

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

I. Civil Categories: (Please check one category only).

1. ☐ General Civil
2. ☐ Administrative Review/Social Security
3. ☐ Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. **RELATED OR REFILED CASES.** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action: is **RELATED** to another **PENDING** civil case is a **REFILED** case was **PREVIOUSLY REMANDED**

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule **3.8**, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

COUNTY: _____

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY: _____

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY: _____

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

☐

AKRON

(Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)

☐

CLEVELAND

(Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)

☐

YOUNGSTOWN

(Counties: Columbiana, Mahoning and Trumbull)

WESTERN DIVISION

☐

TOLEDO

(Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

THE NOCO COMPANY
30339 Diamond Parkway, #102
Glenwillow, OH 44139

Plaintiff,

V.

SHENZHEN LANCAITONG
TECHNOLOGY CO., LTD.
Bldg. 98, Shangyousong Village
Longhua St.
Longhua New Dist., Shenzhen, Guangdong
China 802

Defendant.

) Case No.: 1:18-cv-2648

) Judge:

) **COMPLAINT FOR DAMAGES,**
) **INJUNCTIVE, AND OTHER RELIEF**
) **FOR VIOLATIONS OF 15 U.S.C. § 1114**
) **AND § 1125 AND OHIO REV. CODE**
) **§§ 4165.01, ET SEQ.**

1) **DEMAND FOR JURY TRIAL**

Plaintiff The NOCO Company (“NOCO” or “Plaintiff”) brings this action against defendant Shenzhen Lancaitong Technology Co., Ltd. (“Defendant”) for (1) false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B); (2) trademark infringement in violation of the Lanham Act, 15 U.S.C. § 1114; and (3) violation of Ohio’s Uniform Deceptive Trade Practices Act, Ohio Rev. Code §§ 4165.01, *et seq.*, and alleges as follows:

THE PARTIES

1. NOCO is an Ohio for-profit corporation, in good standing, having its principal offices located in Cuyahoga County, Ohio.

2. Upon information and belief, Defendant is a for-profit company having its principal place of business in Shenzhen, China, that operates and does business throughout the United States under the seller name “SunmnDirect” on Amazon.

JURISDICTION

3. This Court has subject-matter jurisdiction over NOCO's claims in this action arising under federal trademark law pursuant to 28 U.S.C. §§ 1331 and 1338. This Court has subject-matter jurisdiction over NOCO's state-law claim in this action pursuant to 28 U.S.C. § 1367 because this claim and NOCO's federal-law claim form part of the same case or controversy under Article III of the United States Constitution.

4. This Court has personal jurisdiction over Defendant under Ohio's long-arm statute because Defendant caused tortious injury by an act in Ohio. Ohio Rev. Code § 2307.382(A)(3). This Court also has personal jurisdiction because Defendant regularly does or solicits business in Ohio, or derives substantial revenue from goods used or consumed or services rendered in Ohio, and caused tortious injury in Ohio by an act from outside Ohio. Ohio Rev. Code § 2307.382(A)(4).

5. This Court has personal jurisdiction under the Due Process Clause because Defendant had sufficient minimum contacts with Ohio by falsely advertising and selling products to consumers in Ohio through one or more highly interactive commercial websites, such that Defendant could reasonably anticipate being brought into court in this forum.

VENUE

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims herein occurred within this judicial district. In addition, venue is properly found in this judicial district pursuant to 28 U.S.C. § 1391(c)(3) because Defendant, who is not resident in the United States, is subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

NOCO and Its Trademarks

7. NOCO is a global manufacturer and distributor of battery chargers, jump starters, solar panels, portable power devices, and an array of other consumer battery products and accessories.

8. NOCO sells and distributes its products around the world, including the United States, Canada, Asia, and Europe.

9. Among NOCO's most popular products is its GB40 Genius Boost Jump Starter ("GB40 Jump Starter").

10. The GB40 Jump Starter is a portable jump-starter battery pack for jump starting a dead vehicle battery. It can also be used as a portable power source for recharging USB devices, such as smartphones and tablets, and powering 12-volt devices such as tire inflators and power inverters.

11. NOCO offers the GB40 Jump Starter, as well as other products, for sale through its website, www.no.co; the "NOCO" storefront on Amazon; and through other authorized sellers (collectively, "Authorized Sales Channels").

12. NOCO devotes a significant amount of time, energy, and resources to protecting the value of its brand, products, name, and reputation. By distributing products exclusively through Authorized Sales Channels, NOCO ensures that its products received by the consumer are of the utmost quality, and that the satisfaction of the consumer, and the integrity and reputation of the NOCO brand are maintained.

