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Attorneys for Plaintiff Sharper Image Corporation

1 **UNITED STATES DISTRICT COURT**

2 **NORTHERN DISTRICT OF CALIFORNIA**

3 SHARPER IMAGE CORPORATION, a  
Delaware corporation,

4 Plaintiff,

5 v.

6 MASTER HOUSEHOLD, INC., a California  
corporation; G D COMMERCE  
7 INTERNATIONAL CO. d/b/a MIDEA MASTER  
DISTRIBUTION, INC., a California corporation,  
8 BLUEBARGAIN, INC., a California corporation,  
and DOES ONE through TEN inclusive,

9 Defendants.

Case No C-03-03257 RMW

**FIRST AMENDED COMPLAINT FOR  
VIOLATIONS OF:**

- 1 **15 U.S.C. § 1125;**  
2 **CAL. BUS. & PROF. CODE § 17200;**  
and  
3 **35 U.S.C. § 271.**

Judge: Hon. Ronald M. Whyte  
Complaint Filed: July 14, 2003

11 Plaintiff Sharper Image Corporation (“Sharper Image”), for its complaint against  
12 defendants MASTER HOUSEHOLD, INC., G D COMMERCE INTERNATIONAL CO. d/b/a  
13 MIDEA MASTER DISTRIBUTION, INC., BLUEBARGAIN, INC., a California corporation and  
14 DOES ONE through TEN (collectively “Defendants”), alleges as follows:

15 1. This lawsuit is the product of a continuing effort to rid the marketplace of  
16 infringing versions of one of Sharper Image’s most innovative and successful products—the Ionic  
17 Breeze® Quadra Air Purifier. The “knock-off” at issue here has been marketed alternatively as  
18 the “Anion Air Purifier” by some defendants and as an “ePureAir Silent Air Purifier” by other  
19 defendants. This “knock-off” product, believed to be manufactured abroad (by entities outside of  
20 the Court’s jurisdictional reach), but imported and sold domestically, infringes Sharper Image’s  
21 precious, valuable intellectual property rights and thereby unfairly competes against Sharper  
22 Image, the market leader in ionic air purifiers, to the immediate economic detriment of Sharper  
23 Image.

24 **Jurisdiction**

25 2. Subject matter jurisdiction is vested in this Court over this action pursuant to the  
26 following:

27 (i) 28 U.S.C. § 1331 and 1338 in that certain claims herein arise under the laws  
28 of the United States;

(ii) 28 U.S.C. § 1367 in that all other claims herein are so related to Plaintiff's claims arising under 18 U.S.C. § 1030 and 17 U.S.C. § 101 *et seq.*, that they arise from a nucleus of operative facts common to the federal claims and therefore form part of the same case or controversy under Article III of the United States Constitution.

### **The Parties**

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

4. Master Household, Inc. is a California corporation with its principal place of business at 767 N. Hill Street, Suite 208, Los Angeles, California. A Consent Judgment and Permanent Injunction was entered into as to this defendant.

5. G D Commerce International Co. d/b/a Midea Master Distributor, Inc. is a California corporation with its principal place of business at 300 W. Valley Blvd., Alhambra, California. A Consent Judgment and Permanent Injunction was entered into as to this defendant.

6. BlueBargain, Inc. ("BlueBargain") is a California corporation located at 416 McGroarty, San Gabriel, California. At all times material to this action, BlueBargain committed the acts complained of herein in this district. Sharper Image is informed and believes and thereupon alleges that BlueBargain conducts business on www.ebay.com under the Member Name "ePureAir," among others.

7. Sharper Image does not know the true names and capacities of the defendants sued herein as Does One through Ten inclusive, and therefore sues these defendants by fictitious names. When it ascertains this information, Sharper Image will amend this complaint to allege the defendant(s)' true names and capacities. Upon information and belief, with respect to the subject matter of this litigation, BlueBargain and each of the Doe Defendants are agents, servants, employees, or otherwise acting in concert, of or with each other.

