

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

GREENAIR, INC.	)	CASE NO.: 1:17-cv-1130
23569 Center Ridge Road	)	
Westlake, Ohio 44145	)	JUDGE
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
WALMART STORES, INC.	)	COMPLAINT FOR
c/o CT Corporation System,	)	DECLARATION OF
Statutory Agent	)	COPYRIGHTABILITY,
1300 East 9 <sup>th</sup> Street	)	INJUNCTIVE RELIEF,
Cleveland, Ohio 44114,	)	AND MONETARY DAMAGES
	)	
and	)	
	)	JURY DEMAND ENDORSED HEREON
MEREDITH CORPORATION	)	
c/o CT Corporation Systems	)	
Statutory Agent	)	
1300 East 9 <sup>th</sup> Street	)	
Cleveland, Ohio 44114,	)	
	)	
and	)	
	)	
TEST RITE INTERNATIONAL CO., LTD	)	
6F, No. 23	)	
Hsin Hu 3 <sup>rd</sup> Road, Neihu District	)	
TAIPEI 114	)	
Taiwan	)	
TWN	)	
	)	
Defendants.	)	

Plaintiff Greenair, Inc. (“Greenair”), for its Complaint against Defendants Walmart Stores, Inc. (“Walmart”), Meredith Corporation (“Meredith”), and Test Rite International Co., Ltd (“Test Rite”) (collectively, “Defendants”) states as follows:

**PRELIMINARY STATEMENT**

1. In this action, Plaintiff Greenair, Inc. (“Greenair”) is suing the Defendants for copyright and trade dress infringement. Greenair is a leader in the multi-billion dollar essential oils diffuser industry. For several years, Greenair has sold, and continues to sell, essential oils diffusers under the names Spa Vapor, Spa Vapor + and Spa Vapor 2.0 (collectively “Greenair Diffusers”). The designs of



these diffusers are very similar.

2. The Spa Vapor tops and bottoms, like so:

and the Spa Vapor + Diffusers have silver Minor changes were made to the Spa

Vapor 2.0: the color of the top and bottom was changed to pearl white and a control button and four LEDs were added to the bottom, like so: have been readily available through online Defendants have had access to the diffusers, and their packaging during this entire time.



All three of these diffusers sales for several years and their instruction manuals,

3. The Greenair Diffusers are very similar to the Spa Mist Diffuser, which was designed by Paul Prince in 2007, while employed as an Accountant at Pearl Essence Ltd. Mr. Prince has assigned his copyright interest in the Spa Mist design to Greenair, where he is the founder and president. The Spa Mist Diffuser looked like this:



4. The three Greenair Diffusers have been extraordinarily successful in the marketplace. On information and belief, sometime in 2015,

Walmart, one of the nation’s leading discount retailers, recognizing the success of the Greenair Diffusers from readily available sources, began offering for sale online and in its discount retail stores four essential oils diffusers. Two of these diffusers had silver tops and bottoms, like the Spa Mist, Spa Vapor and Spa Vapor + Diffusers, and two had pearl white tops and bottoms like

the Spa Vapor 2.0 Diffuser. Two of these diffusers were marketed and sold under the trademark, Better Homes & Gardens Cool Mist Ultrasonic Aroma Diffuser (the “Silver BH&G Diffuser” and the “White BH&G Diffuser,” collectively the “BH&G Diffusers”). Two other diffusers were sold under the trademark, Mainstays Cool Mist Ultrasonic Aroma Diffuser (the “Silver M Diffuser” and the “White M Diffuser,” collectively the “M Diffusers”). Collectively, these diffusers are referred to herein as the “Walmart Diffusers.” The silver diffusers are exact copies of the Greenair Spa Vapor and Spa Vapor + Diffusers. The white diffusers are exact copies of the Spa Vapor and Spa Vapor + Diffusers except they adopt the pearl white color of the Spa Vapor 2.0 Diffuser for their top and bottom. The silver diffusers offered by Walmart under the two marks are identical. The pearl white diffusers offered by Walmart under the two marks are also identical. None of the diffusers bear any trademarks whatsoever.

