

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

PODS, INC., a Florida corporation,

Plaintiff,

v.

CASE NO. 8:04-CV-2101-T-17MAP

PORTA STOR, INC., a Florida  
corporation and CHRISTOPHER E.  
NEUGUTH, individually,

Defendants.

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**FIRST AMENDED COMPLAINT**

Plaintiff PODS, Inc. (“PODS”), for its First Amended Complaint against defendants Porta Stor, Inc. (“Porta Stor”) and Christopher E. Neuguth, alleges as follows:

**THE PARTIES**

1. Plaintiff PODS is a Florida corporation having its principal place of business in Clearwater, Florida.
2. PODS is engaged in the business of renting portable storage containers under the brand PODS® that are used with a method and apparatus for lifting, handling, and transporting storage containers.
3. Defendant Porta Stor is a Florida corporation having its principal place of business in Hudson, Florida.
4. Defendant Christopher E. Neuguth is an individual residing within this district.

Upon information and belief, Mr. Neuguth is Porta Stor’s president.

5. Porta Stor is a direct competitor of PODS, both in the rental of storage containers using Porta Stor's apparatus for lifting, handling, and transporting a storage container, and in the franchises it offers, which use the apparatus.

### **JURISDICTION AND VENUE**

6. This is a civil action concerning: (i) patent infringement in violation of the United States Patent Act of 1952, as amended, 35 U.S.C. § 271 et seq.; (ii) copyright infringement of a federally registered copyright in violation of the United States Copyright Act of 1976, as amended, 17 U.S.C. § 101 et seq.; (iii) false advertising and unfair competition in violation of Section 43(a) of the United States Trademark Act of 1946, as amended, 15 U.S.C. § 1125(a); (iv) related claims of false advertising and unfair competition in violation of the laws of the State of Florida and the common law; and (v) deceptive and unfair trade practices in violation of the Florida Deceptive and Unfair Trade Practices Act, § 501.201 et seq.

7. This Court has jurisdiction over this action pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a)-(b), as it involves substantial claims arising under the United States Patent Act of 1952, as amended, 35 U.S.C. § 271 et seq., the United States Copyright Act of 1976, as amended, 17 U.S.C. § 101 et seq., the United States Trademark Act of 1946, as amended, 15 U.S.C. § 1051, et seq., and is joined with related claims under state law.

8. This Court has supplemental jurisdiction over the claims in this Complaint which arise under state statutory and common law pursuant to 28 U.S.C. § 1367(a), since the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400, since defendants reside in this district and a substantial part of the events giving rise to the

claims herein occurred in this district, and since the defendant's principal place of business is located in this district and this is where the patent infringement occurred.

**THE PATENT-IN-SUIT**

10. PODS owns all right, title, and interest in and to United States Patent No. 6,071,062 ("the '062 patent") entitled "Apparatus for Lifting, Handling, and Transporting a Container," which was duly and legally issued by the United States Patent and Trademark Office ("PTO") on June 6, 2000. A copy of the '062 patent is attached hereto as Exhibit A.

**COUNT I - INFRINGEMENT OF THE '062 PATENT**

11. PODS repeats and realleges the allegations of paragraphs 1 through 10 as though fully set forth herein.

12. Defendants have infringed, induced and/or contributed to the infringement of, the claims of the '062 patent in this judicial district by making, using, or offering franchises for, their apparatus for lifting, handling, and transporting a storage container.

13. Defendants infringement of the '062 patent has been deliberate, willful, wanton, and with full knowledge and awareness of the '062 patent.

14. Defendants' acts have caused irreparable injury and damage to PODS for which PODS has no adequate remedy at law.

**COUNT II - COPYRIGHT INFRINGEMENT**

15. PODS repeats and realleges the allegations of paragraphs 1 through 14 as though fully set forth herein.

16. PODS owns a copyright registration for the rental agreements that it uses in its business. A copy of the agreement is attached as Exhibit B. A copy of the copyright

registration, Reg. No. TX 6-008-452, issued on August 23, 2004, is attached as Exhibit C. The copyright registration is valid, subsisting and in full force.

17. Defendants have copied, nearly verbatim, PODS' copyrighted contract and used it in their own business.

18. Defendants' activities constitute willful copyright infringement in violation of Section 501 of the United States Copyright Act of 1976, as amended, 17 U.S.C. § 501.

19. Defendants infringement of PODS' copyright has been deliberate, willful, and wanton.

20. Defendants' acts have caused irreparable injury and damage to PODS for which PODS has no adequate remedy at law.

**COUNT III - FALSE ADVERTISING and UNFAIR COMPETITION**

21. PODS repeats and realleges the allegations of paragraphs 1 through 20 as though fully set forth herein.

22. In the course of advertising and promoting their apparatus for lifting, handling, and transporting a storage container on their website, www.portastorit.com, defendants have made false, misleading statements of fact about their apparatus.