13. To promote and protect the NOCO brand, Plaintiff has registered numerous trademarks with the United States Patent and Trademark Office (the "NOCO Trademarks"),

including, but not limited to: NOCO[®] (U.S. Reg. No. 5,238,298); NOCO GENIUS[®] (U.S. Reg. Nos. 3,779,305, 4,644,688 and 5,303,090); NOCO GENIUS BOOST[®] (U.S. Reg. Nos. 4,778,383 and 4,778,384); and ULTRASAFE[®] (U.S. Reg. No. 4,811,656).

14. The registration for each of the NOCO Trademarks is valid, subsisting, and in full force and effect. NOCO's right to use some of the NOCO Trademarks has become incontestable under 15 U.S.C. § 1065 because the trademarks have been in continuous use; NOCO received no final legal decision issued against the trademarks; and NOCO timely filed a Section 15 Declaration describing the trademarks' use. Accordingly, the NOCO Trademarks serve as conclusive evidence of NOCO's ownership of the marks and of its exclusive right to use and direct the use of the marks in commerce and in connection with the sale and distribution of products bearing the marks identified in the registrations, as provided by 15 U.S.C. § 1115(b).

15. NOCO actively uses and markets all of the NOCO Trademarks in commerce throughout the United States.

16. NOCO's products are popular sellers on Amazon. For example, the GB40 Jump Starter currently ranks as the highest-selling product in Amazon's "automotive jump starters" product category and has received Amazon's designation as the "#1 Best Seller in Jump Starters" on its marketplace. In addition, the GB40 Jump Starter currently ranks as the 26th highest selling automotive product overall on Amazon out of tens of thousands of products in this category. Many of NOCO's products, including the GB40 Jump Starter, carry high user ratings on Amazon of four or more stars.

17. Due to the quality of NOCO's products and customer service, as well as consumers' recognition of NOCO as the source of high quality products, the NOCO Trademarks have enormous value.

**Defendant's Sale of Products on the Internet Whose Advertisements
Include the NOCO Trademarks and Create False Associations with NOCO**

18. Defendant is not authorized to sell NOCO products or use the NOCO Trademarks.

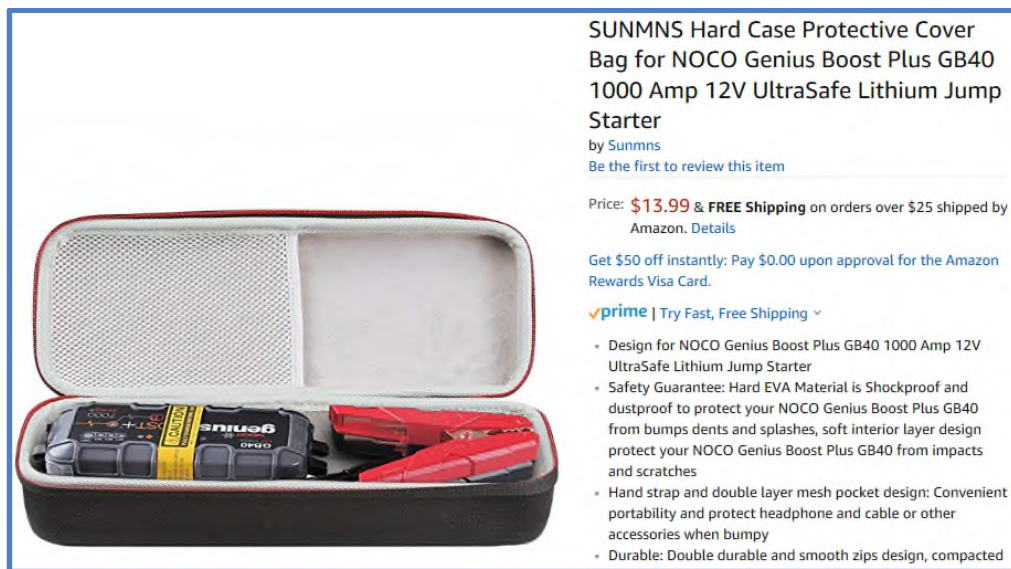
19. Defendant, without authorization from NOCO, sells on the Internet, including on Amazon, product storage cases whose advertisements include the NOCO Trademarks. For example, as set forth in Paragraph 22, Defendant advertises a product whose name is the “SUNMNS Hard Case Protective Cover Bag for NOCO Genius Boost Plus GB40 1000 Amp 12V UltraSafe Lithium Jump Starter,” which includes four NOCO Trademarks: NOCO[®], NOCO GENIUS[®], NOCO GENIUS BOOST[®], and ULTRASAFE[®].

20. Defendant's advertisements of product names that use the NOCO Trademarks falsely state and/or suggest that the advertised products—generic storage cases for electronics or any other small items—are specifically designed “for” NOCO products. To the contrary, none of the Defendant's products, described further in Paragraph 22, are in any way designed specifically “for” or “to fit” the NOCO jump-starter products. Stated differently, none of Defendant's products are “for” NOCO products any more than they are “for” a host of other small items, such as competing jump starters and battery chargers, small electronics, toys, office supplies, and canned goods.