5. A significant portion of the instruction manuals for the Walmart Diffusers, which are included in the packaging, are exact copies of the instruction manuals for the Greenair Spa Vapor (both the 2010 edition and the 2012 edition), Spa Vapor +, and Spa Vapor 2.0 diffusers. In addition, the packaging for the Walmart Diffusers are comprised of numerous photographs of the Walmart Diffusers on the four sides of the packaging box for the BH&G Diffusers and on the four sides of the packing box as well as the top closure of the packing box for the M Diffusers. The packaging of these four Walmart Diffusers are unlicensed derivative works of the Greenair Spa Vapor and Spa Vapor 2.0 Diffusers.

6. Accordingly, the four Walmart Diffusers and the packaging for same are unlicensed derivative works of the Spa Mist, the Spa Vapor, and the Spa Vapor 2.0 Diffusers; and the instruction manuals accompanying the four Walmart Diffusers are unlicensed derivative

works of the instruction manuals for the Spa Vapor, the Spa Vapor +, and the Spa Vapor 2.0 Diffusers.

7. The instruction manuals for the Greenair Spa Vapor line of diffusers are protected by copyright and have been registered by the U.S. Copyright Office. The Spa Mist, the Spa Vapor and the Spa Vapor 2.0 Diffusers are also protected by copyright, although the U.S. Copyright Office has rejected Greenair's applications for registration, as is typical for the Office regarding useful three dimensional articles.

### **PARTIES**

8. Greenair is a corporation incorporated in the State of Ohio, with its principal place of business in this judicial district in Westlake, Ohio. Greenair was established in 2005 and has been a pioneer in the essential oils and oil diffuser industry since the company's inception. Greenair sells and distributes to retailers, both online retailers and retailers that operate physical stores where wares are displayed and sold, numerous essential oils diffusers, including the Spa Vapor, the Spa Vapor +, and the Spa Vapor 2.0 diffusers. Greenair is the lawful owner of the copyrights in the Spa Mist, the Spa Vapor, and the Spa Vapor 2.0 Diffusers and the instruction manuals that accompany the Spa Vapor, the Spa Vapor +, and the Spa Vapor 2.0 Diffusers.

9. Walmart Stores, Inc. ("Walmart") is a corporation incorporated in the State of Arkansas with its principal place of business in Bentonville, Arkansas. Among other things, Walmart operates a chain of discount department stores throughout the United States, including several such stores in Ohio and in this judicial district, at which it offers for sale and sells numerous products. Walmart also operates an Internet web page site at which it offers for sale and sells many of the same products sold at its discount department stores. Among the many products that Walmart sells on the Internet and, on information and belief, at its discount

department stores, are the four infringing essential oils diffusers that are the subject of this action.

10. Meredith Corporation (“Meredith”) is a corporation incorporated in the State of Iowa with its principal place of business in Des Moines, Iowa. Among its other businesses, Meredith publishes the Better Homes and Gardens magazine, which is distributed throughout the United States, including in the State of Ohio and this judicial district, and licenses the Better Homes and Gardens trademark (“BH&G”) on two of the infringing essential oils diffusers that are the subject of this action. Meredith also operates a web page located at [www.bhg.com](http://www.bhg.com), which displays products licensed under the BH&G name and provides links to web pages where the products are sold. On information and belief, Meredith displayed the Silver BH&G Diffuser and the White BH&G Diffuser on its web page and provided a link to the Walmart web page where they could be purchased.

11. Test Rite Int’l Co., Ltd. (“Test Rite”) is a corporation incorporated in Taiwan with its principal place of business in Taipei, Taiwan. Test Rite manufactures and distributes numerous household products throughout the United States, including into the State of Ohio and this judicial district, including the four infringing essential oils diffusers that are the subject of this action, which it supplies to Walmart and possibly others.

### **JURISDICTION AND VENUE**

12. This is an action for copyright infringement, trademark infringement, and state unfair competition arising under the Copyright Act of 1976, specifically 17 U.S.C. § 501, the Lanham Act of 1946, specifically 15 U.S.C. § 1125, and the Ohio Deceptive Trade Practices Act, specifically Ohio Revised Code § 4165.02.

13. This action arises out of the unauthorized exercise by Defendants of Greenair's exclusive rights to prepare, reproduce, distribute, and display derivatives of Greenair's original pictorial, graphic, textual, and sculptural works protected by U.S. copyright law.

14. This action also arises out of the unauthorized use by Defendants of Greenair's trade dress in its Spa Vapor, Spa Vapor +, and Spa Vapor 2.0 Diffusers that is likely to cause confusion among consumers and potential consumers of essential oil diffusers.

15. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because this is a civil action arising under the laws of the United States, pursuant to § 1338(a), because this is a civil action arising under Acts of Congress relating to copyrights and trademarks, and pursuant to 28 U.S.C. § 1338(b), because this is a civil action asserting a claim of unfair competition which is joined with a substantial and related claim under copyright and trademark law.

16. This Court has personal jurisdiction over each of the Defendants because each of the Defendants is causing and has caused tortious injury in the State of Ohio and this judicial district by an act or omission outside the State of Ohio, specifically manufacturing, displaying, selling, and distributing the infringing essential oil diffusers, and each Defendant regularly does and solicits business, engages in a persistent course of conduct, and derives substantial revenue from goods used or consumed or services rendered in the State of Ohio and this judicial district.

17. This Court also has personal jurisdiction over the Defendants because (a) Defendants purposefully availed themselves of the privilege of acting in the State of Ohio and this judicial district or causing a consequence in the State of Ohio and this judicial district by displaying and selling the infringing essential oil diffusers in the State of Ohio and this judicial district, Plaintiff Greenair felt the brunt of the injury caused by Defendants' infringement in the

State of Ohio and this judicial district, where Greenair is incorporated and where Greenair's principal place of business is located, Defendants deliberately and intentionally used Greenair's copyrighted and trade dress materials, and Defendants' actions in manufacturing, displaying, selling and distributing the copyrighted and trademarked material that are the subject of this action were expressly aimed at the State of Ohio and this judicial district, where Greenair is located and incorporated; (b) this cause of action for copyright and trademark infringement arises from Defendants' activities related to the State of Ohio and this judicial district, because the allegations in this action center on Defendants' infringing activities that resulted in tortious injury to Greenair in Ohio and this judicial district; and (c) the exercise of personal jurisdiction over Defendants is reasonable because Plaintiff Greenair's interest in obtaining relief, coupled with Ohio's interest in protecting Ohio-based companies from copyright and trade dress infringement, significantly outweighs whatever burden Defendants may face in defending this action in Ohio and this judicial district.

18. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(a) because Defendants reside or may be found in this judicial district and this Court has personal jurisdiction over Defendants as set forth herein.

19. Venue is also proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial portion of the events giving rise to the claims set forth herein occurred in the State of Ohio and this judicial district.

20. Venue is also proper in this judicial district with respect to Defendant Test Rite pursuant to 28 U.S.C. § 1391(c)(3) because Test Rite is a foreign corporation not resident in the United States.

**FACTS COMMON TO ALL COUNTS**  
**GREENAIR'S ACTIVITIES**

21. Greenair manufactures oil diffusers to retailers. Among its are the SpaVapor line of diffusers, Vapor, the Spa Vapor +, and the Spa



and sells high quality most popular diffusers including the Spa Vapor 2.0. The Spa

Vapor and the Spa Vapor +, which are identical, are pictured here:

The Spa Vapor 2 is pictured here:

22. The Spa Vapor, the Vapor 2.0 Diffusers sport a with a smaller spherically-shaped notch situated atop the center of



Spa Vapor +, and the Spa spherically-shaped top cover discharge having a horizontal the cover which permits

emission of an ultra-fine mist containing essential oils. A slightly larger square-shaped base with chamfered corners and a slightly concave bottom supports the outwardly inclined four white translucent walls that also feature chamfered corners. The walls of all the diffusers change color during operation. The colors include blue, green, purple and red.

23. The Spa Vapor and Spa Vapor + Diffusers feature a silver-colored top and base, similar to the Spa Mist Diffuser which, some years ago, was sold by Pearl Essence Ltd., but which was designed by Paul Prince, President of Greenair. Unlike the Spa Mist, the base of the Spa Vapor and the Spa Vapor + contains two rectangular buttons aligned horizontally. The left button features a lightbulb graphic with three light rays emanating from it and the right button contains a power button logo.

24. The Spa Vapor 2.0 Diffuser features a pearl white-colored top and base. The base contains three rectangular buttons aligned horizontally. The left button features a lightbulb graphic with three light rays emanating from it; the middle button features a clock graphic; and the right button features a power logo. In addition, the base of the Spa Vapor 2.0 diffuser features small lights above the buttons denominating the amount of time the diffuser is set to operate. Other than these differences, the Spa Vapor 2.0 is identical to the Spa Vapor and the Spa Vapor + Diffusers.

