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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SHARPER IMAGE CORPORATION,

Plaintiff,

v.

TARGET CORPORATION, IONIC PRO, LLC,
IDEAL PRODUCTS, LLC, SYLMARK, INC.,
SYLMARK, LLC, QWIK COOK, INC. d/b/a
HOME TRENDS, FACTORIES2U, LLC,
CHAIM MARK BESS and PETER SPIEGEL,

Defendants.

Case No. 04-0824 CW

**THIRD AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF
ARISING OUT OF:**

1. Patent Infringement-35 U.S.C. § 271;
2. Trade Dress Infringement-15 U.S.C. § 1125; and
3. Unfair Competition-Cal. Bus. & Prof. Code § 17200

[DEMAND FOR JURY]

1 Plaintiff Sharper Image Corporation (“Sharper Image”), for its Third Amended Complaint
2 against defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc.,
3 Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel, alleges as
4 follows:

5 **Jurisdiction**

6 1. Pursuant to 28 U.S.C. §§ 1331 and 1338, this Court has jurisdiction over the federal
7 claims alleged herein. Pursuant to 28 U.S.C. § 1367, this Court has jurisdiction over the state law
8 claim because it arises from a nucleus of operative facts common to the federal claims.

9 **The Parties**

10 2. Sharper Image is a Delaware corporation with its principal place of business at
11 650 Davis Street, San Francisco, California.

12 3. Target is a Minnesota corporation with its principal place of business at 777 Nicollet
13 Mall, Minneapolis, Minnesota. Target has several retail stores in this district and at all times
14 material, committed the acts complained of herein in this district.

15 4. Ionic Pro, LLC is a Delaware limited liability company with its principal place of
16 business at 4929 Wilshire Blvd, Suite 500, Los Angeles, California. At all times material to this
17 action, Ionic Pro, LLC committed the acts complained of herein in this district.

18 5. Ideal Products, LLC is a Nevis (Offshore) limited liability company with its principal
19 place of business at 4929 Wilshire Blvd, Suite 500, Los Angeles, California (the same address as
20 Ionic Pro, LLC). At all times material to this action, Ideal Products, LLC committed the acts
21 complained of herein in this district.

22 6. Sylmark, Inc. is a Delaware corporation with its principal place of business at
23 4929 Wilshire Blvd, Suite 500, Los Angeles, California (the same address as Ionic Pro, LLC and
24 Ideal Products, LLC). At all times material to this action, Sylmark, Inc. committed the acts
25 complained of herein in this district.

26 7. Sylmark, LLC is a Delaware limited liability company with principal place of
27 business at 4929 Wilshire Blvd, Suite 500, Los Angeles, California (the same address as Ionic
28 Pro, LLC, Ideal Products, LLC, and Sylmark, Inc.). At all times material to this action,

1 Sylmark, LLC committed the acts complained of herein in this district.

2 8. Qwik Cook, Inc. d/b/a Home Trends is a New York corporation with its principal
3 place of business at 1450 Lyell Avenue, Rochester, NY 14606. At all times material to this action,
4 Home Trends committed the acts complained of herein in this district.

5 9. Factories2u, LLC is a California corporation with its principal place of business at
6 9704 Royce Ct, Beverly Hills, CA 90210. At all times material to this action, Factories2u, LLC
7 committed the acts complained of herein in this district.

8 10. Chaim Mark Bess is an individual Israeli resident who until recently was a California
9 resident. At all times material to this action, Chaim Mark Bess was the President of Ideal Products,
10 LLC, President of Sylmark, Inc., and the Managing Member of Sylmark LLC. At all times material
11 to this action, Chaim Mark Bess committed the acts complained of herein in this district.

12 11. Peter Spiegel is an individual California resident and the former Chief Strategic
13 Officer of Ionic Pro, LLC. In 2005, Peter Spiegel became the Managing Member of Sylmark LLC.
14 At all times material to this action, Peter Spiegel committed the acts complained of herein in this
15 district.