23. Specifically, defendants have advertised on their website that their apparatus for lifting, handling, and transporting a container is patented. A copy of the website is attached as Exhibit D. This statement is false and misleading. Defendants have no patent on their apparatus.

24. The false and misleading statement was made by defendants in the context of commercial advertising and promotion. The false and misleading statement constitutes unfair competition and false advertising in violation of the United States Trademark Act of 1946, as amended, 15 U.S.C. § 1125(a).

25. Defendants' false claim that their apparatus was patented was made deliberately, willfully, wantonly, and with full knowledge that they did not own any patents on their apparatus.

26. In addition to infringing PODS' patent and copyright, defendants have copied almost every aspect of PODS' business model. By way of example only, as part of their overall scheme to copy PODS' business model, defendants have copied the overall appearance and look of PODS' distinctive business card. Copies of PODS' and Porta Stor's business cards are attached as Exhibit E. Defendants' actions constitute unfair competition in violation of the United States Trademark Act of 1946, as amended, 15 U.S.C. § 1125(a).

27. Defendants' acts have caused irreparable injury and damage to PODS for which PODS has no adequate remedy at law.

**COUNT IV - FALSE ADVERTISING UNDER FLORIDA LAW**

28. PODS repeats and realleges the allegations of paragraphs 1 through 27 as though fully set forth herein.

29. By reason of their deliberate and willful acts as set forth above, defendants have engaged in false advertising in violation of Florida Statutes § 817.41.

30. Defendants' acts have caused irreparable injury and damage to PODS for which PODS has no adequate remedy at law.

**COUNT V - COMMON LAW UNFAIR COMPETITION**

31. PODS repeats and realleges the allegations of paragraphs 1 through 30 as though fully set forth herein.

32. By reason of their deliberate and willful acts as set forth above, defendants have engaged in unfair competition under the common law of the state of Florida.

33. Defendants' acts have caused irreparable injury and damage to PODS for which PODS has no adequate remedy at law.

**COUNT VI - DECEPTIVE AND UNFAIR TRADE PRACTICES**

34. PODS repeats and realleges the allegations of paragraphs 1 through 33 as though fully set forth herein.

35. By reason of their deliberate and willful acts as set forth above, defendants have engaged in deceptive and unfair trade practices in violation of the Florida Deceptive and Unfair Trade Practices Act, § 501.201 et seq.

36. Defendants' acts have caused irreparable injury and damage to PODS for which PODS has no adequate remedy at law.

WHEREFORE, PODS seeks judgment:

(A) Permanently enjoining defendants and their principals, shareholders, officers, directors, employees, successors, assigns, suppliers, agents, servants and attorneys, and all those persons in active concert, participation or privity with them, or any of them from:

(1) Making, using, selling, offering for sale, or offering franchises for, defendants' apparatus for lifting, handling, and transporting a storage container, and any other act that would constitute an infringement of the '062 patent;

(2) Using for or in connection with defendants' business PODS' copyrighted contract, or any contract that is substantially similar to PODS' copyrighted contract, and any other act that would constitute an infringement of PODS' copyright; and

(3) Using a false description or representation including words or other symbols tending to falsely describe or represent defendant's apparatus for lifting, handling, and transporting a storage container.

(B) Awarding PODS, pursuant to 35 U.S.C. §284, damages adequate to compensate it for defendants' infringement of the '062 patent, but in no event less than a reasonable royalty, together with pre-judgment interest;

(C) Awarding PODS, pursuant to 15 U.S.C. § 1117 and 35 U.S.C. § 284, increased damages in the amount of three times the amount found or assessed, for the deliberate and willful nature of defendants' infringing activities;

(D) Awarding PODS, pursuant to 15 U.S.C. § 1117, 17 U.S.C. § 505, Florida Statutes § 817.41, Florida Deceptive and Unfair Trade Practices Act, § 501.211, and 35 U.S.C. § 285, its costs, disbursements and attorneys' fees in preparing for and pursuing this action;

(E) Awarding PODS, pursuant to 17 U.S.C. § 504, damages sustained as a result of defendants' copyright infringement and defendants' profits attributable to the infringement, or, in the alternative, increased statutory damages for each copyright infringement involved in this action;

(F) Awarding PODS, pursuant to 15 U.S.C. § 1117, damages it sustained and defendant's profits derived or realized from their apparatus for lifting, handling, and transporting a storage container;

(G) Awarding PODS additional exemplary and punitive damages against defendants under state law; and

(H) Granting such further and other relief as the Court may deem necessary and proper.

Dated: May 18, 2005

/s/ James M. Landis  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 18th day of May 2005, I electronically filed the foregoing FIRST AMENDED COMPLAINT with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Edward P. Dutkiewicz, Esq.  
Law Offices of Edward P. Dutkiewicz  
640 Douglas Avenue  
Dunedin, FL 34698  
**Attorneys for Defendants**

I further certify that I have Federal Expressed the foregoing to the above-named addressee this same day.

/s/ James M. Landis  
Attorney