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26 **UNITED STATES DISTRICT COURT**
27 **NORTHERN DISTRICT OF CALIFORNIA**

28 SHARPER IMAGE CORPORATION, a
Delaware corporation,

Plaintiff,

v.

BROOKSTONE COMPANY, INC., a New
Hampshire corporation,

Defendant.

Case No. _____

COMPLAINT FOR VIOLATION
OF 35 U.S.C. § 271

Demand for Jury Trial

1 Plaintiff Sharper Image Corporation (“Sharper Image”), for its complaint against defendant
2 Brookstone Company, Inc. (“Brookstone”), alleges as follows:

3 **The Parties**

4 1. Sharper Image is a Delaware corporation with its principal place of business at 650
5 Davis Street, San Francisco, California.

6 2. Brookstone is a New Hampshire corporation with its principal place of business at 17
7 Riverside Street, Nashua, New Hampshire. Brookstone has at least three retail stores in this district
8 and at all times material, committed the acts complained of herein in this district.

9 **Venue**

10 3. Under 28 U.S.C. § 1391(c), venue lies in this judicial district because Brookstone
11 conducts continuous and systematic business in this district, advertises in this district, and/or has
12 caused the injuries complained of herein in this district.

13 **Sharper Image’s Business**

14 4. Sharper Image was founded in 1977 and is a leading specialty retailer/product
15 developer that is nationally and internationally renowned as the source of innovative, high quality
16 products that are useful, entertaining, and designed to make life easier and more enjoyable.

17 5. Over the years, Sharper Image has built an unparalleled multi-channel distribution
18 system: It sells products via catalogs, the Internet, nationally aired infomercials, direct mailings,
19 wholesale to department stores including Dillards, Linens and Things, Circuit City, and Lord &
20 Taylor, and in more than 140 Sharper Image retail stores throughout the United States and Europe.

21 6. Sharper Image has invested multiple millions of dollars developing a proprietary line
22 of products, known as Sharper Image Design® products. Sharper Image Design® products form a
23 substantial portion of the foundation of the company’s success. Over the past few years and
24 continuing to date, a significant percentage of Sharper Image’s sales were attributable to these
25 products, which are conceived of, designed, engineered, and marketed solely by Sharper Image.
26 Certain Sharper Image Design® products, such as the Ionic Breeze® product line, have significantly
27 contributed to this success.

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1 7. Sharper Image Design® products are unique and have no equal in the marketplace.
2 Nearly all of these products incorporate patented technologies, and represent clear value to
3 customers because of their imaginative, problem-solving usefulness. Some of its best-sellers are
4 Sharper Image Design® Ionic Breeze® products, including the Ionic Breeze® Quadra® Air Purifier,
5 the Ionic Breeze® Quadra® Compact Air Purifier, the Ionic Breeze® GP Air Purifier with
6 Ultraviolet Germicidal Protection, and several other Ionic Breeze® products having unique
7 consumer applications.

8 **Sharper Image’s Ionic Breeze® Quadra® Air Purifier and Ionic Breeze® GP**

9 8. In or around 1998, Sharper Image introduced to the marketplace its Sharper Image
10 Design® Ionic Breeze® air purifiers, including the first generation of its Ionic Breeze® Quadra®
11 Air Purifier (“IBQ”), and since then sales have continually, dramatically expanded.

12 9. Sharper Image’s IBQ is innovative and unique because it purifies air without the use
13 of fans or costly filters—instead, patented Ionic Breeze® technology uses wire electrodes to charge
14 airborne particulates, which are then attracted to oppositely-charged collection plates. Rather than
15 purchase costly replacement filters, users can easily and continuously clean the collection grid by
16 simply wiping it with a soft towel. Consumers have come to recognize Sharper Image as the
17 exclusive source of filter-less, silent air purifiers.

18 10. The Ionic Breeze® GP uses the same air purifying technology as the IBQ, but adds an
19 ultraviolet germicidal lamp within the product’s housing that treats the air flow created by the
20 electrodes. The lamp destroys bacteria and other microorganisms.

21 **Brookstone’s Business**

22 11. Brookstone is a nationwide retailer and competitor of Sharper Image. Brookstone
23 describes itself as “a specialty retailer that operates 270 Brookstone Brand stores nationwide and in
24 Puerto Rico.” Brookstone also operates three stores under the Gardeners Eden Brand, and a direct
25 marketing business that consists of three catalog titles—Brookstone, Hard-to-Find Tools and
26 Gardeners Eden—as well as e-commerce web sites at <http://www.brookstone.com/> and
27 <http://www.gardenerseden.com>.