### **Venue**

8. Under 28 U.S.C. §§ 1391(c), venue lies in this judicial district because BlueBargain and each of the Doe Defendants conduct continuous and systematic business in this district, advertise in this district, and have caused the injuries complained of herein in this district

## Factual Background

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

10. Over the years, Sharper Image has built an unparalleled multi-channel distribution system: It sells products via catalogs, the Internet, nationally aired infomercials, direct mailings, wholesale to department stores, and in more than 140 Sharper Image retail stores throughout the United States and Europe.

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

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

### Sharper Image's Ionic Breeze® Quadra® Air Purifier

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

14. Sharper Image's IBQ is innovative and unique because it purifies air without the use of fans or costly filters—instead, patented Ionic Breeze® technology uses wire electrodes to

1 charge airborne particulates, which are then attracted to oppositely-charged collection plates.  
2 Rather than purchase costly replacement filters, users can easily and continuously clean the  
3 collection grid by simply wiping it with a soft towel. Consumers have come to recognize Sharper  
4 Image as the exclusive source of filter-less, silent air purifiers.

5 15. Over the past few years and continuing to date, Sharper Image has expended  
6 multiple millions annually in advertising, a significant portion of which was devoted to the IBQ  
7 and its promotion through radio, television infomercials, and product mailers. Sharper Image  
8 publishes at least one catalog per month and oftentimes publishes additional catalogs for holidays.  
9 For example, during fiscal 2002, Sharper Image mailed approximately 78 million catalogs to over  
10 16 million individuals. Sharper Image devotes several pages of its catalog to the Ionic Breeze®  
11 product line and specifically to the IBQ. For instance, most of the catalog issues in 2002  
12 contained at least a two-page advertisement of the IBQ. It also frequently sends single product  
13 mailers featuring the IBQ.

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

20 17. Not surprisingly, Sharper Image Design™ products (and particularly the Ionic  
21 Breeze® Quadra) enjoy a degree of unsolicited media coverage. For example, in a recent issue of  
22 *Home Remodeling* (a *Woman's Day* publication), an article featured portable air purifiers,  
23 including the Ionic Breeze® Quadra. (A true and correct copy of the article is attached as Exhibit  
24 A). It listed "Sharper Image" in boldface, and described the Ionic Breeze Quadra® as having a  
25 "discreet profile" and "paired down design." In addition, in a recent episode of the popular,  
26 prime-time television show *Will & Grace*, the sub-plot involved the main characters browsing a  
27 Sharper Image retail store. As aired, the scene televised numerous "shots" of various Ionic  
28

1 Breeze® Quadra air purifiers. Finally, the product was similarly featured in a recent episode of  
2 another television show, *Sex & the City*.

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

8 19. The eye-catching design of the Ionic Breeze® Quadra is unique for ionic air  
9 purifiers. (A true and correct depiction of the Ionic Breeze® Quadra's appearance is attached as  
10 Exhibit B.) For example:

- 11 (a) While other ionic purifiers are housed in squat, rectangular boxes, the IBQ  
12 is an upright, rounded tower.
- 13 (b) The unit's black coloring gives it a sleek, modern look that blends with  
14 most room designs.
- 15 (c) Extending across the front and back of the IBQ are approximately 50 sleek,  
16 smooth, horizontal vents that are parted at their middle.
- 17 (d) The top of the unit is slanted and has a handle for the removable, internal  
18 collection rod. This handle is attached to the spherical tope of the internal  
19 collection array.
- 20 (e) The unit's operational controls are situated at the top of the unit; these  
21 controls feature three cleaning levels ("low" "medium" and "high")  
22 indicated by LED lights. By pressing a button, users can toggle between  
cleaning levels, as well as turn the unit on or off.
- 23 (f) A red LED light labeled "cleaning indicator" alerts users when the device's  
24 internal collection array needs to be cleaned.