21. In addition to using NOCO Trademarks in product names, Defendant's advertisements, described further in Paragraph 22, feature at least one image of a NOCO product contained in the advertised protective case. This image shows NOCO Trademarks prominently displayed on the NOCO product depicted. Defendant's usage of the NOCO Trademarks therefore constitutes false advertising because it implies that NOCO sponsors, approves of, and/or authorizes Defendant's products and/or that Defendant has an association with NOCO,

which it does not. Furthermore, Defendant's use in advertisements of NOCO Trademarks in product names and images, both separately and combined, constitutes trademark infringement, as the advertisements use more of the NOCO Trademarks than is reasonably necessary to identify the NOCO products.

22. Upon information and belief, Defendant operates and conducts business under the storefront "SunmnDirect" on Amazon. Through this storefront, Defendant has sold and is currently selling protective cases advertised as being designed for NOCO products, including the GB40 Jump Starter.



23. Through its infringing use of the NOCO Trademarks, Defendant has misled—and continues to mislead—consumers into believing that they are purchasing products that have been licensed or otherwise authorized by NOCO and that conform to NOCO's quality standards.

NOCO Has Suffered Substantial Harm

24. As a proximate result of Defendant's actions, NOCO has suffered, and will continue to suffer, irreparable harm to its NOCO Trademarks and brand goodwill.

25. Defendant's conduct was knowing, intentional, willful, malicious, wanton, and contrary to law.

26. NOCO is entitled to injunctive relief because Defendant continues to use NOCO Trademarks in false advertisements. In so doing, Defendant continues to compromise the value of the NOCO Trademarks.

27. Defendant's ongoing illegal conduct has caused, and will continue to cause, irreparable harm to NOCO's goodwill and a loss of business for NOCO.

FIRST CAUSE OF ACTION

False Advertising

15 U.S.C. § 1125(a)(1)(B)

28. NOCO re-alleges the allegations set forth in paragraphs 1–27 above.

29. NOCO owns the NOCO Trademarks.

30. NOCO has registered the NOCO Trademarks with the United States Patent and Trademark Office.

31. The NOCO Trademarks are valid and subsisting trademarks in full force and effect.

32. Defendant willfully and knowingly used, and continues to use, the NOCO Trademarks in interstate commerce, including through its product listings on Amazon, for the purpose of advertising, promoting, and selling products without NOCO's consent.

33. Defendant's advertisements and promotions of products unlawfully using the NOCO Trademarks have been disseminated to the relevant purchasing public.

34. The products Defendant advertises, promotes, and sells using the NOCO Trademarks are not authorized for sale by NOCO.

35. Defendant's use of the NOCO Trademarks in connection with the unauthorized advertising, promotion, and sale of products misrepresents the nature, characteristics, qualities, and origin of Defendant's products because it suggests that the products are subject to NOCO's review and approval when, in fact, they are not.

36. Defendant's use of the NOCO Trademarks in connection with the unauthorized advertising, promotion, and sale of products is likely to cause consumer confusion, cause mistake, or deceive consumers because it suggests that the products Defendant offers for sale are sponsored by, approved by, or are otherwise connected with NOCO when, in fact, they are not.

37. Defendant's unauthorized and deceptive use of the NOCO Trademarks is material and likely to influence consumers to purchase the products it sells, as consumers are likely to believe that products Defendant advertises using the NOCO Trademarks are subject to NOCO's approval when, in fact, they are not.

38. As a proximate result of Defendant's actions, NOCO has suffered, and will continue to suffer, damage to its business, goodwill, reputation, and profits in an amount to be proven at trial.

39. NOCO is entitled to recover its damages caused by Defendant's infringement of the NOCO Trademarks and disgorge Defendant's profits from its willfully infringing sales and unjust enrichment.

40. NOCO is entitled to injunctive relief under 15 U.S.C. § 1116 because it has no adequate remedy at law for Defendant's infringement and, unless Defendant is permanently enjoined, NOCO will suffer irreparable harm.

41. NOCO is entitled to enhanced damages and attorneys' fees under 15 U.S.C. § 1117(a) because Defendant willfully, intentionally, maliciously, and in bad faith infringed on the NOCO Trademarks.

SECOND CAUSE OF ACTION
Trademark Infringement
15 U.S.C. § 1114

42. NOCO re-alleges the allegations set forth in paragraphs 1–41 above.

43. NOCO owns the NOCO Trademarks.

44. NOCO has registered the NOCO Trademarks with the United States Patent and Trademark Office.

45. The NOCO Trademarks are valid and subsisting trademarks in full force and effect.

46. Defendant willfully and knowingly used, and continues to use, the NOCO Trademarks in interstate commerce without NOCO's consent for the purpose of selling products.