25. The combination of the cover, base, and body of the Spa Mist, Spa Vapor, SpaVapor +, and the Spa Vapor 2.0 Diffusers results in a three dimensional, multi-colored, trapezoidal diffuser. True and accurate photographs of the Spa Mist, the Spa Vapor, the Spa Vapor + and the Spa Vapor 2.0 Diffusers are attached hereto and incorporated herein by reference as Exhibits A (Pages 1-6), B (Pages 1-6), C (Pages 1-6), and D (Pages 1-6), respectively.

26. The Spa Vapor, SpaVapor +, and the Spa Vapor 2.0 Diffusers are known by consumers as more affordable Greenair diffuser options, but ones which do not require customers to compromise the quality they rely on Greenair to provide.

27. Included within each package containing a Greenair Spa Vapor, Spa Vapor +, or Spa Vapor 2.0 diffuser is an instruction manual. Each such instruction manual contains photographic, textual and graphical elements. True and accurate copies of the instruction manual for the Spa Vapor (2010 edition and 2012 edition), the Spa Vapor +, and the Spa Vapor 2.0 Diffusers are attached hereto and incorporated herein as Exhibit E (Pages 1-4), F (Pages 1-2), and G (Pages 1-2), respectively.

**DEFENDANTS' ACTIVITIES**

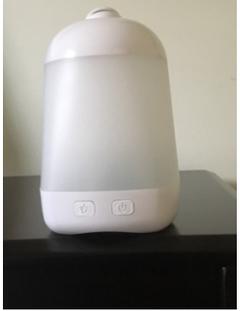
28. Beginning sometime in 2015, Walmart began displaying, selling and distributing the BH&G Diffusers and the M Diffusers, both silver and white. Walmart continues to sell at least the  Silver BH&G Diffuser. Many of these sales occurred over the Internet where a purchaser at the Walmart web site would encounter photos of the  BH&G Diffusers and the M Diffusers on the Walmart web site or on the BH&G web site, where photos of the BH&G Diffusers were linked to the Walmart web site, where they could be purchased.

29. The Silver BH&G Diffuser sold by Walmart is pictured here:

The Silver M Diffuser sold by Walmart is pictured here:

30. The Silver BH&G Diffuser and the Silver M Diffuser are identical. Each features a silver-colored top and base. Each sports a silver-colored spherically-shaped top cover with a smaller silver-colored spherically-shaped discharge having a horizontal notch situated atop the center of the cover for emission of the essential oils. Each includes two rectangular buttons horizontally aligned with the left button sporting a lightbulb graphic with three rays emanating from it and the right button sporting a power logo. A slightly larger silver-colored square-shaped base with chamfered corners and a slightly concave bottom supports the outwardly inclined four white translucent walls which also feature chamfered corners. The walls change color during operation from blue to green to purple to red. The combination of the cover, base, and body of these diffusers results in a three dimensional, multi-colored, trapezoidal diffuser. True and accurate photographs of the Silver BH&G Diffuser and the Silver M Diffuser are attached hereto and incorporated herein respectively as Exhibits H (Pages 1-6) and I (Pages 1-6).



31. The White BH&G Diffuser and the White M Diffuser are also identical. Each features a pearl white-colored top and base. The White BH&G Diffuser is shown here:  The White M Diffuser is shown here:  Each sports a pearl white spherically-shaped top cover with a smaller spherically-shaped discharge having a horizontal notch situated atop the center of the cover for emission of the essential oils. Each includes two rectangular buttons horizontally aligned with the left button sporting a lightbulb graphic with three rays emanating from it and the right button including a power logo. A slightly larger pearl white square-shaped base with chamfered corners and a slightly concave bottom supports the outwardly inclined four white translucent walls which also feature chamfered corners. The walls change color during operation from blue to green to purple to red. The combination of the cover, base, and body of these diffusers results in a three dimensional, multi-colored, trapezoidal diffuser. True and accurate photographs of the White BH&G Diffuser and the White M Diffuser are attached hereto and incorporated herein respectively as Exhibits J (Pages 1-6) and K (Pages 1-6).

32. The design of the Silver BH&G Diffuser, which is manufactured and distributed by Test Rite, displayed by Meredith, and displayed, sold and distributed by Walmart, is an exact copy of the design of the Spa Vapor and Spa Vapor + Diffusers and bears a striking similarity to the design of the Spa Mist and the Spa Vapor 2.0 Diffusers.