### 25 **The Master Household Defendants**

26 20. Upon the filing and service of the initial Complaint in this action, a Consent  
27 Judgment was entered into between Sharper Image and the Master Household defendants wherein  
28 the Master Household defendants admitted that the product described in this Complaint and sold  
by those defendants infringed upon the patented technology and design embodied in Sharper  
Image's IBQ as alleged in the Complaint.

21. In or about July 2004 Sharper Image sought this Court's intervention for enforcement of that Judgment to ensure compliance with the Judgment with respect to the Master Household defendants' obligation to provide actual notice of the Consent Judgment to the overseas manufacturer of the infringing unit. The Court entered an order to that effect, and thereafter the Master Household defendants filed proof of actual service of the Consent Judgment on the manufacturer of the infringing unit in China.

### **BlueBargain**

22. In or about March 2005, the same infringing product previously sold by the Master Household defendants reappeared for sale in California on [www.ebay.com](http://www.ebay.com) and [www.bluebargain.com](http://www.bluebargain.com). At [www.bluebargain.com](http://www.bluebargain.com), BlueBargain describes itself as follows:

BlueBargain.com is not just a virtual store. We are fully funded and operated by BlueBargain Inc. BlueBargain Inc. is a trading company which import huge volume of quality merchandises directly from manufacturers oversea. [sic]

23. On auctions on [www.ebay.com](http://www.ebay.com) on or about March 7, 2005 the infringing air purifier is sold as, at a minimum, the "ePureAir Silent Air Purifier" under the item heading of "~NEW~ IONIC TOWER SILENT AIR PURIFIER IONIZER W/ BREEZE" — an obvious attempt to capture ebayers who conducted a "search" for any of Sharper Image's Ionic Breeze® Silent Air Purifiers. Sharper Image is informed and believes and thereupon alleges that the "Silent Air Purifier" for sale from BlueBargain is the exact same model sold by the Master Household defendants.

24. On Tuesday, March 8, 2005, BlueBargain, Inc. sold the infringing air purifier at 416 McGroarty, San Gabriel, California, which is identified on [www.bluebargain.com](http://www.bluebargain.com) as the physical location of BlueBargain, Inc. BlueBargain continues to sell the infringing product through the Internet and elsewhere.

25. The infringing air purifier currently being sold by BlueBargain and each of the Doe Defendants are overtly copied from the Ionic Breeze® Quadra. The infringing products use the same ionic technology, patented by Sharper Image, to attract air-borne particles to metal collection rods, and the infringing products do not use a replaceable filter. The internal collector rod used in



1 infringing unit is virtually interchangeable with the Ionic Breeze® Quadra collector rod. (A true  
 2 and correct picture of both collector rods is attached as Exhibit C.) In imitation of the Ionic  
 3 Breeze® Quadra, the infringing air purifiers utilize both wire electrodes and bead-cleaner  
 4 mechanisms that slide along the wire electrodes.

5 26. In appearance, the infringing air purifiers are plainly copied from the Ionic  
 6 Breeze® Quadra (a true and correct picture of the air purifier sold by Defendants is attached as  
 7 Exhibit D; true and correct side-by-side pictures of the Ionic Breeze® Quadra and Defendants' air  
 8 purifier are attached as Group Exhibit E):

- 9 (a) Its structural design is a vertical, upright, column.
- 10 (b) It is silver/gray in color—similar to the coloring used by Sharper Image.
- 11 (c) It has 54 horizontal vents extending across the front and back of the unit;  
 12 the vents are perfectly aligned so that one can see through the unit.
- 13 (d) As with the Ionic Breeze® Quadra, the top of the device houses the handle  
 14 for the removable, internal collection array, as well as the unit's operational  
 15 controls. The handle on the device's internal, removable collection array is  
 16 an oblong, oval-shaped bar inset within a cylindrical sphere.
- 17 (e) The device features three cleaning levels ("low" "medium" and "high")  
 18 indicated by green LED lights. Strikingly, the button used to switch  
 19 between cleaning levels is in the shape of a boomerang—identical to the  
 20 arbitrary and purely aesthetically shaped button featured on Sharper  
 21 Image's product.
- 22 (f) Identical to the Ionic Breeze® Quadra, a red LED light labeled "cleaning  
 23 indicator" alerts users when the device's internal collection array needs to  
 24 be cleaned.