47. Defendant's unauthorized sale of products using advertising that includes the NOCO Trademarks interferes with NOCO's ability to exercise control over the NOCO Trademarks.

48. Defendant's unauthorized sale of products using advertising that includes the NOCO Trademarks is likely to cause confusion, cause mistake, or deceive consumers because Defendant's use of the NOCO Trademarks suggests that the products Defendant offers for sale are sponsored or authorized by NOCO when, in fact, they are not.

49. Defendant's unauthorized use of the NOCO Trademarks has infringed and materially damaged the value of the NOCO Trademarks and caused significant damage to NOCO's business relationships.

50. As a proximate result of Defendant's actions, NOCO has suffered, and continues to suffer immediate and irreparable harm. NOCO has also suffered, and continues to suffer, damages, including, but not limited to, loss of business, goodwill, reputation, and profits in an amount to be proven at trial.

51. NOCO is entitled to recover its damages caused by Defendant's infringement of the NOCO Trademarks and disgorge Defendant's profits from Defendant's willfully infringing sales and unjust enrichment.

52. NOCO is entitled to injunctive relief under 15 U.S.C. § 1116 because it has no adequate remedy at law for Defendant's infringement and, unless Defendant is permanently enjoined, NOCO will suffer irreparable harm.

53. NOCO is entitled to enhanced damages and attorneys' fees under 15 U.S.C. § 1117(a) because Defendant willfully, intentionally, maliciously, and in bad faith infringed the NOCO Trademarks.

THIRD CAUSE OF ACTION
Violation of Ohio Uniform Deceptive Trade Practices Act,
Ohio Rev. Code §§ 4165.01, *et seq.*

54. NOCO re-alleges the allegations set forth in paragraphs 1–53 above.

55. This claim arises under the laws of the State of Ohio.

56. NOCO owns the NOCO Trademarks.

57. NOCO has registered the NOCO Trademarks with the United States Patent and Trademark Office.

58. The NOCO Trademarks are valid and subsisting trademarks in full force and effect.

59. NOCO is widely recognized as the designated source of goods bearing the NOCO Trademarks.

60. The products Defendant advertises, promotes, and sells using the NOCO Trademarks are not authorized for sale by NOCO.

61. Defendant's use of the NOCO Trademarks in connection with the unauthorized advertising, promotion, and sale of products suggests that the products are sponsored by, approved by, affiliated with, or connected with NOCO, which they are not.

62. Defendant's deceptive trade practices have caused and will continue to cause NOCO irreparable harm. NOCO is entitled to judgment enjoining and restraining Defendant from engaging in further deceptive practices.

PRAYER FOR RELIEF

WHEREFORE, NOCO prays for relief and judgment as follows:

A. Judgment in favor of NOCO and against Defendant in an amount to be determined at trial including, but not limited to, compensatory damages, statutory damages, treble damages, restitution, including disgorgement of profits, punitive damages, and pre-judgment and post-judgment interest, as permitted by law;

B. Preliminary and permanent injunctions enjoining Defendant and any employees, agents, servants, officers, representatives, directors, attorneys, successors, affiliates, assigns, any and all other entities owned or controlled by Defendant, and all of those in active concert and participation with Defendant (the "Enjoined Parties") as follows:

i) Prohibiting the Enjoined Parties from using any of the NOCO Trademarks in any manner, including advertising on the Internet,

- ii) Requiring the Enjoined Parties to take all action to remove from the Enjoined Parties' websites any reference to any of the NOCO Trademarks;
 - iii) Requiring the Enjoined Parties to take all action, including but not limited to, requesting removal from the Internet search engines (such as Google, Yahoo!, and Bing), to remove from the Internet any of the NOCO Trademarks associated with the Enjoined Parties or the Enjoined Parties' websites or storefronts;
 - iv) Requiring the Enjoined Parties to take all action to remove unauthorized NOCO Trademarks from the Internet, including from www.amazon.com;
- C. An award of attorneys' fees, costs, and expenses; and
- D. Such other and further relief as the Court deems just, equitable and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: November 15, 2018

Respectfully submitted,

/s/ Katie L. Steiner

Michael J. Garvin (0025394)

Katie L. Steiner (0096933)

VORYS, SATER, SEYMOUR AND PEASE LLP

200 Public Square, Suite 1400

Cleveland, OH 44114-2327

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klsteiner@vorys.com

Counsel for Plaintiff The NOCO Company

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

I. Civil Categories: (Please check one category only).

1. ☐ General Civil
2. ☐ Administrative Review/Social Security
3. ☐ Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. **RELATED OR REFILED CASES.** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action: is **RELATED** to another **PENDING** civil case is a **REFILED** case was **PREVIOUSLY REMANDED**

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule **3.8**, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

COUNTY:

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY:

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> AKRON | (Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne) |
| <input type="checkbox"/> CLEVELAND | (Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland) |
| <input type="checkbox"/> YOUNGSTOWN | (Counties: Columbiana, Mahoning and Trumbull) |

WESTERN DIVISION

- | | |
|---------------------------------|---|
| <input type="checkbox"/> TOLEDO | (Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot) |
|---------------------------------|---|

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

THE NOCO COMPANY
30339 Diamond Parkway, #102
Glenwillow, OH 44139

Plaintiff,

v.