16 Venue

17 12. Under 28 U.S.C. § 1391, venue lies in this judicial district because Defendants
18 conduct continuous and systematic business in this district, advertise in this district, are subject to
19 personal jurisdiction in this district, have caused the injuries complained of herein in this district,
20 and/or are present in this district.

21 Sharper Image's Business

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

25 14. Over the years, Sharper Image has built an unparalleled multi-channel
26 distribution system: It sells products via catalogs, the Internet, nationally aired infomercials, direct
27 mailings, wholesale to department stores including Bed, Bath & Beyond, Linens and Things, Circuit
28

1 City, and Lord & Taylor, and in more than 175 Sharper Image retail stores throughout the United
2 States and Europe.

3 15. Sharper Image has invested multiple millions of dollars developing a proprietary line
4 of products, known as Sharper Image Design® products. Sharper Image Design® products form a
5 substantial portion of the foundation of the company's success. Over the past few years and
6 continuing to date, a significant percentage of Sharper Image's sales were attributable to these
7 products, which are conceived of, designed, engineered, and marketed solely by Sharper Image.
8 Certain Sharper Image Design® products, such as the Ionic Breeze® product line, have significantly
9 contributed to this success.

10 16. Sharper Image Design® products are unique and have no equal in the marketplace.
11 Nearly all of these products incorporate patented technologies, and represent clear value to
12 customers because of their imaginative, problem-solving usefulness. Some of its best-sellers are
13 Sharper Image Design® Ionic Breeze® products, including the Ionic Breeze® Quadra® Air Purifier,
14 the Ionic Breeze® Quadra® Compact Air Purifier, the Ionic Breeze® with Ultraviolet Germicidal
15 Protection, and several other Ionic Breeze® products having unique consumer applications.

16 **Sharper Image's Ionic Breeze® Quadra® Air Purifier**

17 17. In or around 1998, Sharper Image introduced to the marketplace its Sharper Image
18 Design® Ionic Breeze® air purifiers, including the first generation of its Ionic Breeze® Air Purifier
19 ("IBQ"), and since then sales have continually, dramatically expanded.

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

26 **The IBQ's Distinctiveness**

27 19. Over the past few years and continuing to date, Sharper Image has expended multiple
28 millions annually in advertising, a significant portion of which was devoted to the IBQ and its

1 promotion through radio, television infomercials, and product mailers. Sharper Image publishes at
2 least one catalog per month and oftentimes publishes additional catalogs for holidays. For example,
3 during fiscal 2002, Sharper Image mailed approximately 78 million catalogs to over 16 million
4 individuals. Sharper Image devotes several pages of its catalog to the Ionic Breeze® product line
5 and specifically to the IBQ. For instance, most of the catalog issues in 2002 contained at least a two-
6 page advertisement of the IBQ. It also frequently sends single product mailers featuring the IBQ.

7 20. Sharper Image is so devoted to the marketing and advertising of the IBQ and other
8 Ionic Breeze® air purifier products that, since introduction into the market, it has invested tens of
9 millions of dollars promoting these products. In 2002, the Company increased spending on its
10 television advertising program, which includes infomercials on a number of its most popular
11 products, one of them being the IBQ. Sharper Image is also an avid radio advertiser of the IBQ
12 product, with thousands of radio spots per year advertising this product.

13 21. Not surprisingly, Sharper Image Design® products (and particularly the IBQ) enjoy a
14 high degree of unsolicited media coverage. For example, in a recent issue of *Home Remodeling* (a
15 *Woman's Day* publication), an article featured portable air purifiers, including the IBQ. It listed
16 "Sharper Image" in boldface, and described the IBQ as having a "discreet profile" and "paired down
17 design." In addition, in a recent episode of the popular, prime-time television show *Will & Grace*,
18 the sub-plot involved the main characters browsing a Sharper Image retail store. As aired, the scene
19 televised numerous "shots" of various IBQ air purifiers. Finally, the product was similarly featured
20 in a recent episode of another television show, *Sex & the City*.

