

Liza M. Walsh  
Hector D. Ruiz  
Katelyn O'Reilly  
Joseph L. Linares  
WALSH PIZZI O'REILLY FALANGA LLP  
One Riverfront Plaza  
1037 Raymond Boulevard, Suite 600  
Newark, New Jersey 07102  
Tel.: (973) 757-1100  
Fax: (973) 757-1090

Tonia A. Sayour  
Robert T. Maldonado (to be admitted *pro hac vice*)  
Benjamin Y. Han (to be admitted *pro hac vice*)  
COOPER & DUNHAM LLP  
30 Rockefeller Plaza  
New York, New York 10112  
Tel.: (212) 278-0400  
Fax: (212) 391-0525

*Attorneys for Plaintiff Telebrands Corp.  
(additional counsel listed on signature page)*

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

TELEBRANDS CORP., )  
 )  
 Plaintiff, ) Civil Action No. \_\_\_\_\_  
 )  
 v. )  
 ) JURY TRIAL DEMANDED  
 ALTAIR INSTRUMENTS, INC., )  
 )  
 Defendant. )  
 )

**COMPLAINT**

Plaintiff Telebrands Corp. (“Telebrands”), by and through its attorneys, for its Complaint against Defendant Altair Instruments, Inc. (“Altair” or “Defendant”), hereby alleges as follows:

**NATURE OF ACTION**

1. This is an action for a declaratory judgment that no claim of U.S. Patent No.

6,241,739 (“the ’739 Patent”), assigned to Altair, is infringed by products being marketed by Telebrands under the trademark DERMASUCTION.

### **PARTIES**

2. Plaintiff Telebrands is a corporation organized and existing under the laws of the State of New Jersey, having a place of business at 79 Two Bridges Road, Fairfield, New Jersey 07004.

3. On information and belief, Altair is a California corporation with a place of business at 1834 Palma Drive, Suite F, Ventura, California 93003. On information and belief, Altair is doing business throughout the United States and within the State of New Jersey.

### **JURISDICTION AND VENUE**

4. These claims arise under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, *et seq.*, and the Patent Laws of the United States, Title 35 of the United States Code, 35 U.S.C. § 1, *et seq.* Based on the allegations set forth herein, there is an actual and justiciable controversy between Telebrands and Defendant regarding the non-infringement of the ’739 Patent.

5. Jurisdiction of this Court is founded on 28 U.S.C. §§ 1331, 1338, and 2201-02.

6. Venue is proper in this Judicial District under 28 U.S.C. Sections 1391(b) and (c).

7. On information and belief, Altair regularly transacts and/or solicits business within this Judicial District and has purposefully availed itself of the privilege of conducting business in this Judicial District. On information and belief, Altair regularly sells and offers for sale products within this Judicial District over the Internet and through distributors to providers within this Judicial District. On information and belief, Altair sells and has sold its products with the knowledge that a substantial number of them will be sold and offered for sale in the State of New Jersey. Altair also sent a cease and desist letter to Telebrands in this Judicial District with respect to the

DERMASUCTION Product.

### **BACKGROUND**

8. Telebrands is a direct marketing company and is engaged in the business of marketing and selling a wide variety of consumer products in this Judicial District and elsewhere, through direct response advertising, catalogue, mail order, and internet sales, and through national retail stores.

9. For over thirty years, Telebrands has been a leading developer and marketer of consumer products. Telebrands is widely known through the retail industry for its success in driving retail sales through its nationwide advertising programs. For many years, Telebrands expended significant human and financial resources cultivating relationships with a wide variety of retailers, *e.g.*, large retail chains, catalogs, and retail websites, which buy its products.

10. Telebrands markets a handheld skincare product that removes blackheads and unclogs skin pores under the trademark DERMASUCTION. The DERMASUCTION Product is the subject of the cease and desist letter that Altair sent Telebrands.