SHENZHEN ZHIDA XINTAI
TECHNOLOGY CO., LTD
Building A, No. 266 Guangtian Road
Tangxiachong, Songgang St.
Bao'an District, Shenzhen City
China 518105

Defendant.

) Case No.: 1:18-cv-2650

)

) Judge:

)

) **COMPLAINT FOR DAMAGES,**
) **INJUNCTIVE, AND OTHER RELIEF**
) **FOR VIOLATIONS OF 15 U.S.C. § 1114**
) **AND § 1125 AND OHIO REV. CODE**
) **§§ 4165.01, ET SEQ.**

)

) **DEMAND FOR JURY TRIAL**

)

)

)

)

Plaintiff The NOCO Company (“NOCO” or “Plaintiff”) brings this action against defendant Shenzhen Zhida Xintai Technology Co., Ltd. (“Defendant”) for (1) false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B); (2) trademark infringement in violation of the Lanham Act, 15 U.S.C. § 1114; and (3) violation of Ohio’s Uniform Deceptive Trade Practices Act, Ohio Rev. Code §§ 4165.01, *et seq.*, and alleges as follows:

THE PARTIES

1. NOCO is an Ohio for-profit corporation, in good standing, having its principal offices located in Cuyahoga County, Ohio.

2. Upon information and belief, Defendant Shenzhen is a for-profit company having its principal place of business in Shenzhen City, China, that operates and does business throughout the United States under the seller names “Zhida” and “Senchang Fitting” on Amazon.

JURISDICTION

3. This Court has subject-matter jurisdiction over NOCO's claims in this action arising under federal trademark law pursuant to 28 U.S.C. §§ 1331 and 1338. This Court has subject-matter jurisdiction over NOCO's state-law claim in this action pursuant to 28 U.S.C. § 1367 because this claim and NOCO's federal-law claim form part of the same case or controversy under Article III of the United States Constitution.

4. This Court has personal jurisdiction over Defendant under Ohio's long-arm statute because Defendant caused tortious injury by an act in Ohio. Ohio Rev. Code § 2307.382(A)(3). This Court also has personal jurisdiction because Defendant regularly does or solicits business in Ohio, or derives substantial revenue from goods used or consumed or services rendered in Ohio, and caused tortious injury in Ohio by an act from outside Ohio. Ohio Rev. Code § 2307.382(A)(4).

5. This Court has personal jurisdiction under the Due Process Clause because Defendant had sufficient minimum contacts with Ohio by falsely advertising and selling products to consumers in Ohio through one or more highly interactive commercial websites, such that Defendant could reasonably anticipate being brought into court in this forum.

VENUE

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims herein occurred within this judicial district. In addition, venue is properly found in this judicial district pursuant to 28 U.S.C. § 1391(c)(3) because Defendant, who is not resident in the United States, is subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

NOCO and Its Trademarks

7. NOCO is a global manufacturer and distributor of battery chargers, jump starters, solar panels, portable power devices, and an array of other consumer battery products and accessories.

8. NOCO sells and distributes its products around the world, including the United States, Canada, Asia, and Europe.

9. Among NOCO's most popular products are its GB40 Genius Boost Jump Starter ("GB40 Jump Starter") and GB70 Genius Boost Jump Starter ("GB70 Jump Starter").

10. The GB40 Jump Starter and GB70 Jump Starter are portable jump-starter battery packs for jump starting a dead vehicle battery. They can also be used as a portable power source for recharging USB devices, such as smartphones and tablets, and powering 12-volt devices such as tire inflators and power inverters.

11. NOCO offers the GB40 Jump Starter and GB70 Jump Starter, as well as other products, for sale through its website, www.no.co; the "NOCO" storefront on Amazon; and through other authorized sellers (collectively, "Authorized Sales Channels").

12. NOCO devotes a significant amount of time, energy, and resources to protecting the value of its brand, products, name, and reputation. By distributing products exclusively through Authorized Sales Channels, NOCO ensures that its products received by the consumer are of the utmost quality, and that the satisfaction of the consumer, and the integrity and reputation of the NOCO brand are maintained.

