C. § 1114(1)(a);
- (i) A judgment that Defendants have violated section 43(a) of the Lanham Act, 15 U.S.C. § 1125;



- (j) A judgment against Defendants awarding ERICO damages suffered by ERICO pursuant to 15 U.S.C. § 1117 and that damages be trebled;
- (k) A judgment that ERICO be awarded statutory damages under 15 U.S.C. § 1117;
- (l) Preliminary and permanent injunctions, pursuant to 15 U.S.C. § 1116, against Defendants and any entity acting in concert with Defendants preventing Defendants and any such entity from selling products that bear ERICO's CADDY<sup>®</sup> trademark or that bear ERICO's CADDY<sup>®</sup> trademark partially obscured by X's;
- (m) A judgment that this is an exceptional case and that ERICO be awarded reasonable attorney fees pursuant to 35 U.S.C. § 285 and 15 U.S.C. § 1117; and
- (n) A judgment that Defendants be directed to pay ERICO its costs incurred herein and such other and further relief as the Court deems just and equitable.

Dated: June 8, 2006

Respectfully submitted,

s/ Mark C. Johnson

Jay R. Campbell, Reg. No. 0041293

Todd R. Tucker, Reg. No. 0065617

Mark C. Johnson, Reg. No. 0072625

RENNER, OTTO, BOISSELLE & SKLAR, LLP

1621 Euclid Avenue

Nineteenth Floor

Cleveland, Ohio 44115

Telephone: (216) 621-1113

Facsimile: (216) 621-6165

*Attorneys for ERICO International Corporation*

**JURY DEMAND**

Plaintiff ERICO respectfully requests a trial by jury as to all issues so triable.

Respectfully submitted,

s/ Mark C. Johnson

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*Attorneys for ERICO International Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 8, 2006, a copy of foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system.

s/ Mark C. Johnson

Jay R. Campbell, Reg. No. 0041293

Todd R. Tucker, Reg. No. 0065617

Mark C. Johnson, Reg. No. 0072625

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Facsimile: (216) 621-6165

*Attorney for ERICO International Corporation*