25 27. On information and belief, BlueBargain and the Doe defendants were aware of the  
 26 existence of Sharper Image's patents protecting its ionic products—Sharper Image is the exclusive  
 27 source of filter-less air purifiers and it prominently marks its products with patent numbers.  
 28 Sharper Image's Ionic Breeze® Quadra products have been on the market for several years and  
 are well known to the public and BlueBargain and the Doe defendants.



1           28.     The marketing and sale of the infringing products are likely to cause confusion  
2 among consumers in the marketplace, implying that the infringing units have a commercial  
3 relationship, association, or affiliation with Sharper Image and its Ionic Breeze® Quadra.

4           29.     Unless enjoined, this disregard of Sharper Image's rights will result in irreparable  
5 harm to Sharper Image.

6                           **Count I – Trade Dress Infringement – 15 U.S.C. § 1125**

7           30.     Sharper Images realleges and incorporates by reference the allegations contained in  
8 paragraphs 1 through 29.

9           31.     The total image of the Ionic Breeze® Quadra, including its size, shape, color, and  
10 product design, constitutes protectible trade dress.

11           32.     The Ionic Breeze® Quadra's trade dress is non-functional—it is not essential to the  
12 product's purpose and it is not dictated by concern for cost efficiency.

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

17           34.     BlueBargain and the Doe defendants' use of a trade dress similar to that of the  
18 Ionic Breeze® Quadra is likely to cause confusion among consumers.

19           35.     BlueBargain and the Doe defendants' actions constitute trade dress infringement in  
20 violation of the Lanham Act, 15 U.S.C. § 1125(a). Sharper Image has been and will continue to  
21 be injured as a result of Defendants' conduct. Sharper Image has no adequate remedy at law for  
22 these injuries. Unless BlueBargain and the Doe defendants are restrained by this Court from  
23 continuing to infringe the Ionic Breeze® Quadra's trade dress, these injuries will continue to  
24 accrue.

25                           **Count II - Unfair Competition - Cal. Bus. & Prof. Code § 17200**

26           36.     Sharper Images realleges and incorporates by reference the allegations contained in  
27 paragraphs 1 through 35.

28

37. BlueBargain and the Doe defendants' deliberate copying and imitation of the Ionic Breeze® Quadra 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."

38. BlueBargain and the Doe 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.

**Count III - Patent Infringement of U.S. Patent No. 6,176,977 – 35 U.S.C. § 271**

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 January 23, 2001, United States Letters Patent No. 6,176,977 (Exhibit F, hereinafter "the '977 patent") was duly and legally issued for an invention entitled "Electro-Kinetic Air Transporter-Conditioner."

42. The '977 patent, along with other patents, protects Sharper Image's Ionic Breeze® technology, including the Ionic Breeze® Quadra.

43. BlueBargain and the Doe defendants make, use, offer to sell, sell and/or import air purifiers under the trade name Anion Air Purifier and/or ePureAir, or enable others to commit such acts.

44. BlueBargain and the Doe defendants are infringing at least one claim of the '977 patent by making, using, selling, offering for sale and/or importing for sale the Anion Air Purifier, or are inducing or have induced the infringement of the '977 patent.

45. BlueBargain and the Doe defendants will continue to commit such acts of infringement unless enjoined by this Court.

46. Sharper Image has placed the required statutory notice on products manufactured or sold by Sharper Image under the '977 patent.