13. To promote and protect the NOCO brand, Plaintiff has registered numerous trademarks with the United States Patent and Trademark Office (the "NOCO Trademarks"),

including, but not limited to: NOCO[®] (U.S. Reg. No. 5,238,298); NOCO GENIUS[®] (U.S. Reg. Nos. 3,779,305, 4,644,688 and 5,303,090); NOCO GENIUS BOOST[®] (U.S. Reg. Nos. 4,778,383 and 4,778,384); and ULTRASAFE[®] (U.S. Reg. No. 4,811,656).

14. The registration for each of the NOCO Trademarks is valid, subsisting, and in full force and effect. NOCO's right to use some of the NOCO Trademarks has become incontestable under 15 U.S.C. § 1065 because the trademarks have been in continuous use; NOCO received no final legal decision issued against the trademarks; and NOCO timely filed a Section 15 Declaration describing the trademarks' use. Accordingly, the NOCO Trademarks serve as conclusive evidence of NOCO's ownership of the marks and of its exclusive right to use and direct the use of the marks in commerce and in connection with the sale and distribution of products bearing the marks identified in the registrations, as provided by 15 U.S.C. § 1115(b).

15. NOCO actively uses and markets all of the NOCO Trademarks in commerce throughout the United States.

16. NOCO's products are popular sellers on Amazon. For example, the GB40 Jump Starter currently ranks as the highest-selling product in Amazon's "automotive jump starters" product category and has received Amazon's designation as the "#1 Best Seller in Jump Starters" on its marketplace. In addition, the GB40 Jump Starter currently ranks as the 26th highest selling automotive product overall on Amazon out of tens of thousands of products in this category. Many of NOCO's products, including the GB40 Jump Starter, carry high user ratings on Amazon of four or more stars.

17. Due to the quality of NOCO's products and customer service, as well as consumers' recognition of NOCO as the source of high quality products, the NOCO Trademarks have enormous value.

**Defendant's Sale of Products on the Internet Whose Advertisements
Include the NOCO Trademarks and Create False Associations with NOCO**

18. Defendant is not authorized to sell NOCO products or use the NOCO Trademarks.

19. Defendant, without authorization from NOCO, sells on the Internet, including on Amazon, product storage cases whose advertisements include the NOCO Trademarks. For example, as set forth in Paragraph 22, Defendant advertises a product whose name is the “Case for NOCO Genius Boost GB40 1000 Amp 12V UltraSafe Lithium Jump Starter by XANAD,” which includes four NOCO Trademarks: NOCO®, NOCO GENIUS®, NOCO GENIUS BOOST®, and ULTRASAFE®.

20. Defendant's advertisements of product names that use the NOCO Trademarks falsely state and/or suggest that the advertised products—generic storage cases for electronics or any other small items—are specifically designed “for” NOCO products. To the contrary, none of the Defendant's products, described further in Paragraphs 22 and 23, are in any way designed specifically “for” or “to fit” the NOCO jump-starter products. Stated differently, none of Defendant's products are “for” NOCO products any more than they are “for” a host of other small items, such as competing jump starters and battery chargers, small electronics, toys, office supplies, and canned goods.

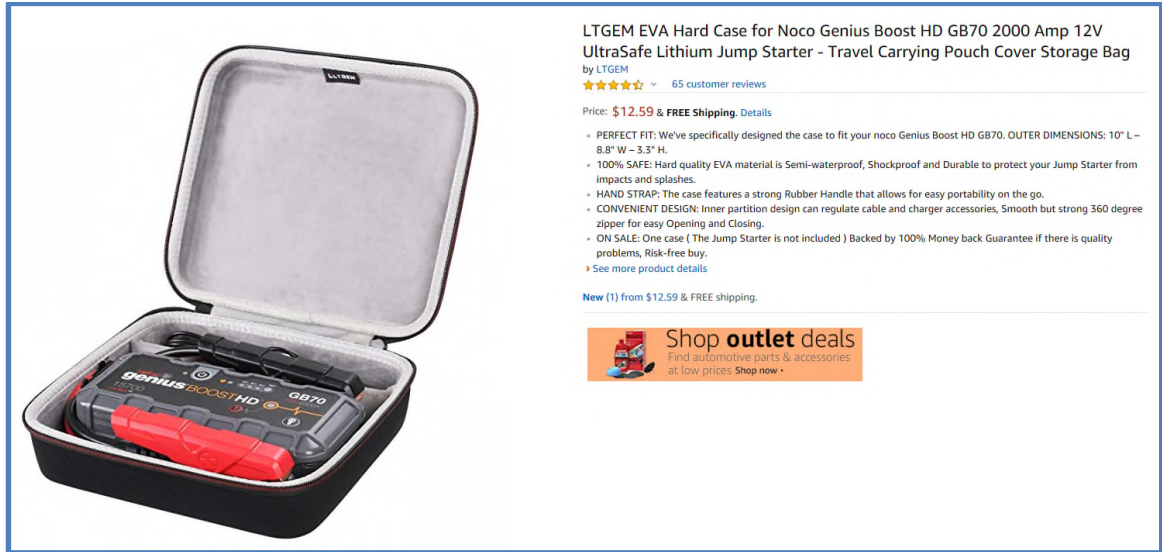
21. In addition to using NOCO Trademarks in product names, Defendant's advertisements, described further in Paragraphs 22 and 23, feature at least one image of a NOCO product contained in the advertised protective case. These images show NOCO Trademarks prominently displayed on the NOCO product depicted. Defendant's usage of the NOCO Trademarks therefore constitutes false advertising because it implies that NOCO sponsors, approves of, and/or authorizes Defendant's products and/or that Defendant has an association