33. The design of the Silver M Diffuser, which is manufactured and distributed by Test Rite and displayed, sold and distributed by Walmart, is an exact copy of the design of the Spa Vapor and Spa Vapor + Diffusers and bears a striking similarity to the Spa Mist and the Spa Vapor 2.0 Diffusers.

34. The design of the White BH&G Diffuser, which is manufactured and distributed by Test Rite, displayed by Meredith, and displayed, sold and distributed by Walmart, is an exact copy of the design of the Spa Vapor and Spa Vapor + Diffusers, except for the color of the top and bottom, and bears a striking similarity to the design of the Spa Mist and the Spa Vapor 2.0 Diffusers.

35. The design of the White M Diffuser, which is manufactured and distributed by Test Rite and displayed, sold and distributed by Walmart, is an exact copy of the design of the Spa Vapor and Spa Vapor + Diffusers, except for the color of the top and bottom, and bears a striking similarity to the design of the Spa Mist and the Spa Vapor 2.0 Diffusers.

36. Accordingly, the BH&G Diffusers and the M Diffusers are unlicensed derivative works of the Spa Mist, the Spa Vapor, and the Spa Vapor 2.0 Diffusers.

37. In contrast to the Greenair Spa Vapor line of diffusers, which bear the Greenair logo trademark as shown here,  neither the BH&G Diffusers nor the M Diffusers bear any trademarks whatsoever. This absence of trademarks is an intentional attempt to confuse the public and trade on the design of the Spa Vapor, the Spa Vapor +, and the Spa Vapor 2.0 Diffusers and the goodwill of Greenair.

38. Accompanying each of the BH&G Diffusers and the M Diffusers sold and distributed by Walmart is an instruction manual. A true and accurate copy of the instruction manual that accompanies the BH&G Diffusers is attached hereto and incorporated herein as Exhibit L (pages 1 through 4). A true and accurate copy of the instruction manual that accompanies the M Diffusers is attached hereto and incorporated herein as Exhibit M (pages 1 through 4).

39. The instruction manuals that accompany the BH&G Diffusers and the M Diffusers copy significant portions of the instruction manuals that accompany the Spa Vapor and the Spa Vapor 2.0 Diffusers. Accordingly, the instruction manuals that accompany the BH&G Diffusers and the M Diffusers, manufactured and distributed by Test Rite and displayed, sold and distributed by Walmart, are unlicensed derivative works of the instruction manuals that accompany the Spa Vapor, the Spa Vapor +, and the Spa Vapor 2.0 Diffusers.

40. Each of the BH&G Diffusers, manufactured by Test Rite and displayed, sold, and distributed by Walmart, is packaged in a cardboard box having a square footprint with a top closure. Illustrated on the four sides of each such box are numerous photographs of the BH&G Diffusers. True and accurate photographs of the four sides of the Silver BH&G Diffuser packaging are attached hereto and incorporated herein as Exhibit N (pages 1 through 4). True and accurate photographs of the four sides of the White BH&G Diffuser packaging are attached hereto and incorporated herein as Exhibit O (pages 1 through 4).

41. The BH&G Diffusers are based on and are unlicensed derivative works of the Spa Mist, the Spa Vapor, and the Spa Vapor 2.0 Diffusers. Accordingly, the photographs that populate the sides of the packaging for the BH&G Diffusers are based on and are unlicensed derivative works of the Spa Mist, the Spa Vapor, and the Spa Vapor 2.0 Diffusers.

42. Each of the M Diffusers, manufactured by Test Rite and displayed, sold, and distributed by Walmart, is packaged in a cardboard box having a square footprint with a top closure. Illustrated on the four sides and the top of each such box are numerous photographs of the M Diffusers. True and accurate photographs of the four sides and top of the Silver M Diffuser packaging are attached hereto and incorporated herein as Exhibit P (pages 1 through 5).

True and accurate photographs of the White M Diffuser packaging are attached hereto and incorporated herein as Exhibit Q (pages 1 through 5).

43. The M Diffusers are based on and are unlicensed derivative works of the Spa Mist, the Spa Vapor, and the Spa Vapor 2.0 Diffusers. Accordingly, the photographs that populate the sides and top of the M Diffusers are based on and are unlicensed derivative works of the Spa Mist, the Spa Vapor, and the Spa Vapor 2.0 Diffusers.