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

3           **Count IV- Patent Infringement of U.S. Patent No. 6,350,417 – 35 U.S.C. § 271**

4           48.     Sharper Image realleges and incorporates by reference the allegations contained in  
5 paragraphs 1 through 47.

6           49.     This action arises under the patent laws of the United States, Title 35 of the United  
7 States Code.

8           50.     On February 26, 2002, United States Letters Patent No. 6,350,417 (Exhibit G,  
9 hereinafter "the '417 patent") was duly and legally issued for an invention entitled "Electrode  
10 Self-Cleaning Mechanism for Electro-Kinetic Air Transporter-Conditioner Devices."

11          51.     BlueBargain and the Doe defendants make, use, offer to sell, sell and/or import air  
12 purifiers under the trade name Anion Air Purifier and/or ePureAir, or enable others to commit  
13 such acts.

14          52.     BlueBargain and the Doe defendants are infringing at least one claim of the '417  
15 patent by making, using, selling, offering for sale and/or importing for sale the Anion Air Purifier,  
16 or are inducing or have induced the infringement of the '417 patent.

17          53.     BlueBargain and the Doe defendants will continue to commit such acts of  
18 infringement unless enjoined by this Court.

19          54.     BlueBargain and the Doe defendants have continued to commit one or more of the  
20 acts described in the preceding paragraphs with full knowledge of Sharper Image's patents.

21  
22           WHEREFORE, Sharper Image prays for judgment as follows:

23           A.     That Sharper Image be awarded damages against BlueBargain and subsequently  
24 identified Doe defendants for their infringement of the '977 and '417 patents and such an award be  
25 trebled under 35 U.S.C. § 284;

26           B.     An order finding BlueBargain and subsequently identified Doe defendants have  
27 engaged in trade dress infringement in violation of 15 U.S.C. § 1125(a);

28

1 C. That this Court permanently enjoin BlueBargain and subsequently identified Doe  
 2 defendants, their officers, agents, servants, employees, attorneys, successors, and assigns, and all  
 3 others in active concert or participation with them, from continued trade dress infringement in  
 4 violation of 15 U.S.C. § 1125;

5 D. That Sharper Image be awarded damages against BlueBargain and subsequently  
 6 identified Doe defendants under 15 U.S.C. § 1117;

7 E. An order finding BlueBargain and subsequently identified Doe defendants have  
 8 engaged in unfair competition in violation of § 17200 of the California Business and Professions  
 9 Code;

10 F. That this Court permanently enjoin BlueBargain and subsequently identified Doe  
 11 defendants, their officers, agents, servants, employees, attorneys, successors, and assigns, and all  
 12 others in active concert or participation with them, from continued unfair competition in violation  
 13 of § 17200;

14 G. An order disgorging BlueBargain and subsequently identified Doe defendants from  
 15 profits for violation of § 17200;

16 H. That this Court adjudge and decree that BlueBargain and subsequently identified  
 17 Doe defendants have infringed or have induced the infringement of one or more claims of the ‘977  
 18 patent, and that such infringement was willful and that this case is exceptional under 35 U.S.C. §  
 19 285;

20 I. That this Court adjudge and decree that BlueBargain and subsequently identified  
 21 Doe defendants have infringed or have induced the infringement of one or more claims of the ‘417  
 22 patent, and that such infringement was willful and that this case is exceptional under 35 U.S.C. §  
 23 285;

24 J. That this Court permanently enjoin BlueBargain and subsequently identified Doe  
 25 defendants, their officers, agents, servants, employees, attorneys, successors, and assigns, and all  
 26 others in active concert or participation with them, from continued infringement of the ‘977 and  
 27 ‘417 patents;

28 K. An award for Sharper Image’s costs and attorneys’ fees; and

1 L. Any other relief this Court deems just and proper.  
2

3 Dated: May 26, 2005

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**JURY DEMAND**

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

Dated: May 26, 2005

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