with NOCO, which it does not. Furthermore, Defendant's use in advertisements of NOCO Trademarks in product names and images, both separately and combined, constitutes trademark infringement, as the advertisements use more of the NOCO Trademarks than is reasonably necessary to identify the NOCO products.

22. Upon information and belief, Defendant operates and conducts business under the storefront "Zhida" on Amazon. Through this storefront, Defendant has sold and is currently selling protective cases advertised as being designed for NOCO products, including the GB40 Battery Charger.



23. Upon information and belief, Defendant operates and conducts business under the storefront "Senchang Fitting" on Amazon. Through this storefront, Defendant has sold and is currently selling protective cases advertised as being designed for NOCO products, including the GB70 Jump Starter.



24. Through its infringing use of the NOCO Trademarks, Defendant has misled—and continues to mislead—consumers into believing that they are purchasing products that have been licensed or otherwise authorized by NOCO and that conform to NOCO’s quality standards.

NOCO Has Suffered Substantial Harm

25. As a proximate result of Defendant’s actions, NOCO has suffered, and will continue to suffer, irreparable harm to its NOCO Trademarks and brand goodwill.

26. Defendant’s conduct was knowing, intentional, willful, malicious, wanton, and contrary to law.

27. NOCO is entitled to injunctive relief because Defendant continues to use NOCO Trademarks in false advertisements. In so doing, Defendant continues to compromise the value of the NOCO Trademarks.

28. Defendant’s ongoing illegal conduct has caused, and will continue to cause, irreparable harm to NOCO’s goodwill and a loss of business for NOCO.

FIRST CAUSE OF ACTION
False Advertising
15 U.S.C. § 1125(a)(1)(B)

29. NOCO re-alleges the allegations set forth in paragraphs 1–28 above.
30. NOCO owns the NOCO Trademarks.
31. NOCO has registered the NOCO Trademarks with the United States Patent and Trademark Office.
32. The NOCO Trademarks are valid and subsisting trademarks in full force and effect.
33. Defendant willfully and knowingly used, and continues to use, the NOCO Trademarks in interstate commerce, including through its product listings on Amazon, for the purpose of advertising, promoting, and selling products without NOCO's consent.
34. Defendant's advertisements and promotions of products unlawfully using the NOCO Trademarks have been disseminated to the relevant purchasing public.
35. The products Defendant advertises, promotes, and sells using the NOCO Trademarks are not authorized for sale by NOCO.
36. Defendant's use of the NOCO Trademarks in connection with the unauthorized advertising, promotion, and sale of products misrepresents the nature, characteristics, qualities, and origin of Defendant's products because it suggests that the products are subject to NOCO's review and approval when, in fact, they are not.
37. Defendant's use of the NOCO Trademarks in connection with the unauthorized advertising, promotion, and sale of products is likely to cause consumer confusion, cause mistake, or deceive consumers because it suggests that the products Defendant offers for sale are sponsored by, approved by, or are otherwise connected with NOCO when, in fact, they are not.

38. Defendant's unauthorized and deceptive use of the NOCO Trademarks is material and likely to influence consumers to purchase the products it sells, as consumers are likely to believe that products Defendant advertises using the NOCO Trademarks are subject to NOCO's approval when, in fact, they are not.

39. As a proximate result of Defendant's actions, NOCO has suffered, and will continue to suffer, damage to its business, goodwill, reputation, and profits in an amount to be proven at trial.

40. NOCO is entitled to recover its damages caused by Defendant's infringement of the NOCO Trademarks and disgorge Defendant's profits from its willfully infringing sales and unjust enrichment.

41. NOCO is entitled to injunctive relief under 15 U.S.C. § 1116 because it has no adequate remedy at law for Defendant's infringement and, unless Defendant is permanently enjoined, NOCO will suffer irreparable harm.