21 22. Through these efforts, as well as the universal satisfaction of consumers, Sharper
22 Image has created a market of consumers receptive to the concept of non-fan-driven indoor air
23 purifiers. Prior to Sharper Image's introduction of the Ionic Breeze® product line, this market did
24 not exist. Defendants' deceptive and unlawful practices are a blatant attempt to profit from Sharper
25 Image's creative and expensive efforts.

26 23. The eye-catching design of the IBQ is unique for ionic air purifiers. For example:

- 27
28 (a) While other ionic purifiers are housed in squat, rectangular boxes, the IBQ is
an upright, rounded tower.

- (b) The unit has a sleek, modern look that blends with most room designs.
- (c) Extending across the front and back of the IBQ are approximately 50 sleek, smooth, horizontal vents that are parted at their middle.
- (d) The top of the unit is slanted and has a handle for the removable, internal collection rod. This handle is attached to the spherical top of the internal collection array.
- (e) The unit's operational controls are situated at the top of the unit; these controls feature three cleaning levels ("low" "medium" and "high") indicated by LED lights. By pressing a button, users can toggle between cleaning levels, as well as turn the unit on or off.
- (f) A red LED light labeled "cleaning indicator" alerts users when the device's internal collection array needs to be cleaned.

Defendants' Businesses

24. Target is a national retail merchandiser competitive with national and local department stores, specialty stores, independent retail stores, and Internet and catalog businesses. It sells products via nationally aired commercials, direct mailings, and in more than 1225 stores in 47 states, including 184 stores in this state. In addition, it maintains a Web site, www.target.com, through which consumers may purchase most, if not all, of its goods.

25. Qwik Cook, Inc. d/b/a Home Trends is a mail order company specializing in cleaning and maintenance items. Qwik Cook offers its products through its catalog, as well as its fully interactive Web site, www.hometrendscatalog.com.

26. Factories2u, LLC maintains a fully interactive Web site, www.factories2u.com, where it sells mostly name-brand factory refurbished equipment and products. However, through this Web site, Factories2u, LLC is selling new (not refurbished) Ionic Pro ionic air purifiers.

27. Ideal Products, LLC is a marketing company/distributor offering an eclectic mix of "innovative" consumer products. In or around March 2004, at the International Home and Housewares Show in Chicago, Illinois, Ideal Products, LLC participated as an exhibitor and maintained a booth that displayed, among other products, the Ionic Pro air purifier. Upon information and belief, Ideal Products, LLC has sold the Ionic Pro air purifier. Chaim Mark Bess was Ideal Products, LLC's President and, on information and belief, was the active, moving force behind Ideal Products, LLC's infringement and/or unfair competition.

1 28. Ionic Pro, LLC is a retailer of air purification systems, including the Ionic Pro
2 portable air purifier. Peter Spiegel is Ionic Pro, LLC's Chief Strategic Officer and, on information
3 and belief, is the active, moving force behind Ionic Pro, LLC's infringement and/or unfair
4 competition. Through at least the Target Web site, Home Trends catalog, www.factories2u.com,
5 www.factoryprices4u.com, and many other distributors and retailers Ionic Pro, LLC is selling the
6 Ionic Pro ionic air purifier.

7 29. Ionic Pro, LLC, Sylmark, LLC and Sylmark, Inc. are affiliated companies and are
8 located at the same address. On information and belief, Sylmark, LLC is the parent of Ionic Pro,
9 LLC. On information and belief, Sylmark, Inc. provides managerial services for all Sylmark-related
10 LLCs, including Sylmark, LLC and Ionic Pro, LLC. On information and belief, Sylmark, LLC
11 applied to Underwriters Laboratories to obtain "UL" certification for the Ionic Pro air purifier
12 product. On information and belief Sylmark, Inc. and Sylmark, LLC are participating in, rendering
13 assistance and facilitating the infringement acts of Ionic Pro, LLC. On information and belief,
14 Sylmark, LLC and Sylmark, Inc. each receive a percentage of the revenue of the Ionic Pro ionic air
15 purifier sales.

16 **Defendants' Ionic Pro Air Purifier**

17 30. On or about February or March 2004, Sharper Image discovered an ionic air
18 purifier—the "Ionic Pro"—being sold through Target, Home Trends catalog, and
19 www.factories2u.com, that appears almost identical to the IBQ.