11. On January 5, 2001, the '739 Patent, entitled "Microdermabrasion Device And Method Of Treating The Skin Surface," issued to Altair. Mr. Stephen H. Waldron ("Waldron") is named as the sole inventor on the '739 Patent. On information and belief, Waldron assigned his rights in the '739 Patent to Altair. The originally issued '739 Patent includes three independent claims and twelve dependent claims.

12. On August 22, 2005, a request for an *ex parte* reexamination of the '739 Patent, Reexamination Proceeding No. 90/007,683 ("the '683 Reexamination"), was filed. The United States Patent and Trademark Office ("USPTO") ordered reexamination of all claims and, on December 11, 2007, issued an *Ex Parte* Reexamination Certificate. The *Ex Parte* Reexamination Certificate shows that all three independent claims (*i.e.*, claims 1, 9, 12) and five dependent claims

(*i.e.*, claims 2, 6, 10, 11, and 12) were amended, two dependent claims (*i.e.*, claims 7 and 15) were cancelled, and claims 16-18 were added.

13. On July 2, 2014, another request for an *ex parte* reexamination of the '739 Patent, Reexamination Proceeding No. 90/013,284 ("the '284 Reexamination"), was filed. The USPTO again ordered reexamination of all patented claims (*i.e.*, claims 1-6, 8-14, and 16-18) and, on July 15, 2015, issued a second *Ex Parte* Reexamination Certificate. The second *Ex Parte* Reexamination Certificate shows that all four independent claims (*i.e.*, claims 1, 9, 12, and 16) were amended. A copy of the '739 Patent, including both reexamination certificates, is attached as Exhibit 1.

14. On October 10, 2018, counsel for Altaire sent Telebrands a cease and desist letter alleging that Telebrands' DERMASUCTION Product infringed several claims of the '739 Patent. A copy of the cease and desist letter is attached as Exhibit 2.

15. Because Defendant's cease and desist letter asserted that the DERMASUCTION Product infringes the '739 Patent, there is a substantial controversy between Telebrands and Defendant, whose legal interests are adverse and of sufficient immediacy and reality to warrant the issuance of a declaratory judgment as to whether Telebrands' DERMASUCTION Product infringes the '739 Patent.

16. The DERMASUCTION Product does not infringe any claim of the '739 Patent.

17. The independent claims of '739 Patent, *i.e.*, claims 1, 9, 12, and 16, each requires certain limitations that are missing from the DERMASUCTION Product. For example, claims 1, 9, and 16 are directed towards a device for performing microdermabrasion or a microdermabrasion procedure/process, and claim 12 is directed towards a method of performing microdermabrasion. During prosecution of the '284 Reexamination, Altaire distinguished microdermabrasion from other skin treatment procedures, such as exfoliation.

18. At the very least, the DERMASUCTION Product does not perform “microdermabrasion,” as required by all the claims of the ’739 Patent. Accordingly, because the DERMASUCTION Product does not include each and every element of the claims of the ’739 Patent, the DERMASUCTION Product does not infringe any claim of the ’739 Patent, literally or under the doctrine of equivalents.

**COUNT ONE**

**DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE ’739 PATENT**

19. Telebrands repeats and realleges all factual allegations made in the preceding paragraphs and incorporates them herein by reference.

20. Telebrands has not infringed and does not infringe, directly or indirectly, either literally or under the doctrine of equivalents, any claim of the ’739 Patent through the manufacture, use, sale, offer to sell, or importation of the DERMASUCTION Product.

21. Accordingly, Telebrands seeks a declaratory judgment, pursuant to 28 U.S.C. §§ 2201-02 that no claim of the ’739 Patent is infringed by Telebrands’ manufacture, use, sale, offer to sell, or importation of the DERMASUCTION Product.