42. NOCO is entitled to enhanced damages and attorneys' fees under 15 U.S.C. § 1117(a) because Defendant willfully, intentionally, maliciously, and in bad faith infringed on the NOCO Trademarks.

SECOND CAUSE OF ACTION

Trademark Infringement

15 U.S.C. § 1114

43. NOCO re-alleges the allegations set forth in paragraphs 1–42 above.

44. NOCO owns the NOCO Trademarks.

45. NOCO has registered the NOCO Trademarks with the United States Patent and Trademark Office.

46. The NOCO Trademarks are valid and subsisting trademarks in full force and effect.

47. Defendant willfully and knowingly used, and continues to use, the NOCO Trademarks in interstate commerce without NOCO's consent for the purpose of selling products.

48. Defendant's unauthorized sale of products using advertising that includes the NOCO Trademarks interferes with NOCO's ability to exercise control over the NOCO Trademarks.

49. Defendant's unauthorized sale of products using advertising that includes the NOCO Trademarks is likely to cause confusion, cause mistake, or deceive consumers because Defendant's use of the NOCO Trademarks suggests that the products Defendant offers for sale are sponsored or authorized by NOCO when, in fact, they are not.

50. Defendant's unauthorized use of the NOCO Trademarks has infringed and materially damaged the value of the NOCO Trademarks and caused significant damage to NOCO's business relationships.

51. As a proximate result of Defendant's actions, NOCO has suffered, and continues to suffer immediate and irreparable harm. NOCO has also suffered, and continues to suffer, damages, including, but not limited to, loss of business, goodwill, reputation, and profits in an amount to be proven at trial.

52. NOCO is entitled to recover its damages caused by Defendant's infringement of the NOCO Trademarks and disgorge Defendant's profits from Defendant's willfully infringing sales and unjust enrichment.

53. NOCO is entitled to injunctive relief under 15 U.S.C. § 1116 because it has no adequate remedy at law for Defendant's infringement and, unless Defendant is permanently enjoined, NOCO will suffer irreparable harm.

54. NOCO is entitled to enhanced damages and attorneys' fees under 15 U.S.C. § 1117(a) because Defendant willfully, intentionally, maliciously, and in bad faith infringed the NOCO Trademarks.

THIRD CAUSE OF ACTION
Violation of Ohio Uniform Deceptive Trade Practices Act,
Ohio Rev. Code §§ 4165.01, *et seq.*

55. NOCO re-alleges the allegations set forth in paragraphs 1–54 above.

56. This claim arises under the laws of the State of Ohio.

57. NOCO owns the NOCO Trademarks.

58. NOCO has registered the NOCO Trademarks with the United States Patent and Trademark Office.

59. The NOCO Trademarks are valid and subsisting trademarks in full force and effect.

60. NOCO is widely recognized as the designated source of goods bearing the NOCO Trademarks.

61. The products Defendant advertises, promotes, and sells using the NOCO Trademarks are not authorized for sale by NOCO.

62. Defendant's use of the NOCO Trademarks in connection with the unauthorized advertising, promotion, and sale of products suggests that the products are sponsored by, approved by, affiliated with, or connected with NOCO, which they are not.

63. Defendant's deceptive trade practices have caused and will continue to cause NOCO irreparable harm. NOCO is entitled to judgment enjoining and restraining Defendant from engaging in further deceptive practices.

PRAYER FOR RELIEF

WHEREFORE, NOCO prays for relief and judgment as follows:

A. Judgment in favor of NOCO and against Defendant in an amount to be determined at trial including, but not limited to, compensatory damages, statutory damages, treble damages, restitution, including disgorgement of profits, punitive damages, and pre-judgment and post-judgment interest, as permitted by law;

B. Preliminary and permanent injunctions enjoining Defendant and any employees, agents, servants, officers, representatives, directors, attorneys, successors, affiliates, assigns, any and all other entities owned or controlled by Defendant, and all of those in active concert and participation with Defendant (the "Enjoined Parties") as follows:

- i) Prohibiting the Enjoined Parties from using any of the NOCO Trademarks in any manner, including advertising on the Internet,
- ii) Requiring the Enjoined Parties to take all action to remove from the Enjoined Parties' websites any reference to any of the NOCO Trademarks;
- iii) Requiring the Enjoined Parties to take all action, including but not limited to, requesting removal from the Internet search engines (such as Google, Yahoo!, and Bing), to remove from the Internet any of the NOCO Trademarks associated with the Enjoined Parties or the Enjoined Parties' websites or storefronts;

- iv) Requiring the Enjoined Parties to take all action to remove unauthorized NOCO Trademarks from the Internet, including from www.amazon.com;
- C. An award of attorneys' fees, costs, and expenses; and
- D. Such other and further relief as the Court deems just, equitable and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: November 15, 2018

Respectfully submitted,

/s/ Katie L. Steiner

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