44. Defendant Test-Rite has manufactured and distributed and continues to manufacture and distribute the BH&G Diffusers and, on information and belief as to continued manufacturing and distributing, the M Diffusers, has prepared and distributed and continues to prepare and distribute the instruction manuals for the BH&G Diffusers and, on information and belief as to continued preparing and distributing, the instruction manuals for the M Diffusers, together with their respective diffusers, and has prepared and distributed and continues to prepare and distribute the packaging for the BH&G Diffusers and, on information and belief as to continued preparing and distributing, the packaging for the M Diffusers, together with their respective diffusers.

45. Defendant Meredith has displayed the BH&G Diffusers on its web site. On information and belief, Defendant Meredith has displayed the M Diffusers on its web site.

**COUNT 1  
DECLARATION OF COPYRIGHTABILITY  
SPA MIST DIFFUSER**

46. Greenair incorporates by reference the foregoing allegations contained in paragraphs 1 through 45 as if fully set forth herein.

47. The Spa Mist Diffuser is an original work, which was designed by Mr. Paul Prince, founder and President of Greenair. Mr. Prince has assigned his rights to the copyright in

the Spa Mist to Greenair, together with the right to sue for any and all past infringements and any and all present and future claims and causes of action arising from or related to said copyright.

48. The exterior design of the Spa Mist Diffuser is a design of a useful article that incorporates pictorial, graphic and sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the Spa Mist Diffuser.

49. The utilitarian aspect of the Spa Mist Diffuser is to provide an ultrafine mist containing essential oils into the air surrounding the diffuser, thus creating an aromatherapy environment.

50. The pictorial, graphic and sculptural features of the Spa Mist Diffuser that are separate from said utilitarian aspects include at least the following: the color and shape of the silver spherically-shaped top cover of the diffuser, the color and shape of the smaller silver spherically-shaped discharge and the placement and shape of the horizontal notch situated atop the center of the cover, the color and shape of the slightly larger silver square-shaped base with chamfered corners and slightly concave bottom, the color, material, shape and inclination of the outwardly inclined four white translucent walls which also feature chamfered corners, the colors that the walls change to during operation of the diffuser from blue to green to purple to red, and the overall three dimensional, multi-colored, trapezoidal shape of the diffuser.

51. The pictorial, graphic and sculptural features are separate from the utilitarian aspects of the Spa Mist Diffuser and a viewer of the Spa Mist Diffuser can identify pictorial, graphic and sculptural features of the Spa Mist Diffuser within the design of the Spa Mist Diffuser separate from its utilitarian aspects.

52. The pictorial, graphic and sculptural features of the design of the Spa Mist Diffuser exist independently of the utilitarian aspects of the Spa Mist Diffuser.

53. The pictorial, graphic and sculptural features of the design of the Spa Mist Diffuser are not required by the Spa Mist Diffuser's utilitarian functions and are wholly unnecessary to performance of its utilitarian function.

54. Accordingly, the Spa Mist Diffuser is entitled to copyright protection for at least the pictorial, graphic and sculptural features so enumerated.

**COUNT 2**  
**DECLARATION OF COPYRIGHTABILITY**  
**SPA VAPOR DIFFUSER**

55. Greenair incorporates by reference the foregoing allegations contained in paragraphs 1 through 54 as if fully set forth herein.

56. The Spa Vapor Diffuser is a derivative work of a prior work, the Spa Mist diffuser, which was designed by Mr. Paul Prince, President of Greenair. Mr. Prince has assigned his rights to the copyright in the Spa Mist to Greenair, together with the right to sue for any and all past infringements and any and all present and future claims and causes of action arising from or related to said copyright. The Spa Vapor Diffuser was designed by Greenair as a work for hire.

57. The exterior design of the Spa Vapor Diffuser is a design of a useful article that incorporates pictorial, graphic and sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the Spa Vapor Diffuser.

58. The utilitarian aspect of the Spa Vapor Diffuser is to provide an ultrafine mist containing essential oils into the air surrounding the diffuser, thus creating an aromatherapy environment.