20 31. On its housing, the Ionic Pro features a sticker which states, "Compare the quality,
21 features, and price of the IONIC PRO Ionic Air Purifier to the Sharper Image Ionic Breeze Quadra
22 and you will GO WITH THE PRO!" Knowing they had unlawfully appropriated the trade dress and
23 likeness of the IBQ, and indicative of their true intent to imitate and copy Sharper Image, Defendants
24 sought to "insulate" themselves by burying an inconspicuous disclaimer statement in fine print at the
25 bottom of the sticker, which states: "Ionic Breeze and Quadra are registered trademarks of Sharper
26 Image Corporation. The Ionic Pro product and Ionic Pro, LLC are not associated with Sharper
27 Image Corporation." The reverse side of the Ionic Pro's product packaging includes the same "non-
28 affiliation" disclaimer.

1 32. On or about October 2005, Sharper Image discovered an ionic air purifier being
2 offered for sale in the United States known as the “Ionic Pro Compact.” Recently, Sharper Image
3 discovered Ionic Pro, LLC, Sylmark, LLC, Sylmark, Inc., and Ideal Products, LLC likewise are
4 selling the Ionic Pro Compact product.

5 33. The Ionic Pro’s functioning is overtly copied from the IBQ. They use similar ionic
6 technology to attract air-borne particles to metal collection rods and do not use a replaceable filter.
7 In imitation of the IBQ, the Ionic Pro (first generation) utilizes wire electrodes as well as bead-
8 cleaner mechanisms that slide along the wire electrodes.

9 34. In appearance, the Ionic Pro is plainly copied after the IBQ:

- 10 (a) Their structural design is a vertical, upright, rounded column.
- 11 (b) They have approximately 50 horizontal vents extending across the front and
12 back of the unit.
- 13 (c) As with the IBQ, the tops of the devices are slanted and house the handle for
14 the removable, internal collection array, as well as the units’ operational
15 controls. The handle on the devices’ internal, removable collection array is
16 oval-shaped.
- 17 (d) The devices feature three cleaning levels (“low” “medium” and “high”)
18 indicated by LED lights.
- 19 (e) Identical to the IBQ, a red LED light labeled “clean” alerts users when the
20 devices’ internal collection array needs to be cleaned.

21 35. On information and belief, Defendants were aware of the existence of Sharper
22 Image’s patents protecting its ionic products—Sharper Image is the exclusive source of filter-less air
23 purifiers and it prominently marks its products with patent numbers. Sharper Image’s IBQ products
24 have been on the market for several years and are well known to the public and Defendants.

25 36. Because Defendants were aware of the existence of Sharper Image’s patents
26 protecting its ionic products, their infringement is willful.

27 37. Defendants’ actions are likely to cause confusion among consumers in the
28 marketplace, implying that Defendants and/or the Ionic Pro have a commercial relationship,
association, or affiliation with Sharper Image and its IBQ.

38. Unless enjoined, Defendants' disregard of Sharper Image's rights will result in irreparable harm to Sharper Image.

Count I - Patent Infringement of U.S. Patent No. 6,709,484 – 35 U.S.C. § 271

(Against Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc., Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel)

39. Sharper Image realleges and incorporates by reference the allegations contained in paragraphs 1 through 38.

40. This action arises under the patent laws of the United States, Title 35 of the United States Code.

41. On March 23, 2004, United States Letters Patent No. 6,709,484 (**Exhibit A**, hereinafter "the '484 patent") was duly and legally issued for an invention entitled "Electrode Self-Cleaning Mechanism for Electro-Kinetic Air Transporter Conditioner Devices."

42. The '484 patent, along with other patents, protects Sharper Image's Ionic Breeze® technology, including the IBQ.

43. Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc., Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel make, use, offer to sell, sell and/or import the Ionic Pro air purifier, or enable others to commit such acts.

44. Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc., Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel are infringing at least one claim of the '484 patent by making, using, selling, offering for sale and/or importing for sale the Ionic Pro air purifier, or are inducing or have induced the infringement of the '484 patent.

45. Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc., Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel will continue to commit such acts of infringement unless enjoined by this Court.

46. Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc., Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel have

1 continued to commit one or more of the acts described in the preceding paragraphs with full
2 knowledge of Sharper Image's patents.

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

4 **(Against Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc.,**
5 **Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel)**

6 47. Sharper Image realleges and incorporates by reference the allegations contained in
7 paragraphs 1 through 46.

8 48. This action arises under the patent laws of the United States, Title 35 of the United
9 States Code.

10 49. On March 30, 2004, United States Letters Patent No. 6,713,026 (**Exhibit B**,
11 hereinafter "the '026 patent") was duly and legally issued for an invention entitled "Electro-Kinetic
12 Air Transporter-Conditioner."

13 50. The '026 patent, along with other patents, protects Sharper Image's Ionic Breeze®
14 technology, including the IBQ.

15 51. Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc.,
16 Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel make, use,
17 offer to sell, sell and/or import the Ionic Pro air purifier, or enable others to commit such acts.

18 52. Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc.,
19 Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel are
20 infringing at least one claim of the '026 patent by making, using, selling, offering for sale and/or
21 importing for sale the Ionic Pro air purifier, or are inducing or have induced the infringement of the
22 '026 patent.

23 53. Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc.,
24 Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel will
25 continue to commit such acts of infringement unless enjoined by this Court.

26 54. Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc.,
27 Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel have
28

1 continued to commit one or more of the acts described in the preceding paragraphs with full
2 knowledge of Sharper Image's patents.

3 **Count III- Design Patent Infringement of U.S. Patent No. Des. 433,494 – 35 U.S.C. § 271**

4 **(Against Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc.,**
5 **Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel)**

6 55. Sharper Image realleges and incorporates by reference the allegations contained in
7 paragraphs 1 through 54.

8 56. This action arises under the patent laws of the United States, Title 35 of the United
9 States Code.

10 57. On November 7, 2000, United States Letters Patent No. Des. 433,494 (**Exhibit C**,
11 hereinafter "the '494 patent") was duly and legally issued for an invention entitled "Air Purifier."

12 58. Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc.,
13 Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel make, use,
14 offer to sell, sell and/or import air purifiers under the trade name Ionic Pro, or enables others to
15 commit such acts.

16 59. Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc.,
17 Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel are
18 infringing the claim of the '494 patent by making, using, selling, offering for sale and/or importing
19 for sale the Ionic Pro air purifier, or are inducing or have induced the infringement of the '494
20 patent.

21 60. Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc.,
22 Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel will
23 continue to commit such acts of infringement unless enjoined by this Court.

24 61. Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc.,
25 Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel have
26 continued to commit one or more of the acts described in the preceding paragraphs with full
27 knowledge of Sharper Image's patents.

Count IV – Trade Dress Infringement – 15 U.S.C. § 1125

**(Against Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc.,
Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel)**

62. Sharper Image realleges and incorporates by reference the allegations contained in paragraphs 1 through 61.

63. The total image of the IBQ, including its shape and product design, constitutes protectable trade dress.

64. The IBQ's trade dress is non-functional—it is not essential to the product's purpose and it is not dictated by concern for cost efficiency.

65. The IBQ's trade dress is distinctive; it identifies Sharper Image as the single source of the product, thereby distinguishing it from other products. Additionally, over the years, the trade dress has acquired secondary meaning as, more and more, the consuming public has come to associate the sleek, slender, vertical, upright-tower design with Sharper Image.

66. Defendants' Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc., Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel use of a trade dress similar to that of the IBQ is likely to cause confusion among consumers.

67. Defendants' Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc., Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel actions constitute trade dress infringement in violation of the Lanham Act, 15 U.S.C. § 1125(a). Sharper Image has been and will continue to be injured as a result of Defendants' conduct. Sharper Image has no adequate remedy at law for these injuries. Unless Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc., Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel are restrained by this Court from continuing to infringe the IBQ's trade dress, these injuries will continue to accrue.