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1 12. Recently, Brookstone’s CEO, Michael Anthony remarked “[t]hroughout 2003, we
2 brought to market an array of high quality, functional and unique products that our customers found
3 relevant to their lives.” Mr. Anthony also claimed, “[p]laced front and center, our products set us
4 apart from other retailers”

5 13. Brookstone has a history of patterning itself after Sharper Image. Over the past
6 several years, Brookstone has intermittently introduced products such as CD/DVD racks, motorized
7 tie racks, massagers, an ionic air purifier called the ESP and others that are imitations of Sharper
8 Image Design® products.

9 **Brookstone’s Pure-Ion™ UV Air Purifier**

10 14. Near the end of 2003 and the beginning of 2004, Brookstone introduced an air
11 purifier called the “Pure-Ion™ UV Air Purifier.”

12 15. In operation and/or technological design, the Pure-Ion™ UV Air Purifier is identical
13 to Sharper Image’s patented Ionic Breeze® GP.

14 16. On information and belief, Brookstone was aware of the existence of Sharper Image’s
15 patents protecting its ionic products—Sharper Image is the exclusive source of filter-less air purifiers
16 and it prominently marks its products with patent numbers. Sharper Image’s ionic breeze products
17 have been on the market for several years and are well known to the public and Brookstone.

18 17. Because Brookstone was aware of the existence of Sharper Image’s patents protecting
19 its ionic products, its infringement is willful.

20 18. Since Brookstone competes directly with Sharper Image in retail stores, via catalog
21 mailings, and through the Internet, Brookstone’s disregard of Sharper Image’s patent rights will
22 result in irreparable harm to Sharper Image unless enjoined.

23 **Count I - Patent Infringement of U.S. Patent No. 6,713,026 – 35 U.S.C. § 271**

24 19. Sharper Image realleges and incorporates by reference the allegations contained in
25 paragraphs 1 through 18.

26 20 This action arises under the patent laws of the United States, Title 35 of the United
27 States Code.

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1 21. On March 30, 2004, United States Letters Patent No. 6,713,026 (**Exhibit A**,
2 hereinafter “the ‘026 patent”) was duly and legally issued for an invention entitled “Electro-Kinetic
3 Air Transporter-Conditioner.”

4 22. The ‘026 patent, along with other patents, protects Sharper Image’s Ionic Breeze®
5 technology, including the IBQ and Ionic Breeze® GP.

6 23. Brookstone makes, uses, offers to sell, sells and/or imports the Pure-Ion™ UV Air
7 Purifier.

8 24. Brookstone is infringing at least one claim of the ‘026 patent by making, using,
9 selling, offering for sale and/or importing for sale the Pure-Ion™ UV Air Purifier, or are inducing or
10 have induced the infringement of the ‘026 patent.

11 25. Brookstone will continue to commit such acts of infringement unless enjoined by this
12 Court.

13 26. Brookstone has continued to commit one or more of the acts described in the
14 preceding paragraphs with full knowledge of Sharper Image’s patents.

15
16 WHEREFORE, Sharper Image prays for judgment as follows:

17 A. That this Court adjudge and decree that Brookstone has infringed one or more claims
18 of the ‘026 patent, and that such infringement was willful and that this case is exceptional under 35
19 U.S.C. § 285;

20 B. That this Court permanently enjoin Brookstone, its officers, agents, servants,
21 employees, attorneys, successors, and assigns, and all others in active concert or participation with it,
22 from continued infringement of the ‘026 patent;

23 C. That Sharper Image be awarded damages against Brookstone for its infringement of
24 the ‘026 patent and such an award be trebled under 35 U.S.C. § 284;

25 D. An award for Sharper Image’s costs and attorneys’ fees; and

26 E. Any other relief this Court deems just and proper.

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JURY DEMAND

Plaintiff, Sharper Image Corporation, requests a trial by jury of all claims so triable.

DATED: April 21, 2004

BELL, BOYD & LLOYD

Alan L. Barry
Amy G. O'Toole
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By /s/ Gregory S. Cavallo
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SHARPER IMAGE CORPORATION