22. Telebrands has no adequate remedy at law.

**PRAYER FOR RELIEF**

**WHEREFORE**, Telebrands demands judgment as follows:

- a. Entering judgment in Telebrands’ favor and against Defendant on its claims;
- b. Declaring that the DERMASUCTION Product does not infringe any claim of the ’739 Patent;
- c. Preliminarily and permanently enjoining Altair, its agents, factories, servants, employees and attorneys and all those acting in concert or participation with them from falsely representing or suggesting that the DERMASUCTION Product infringes the ’739 Patent or any

patent with patentably indistinct claims;

d. Declaring this case an exceptional case and awarding Telebrands its attorneys' fees;

and

e. Granting such other and further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

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

Respectfully submitted,

Dated: November 16, 2018

By: s/Liza M. Walsh

Liza M. Walsh  
Hector D. Ruiz  
Katelyn O'Reilly  
Joseph L. Linares  
WALSH PIZZI O'REILLY FALANGA LLP  
One Riverfront Plaza  
1037 Raymond Blvd., Suite 600  
Newark, New Jersey 07102  
Tel.: (973) 757-1100  
Fax: (973) 757-1090

Tonia A. Sayour  
Robert T. Maldonado (to be admitted *pro hac vice*)  
Benjamin Y. Han (to be admitted *pro hac vice*)  
COOPER & DUNHAM LLP  
30 Rockefeller Plaza  
New York, New York 10112  
Tel.: (212) 278-0400  
Fax: (212) 391-0525  
tsayour@cooperdunham.com  
rmaldonado@cooperdunham.com  
bhan@cooperdunham.com

*Attorneys for Plaintiff Telebrands Corp.*

**RULE 11.2 CERTIFICATION**

Plaintiff Telebrands Corp. by and through their undersigned counsel, hereby certify pursuant to Local Civil Rule 11.2 that the matter in controversy in the present action is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

Respectfully submitted,

Dated: November 16, 2018

By: s/Liza M. Walsh  
Liza M. Walsh  
Hector D. Ruiz  
Katelyn O'Reilly  
Joseph L. Linares  
WALSH PIZZI O'REILLY FALANGA LLP  
One Riverfront Plaza  
1037 Raymond Blvd., Suite 600  
Newark, New Jersey 07102  
Tel.: (973) 757-1100  
Fax: (973) 757-1090

Tonia A. Sayour  
Robert T. Maldonado (to be admitted *pro hac vice*)  
Benjamin Y. Han (to be admitted *pro hac vice*)  
COOPER & DUNHAM LLP  
30 Rockefeller Plaza  
New York, New York 10112  
Tel.: (212) 278-0400  
Fax: (212) 391-0525  
tsayour@cooperdunham.com  
Rmaldonado@cooperdunham.com  
bhan@cooperdunham.com

*Attorneys for Plaintiff Telebrands Corp.*

**CERTIFICATION PURSUANT TO L. CIV. R. 201.1**

Pursuant to Local Civil Rule 201.1, Telebrands, through its attorneys, certifies that the above captioned matter is not subject to compulsory arbitration.

Respectfully submitted,

Dated: November 16, 2018

By: s/Liza M. Walsh  
Liza M. Walsh  
Hector D. Ruiz  
Katelyn O'Reilly  
Joseph L. Linares  
WALSH PIZZI O'REILLY FALANGA LLP  
One Riverfront Plaza  
1037 Raymond Blvd., Suite 600  
Newark, New Jersey 07102  
Tel.: (973) 757-1100  
Fax: (973) 757-1090

Tonia A. Sayour  
Robert T. Maldonado (to be admitted *pro hac vice*)  
Benjamin Y. Han (to be admitted *pro hac vice*)  
COOPER & DUNHAM LLP  
30 Rockefeller Plaza  
New York, New York 10112  
Tel.: (212) 278-0400  
Fax: (212) 391-0525  
tsayour@cooperdunham.com  
Rmaldonado@cooperdunham.com  
bhan@cooperdunham.com

*Attorneys for Plaintiff Telebrands Corp.*