Count V - Unfair Competition - Cal. Bus. & Prof. Code § 17200

(Against Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc., Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel)

68. Sharper Images realleges and incorporates by reference the allegations contained in paragraphs 1 through 67.

69. Defendants' deliberate copying and imitation of the IBQ is an act of unfair competition, in violation of section 17200 of the California Business & Professions Code, defined therein to mean "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

70. Defendants have engaged in unfair competition by the acts complained of herein and have caused Sharper Image substantial injury. Sharper Image has no adequate remedy at law for these injuries. Unless Defendants are restrained by this Court from continuing their acts of unfair competition, these injuries will continue to accrue.

PRAYER FOR RELIEF

WHEREFORE, Sharper Image prays for judgment as follows:

A. That this Court adjudge and decree that Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc., Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel have infringed or have induced infringement of the claims of the '484, '026, and '494 patents, and that such infringement was willful and that this case is exceptional under 35 U.S.C. § 285;

B. That this Court permanently enjoin Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc., Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel their officers, agents, servants, employees, attorneys, successors, and assigns, and all others in active concert or participation with them, from continued infringement of the '484, '026, and '494 patents;

C. That Sharper Image be awarded the profits of Defendants Target Corporation, Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc., Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and Peter Spiegel under 35 U.S.C. § 289;

1 D. That Sharper Image be awarded damages against Defendants Target Corporation,
2 Ionic Pro, LLC, Ideal Products, LLC, Sylmark, Inc., Sylmark, LLC, Qwik Cook, Inc., Factories2u,
3 LLC, Chaim Mark Bess and Peter Spiegel for infringement of the '484, '026, and '494 patents, and
4 that such an award be trebled under 35 U.S.C. §§ 284;

5 E. An order finding Defendants Target Corporation, Ionic Pro, LLC, Ideal Products,
6 LLC, Sylmark, Inc., Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim Mark Bess and
7 Peter Spiegel have engaged in trade dress infringement in violation of 15 U.S.C. § 1125(a);

8 F. That this Court permanently enjoin Defendants Target Corporation, Ionic Pro, LLC,
9 Ideal Products, LLC, Sylmark, Inc., Sylmark, LLC, Qwik Cook, Inc., Factories2u, LLC, Chaim
10 Mark Bess and Peter Spiegel their officers, agents, servants, employees, attorneys, successors, and
11 assigns, and all others in active concert or participation with them, from continued trade dress
12 infringement in violation of 15 U.S.C. § 1125;

13 G. That Sharper Image be awarded damages against Defendants under 15 U.S.C. § 1117;

14 H. An order finding Defendants have engaged in unfair competition in violation of
15 § 17200 of the California Business and Professions Code;

16 I. That this Court permanently enjoin Defendants, their officers, agents, servants,
17 employees, attorneys, successors, and assigns, and all others in active concert or participation with
18 them, from continued unfair competition in violation of § 17200;

19 J. An order disgorging Defendants from profits for violation of § 17200;

20 K. An award for Sharper Image's costs and attorneys' fees; and

21 L. Any other relief this Court deems just and proper.

JURY DEMAND

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

DATED: April 3, 2006.

SHARPER IMAGE CORPORATION, Plaintiff

By: /s/ Alan L. Barry (electronically signed and filed)
e. robert (bob) wallach, esq.
Lawyer Counselor
Law Offices of e. robert (bob) wallach, P.C.

Alan L. Barry
Amy G. O'Toole
Bell, Boyd & Lloyd, LLC

David L. Aronoff (SBN 152606)
Gayle I. Jenkins (SBN 168962)
Thelen Reid & Priest LLP

CERTIFICATE OF SERVICE

I am a citizen of the United States of America, and I am employed in Chicago, Illinois. I am over the age of 18 and not a party to the within action. My business address is 70 West Madison Street, Suite 3300, Chicago, Illinois 60602.

On April 3, 2006, I served **Plaintiff Sharper Image Corporation's Third Amended Complaint** by electronic mail on the parties or their counsel shown below:

Morgan Chu
Jonathan Kagan
Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067-4276

/s/ Alan L. Barry (electronically signed)
Alan L. Barry