59. The pictorial, graphic and sculptural features of the Spa Vapor Diffuser that are separate from said utilitarian aspects include at least the following: the color and shape of the

silver spherically-shaped top cover of the diffuser, the color and shape of the smaller silver spherically-shaped discharge and the placement and shape of the horizontal notch situated atop the center of the cover, the color and shape of the slightly larger silver square-shaped base with chamfered corners and slightly concave bottom, the color, material, shape and inclination of the outwardly inclined four white translucent walls which also feature chamfered corners, the colors that the walls change to during operation of the diffuser from blue to green to purple to red, the placement and shape of the two silver rectangular buttons aligned horizontally on the base of the diffuser, the graphical elements that appear on the rectangular buttons on the base of the diffuser, and the overall three dimensional, multi-colored, trapezoidal shape of the diffuser.

60. The pictorial, graphic and sculptural features are separate from the utilitarian aspects of the Spa Vapor Diffuser and a viewer of the Spa Vapor Diffuser can identify pictorial, graphic and sculptural features of the Spa Vapor Diffuser within the design of the Spa Vapor Diffuser separate from its utilitarian aspects.

61. The pictorial, graphic and sculptural features of the design of the Spa Vapor Diffuser exist independently of the utilitarian aspects of the Spa Vapor Diffuser.

62. The pictorial, graphic and sculptural features of the design of the Spa Vapor Diffuser are not required by the Spa Vapor Diffuser's utilitarian functions and are wholly unnecessary to performance of its utilitarian function.

63. Accordingly, the Spa Vapor Diffuser is entitled to copyright protection for at least the color of the silver spherically-shaped top cover of the diffuser, the color of the smaller silver spherically-shaped discharge situated atop the center of the cover, the color of the slightly larger silver square-shaped base, the placement and shape of the two silver rectangular buttons aligned

horizontally on the base of the diffuser and the graphical elements that appear on the rectangular buttons on the base of the diffuser.

**COUNT 3**  
**DECLARATION OF COPYRIGHTABILITY**  
**SPA VAPOR 2.0 DIFFUSER**

64. Greenair incorporates by reference the foregoing allegations contained in paragraphs 1 through 63 as if fully set forth herein.

65. The Spa Vapor 2.0 Diffuser is a derivative work based upon the Spa Mist and the Spa Vapor Diffusers designed by Greenair as a work for hire.

66. The Spa Vapor 2.0 Diffuser is a design of a useful article that incorporates pictorial, graphic and sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the Spa Vapor 2.0 Diffuser.

67. The utilitarian aspect of the Spa Vapor 2.0 Diffuser is to provide an ultrafine mist containing essential oils into the air surrounding the diffuser, thus creating an aromatherapy environment.

68. The pictorial, graphic and sculptural features of the Spa Vapor 2.0 Diffuser that are separate from said utilitarian aspects include at least the following: the color and shape of the pearl white spherically-shaped top cover of the diffuser, the color and shape of the smaller pearl white spherically-shaped discharge and the placement and shape of the horizontal notch situated atop the center of the cover, the color and shape of the slightly larger pearl white square-shaped base with chamfered corners and slightly concave bottom, the color, material, shape and inclination of the outwardly inclined four white translucent walls which also feature chamfered corners, the colors that the walls change to during operation of the diffuser from blue to green to purple to red, the placement, color and shape of the three pearl white rectangular buttons aligned

horizontally on the base of the diffuser, the graphical elements that appear on the rectangular buttons on the base of the diffuser, and the overall three dimensional, multi-colored, trapezoidal shape of the diffuser.

69. The pictorial, graphic and sculptural features are separate from the utilitarian aspects of the Spa Vapor 2.0 Diffuser and a viewer of the Spa Vapor 2.0 Diffuser can identify pictorial, graphic and sculptural features of the Spa Vapor 2.0 Diffuser within the design of the Spa Vapor 2.0 Diffuser separate from its utilitarian aspects.

70. The pictorial, graphic and sculptural features of the design of the Spa Vapor 2.0 Diffuser exist independently of the utilitarian aspects of the Spa Vapor + Diffuser.

71. The pictorial, graphic and sculptural features of the design of the Spa Vapor 2.0 Diffuser are not required by the Spa Vapor 2.0 Diffuser's utilitarian functions and are wholly unnecessary to performance of its utilitarian function.

72. Accordingly, the Spa Vapor 2.0 Diffuser is entitled to copyright protection for at least, the placement, color and shape of the three pearl white rectangular buttons aligned horizontally on the base of the diffuser, and the graphical elements that appear on the rectangular buttons on the base of the diffuser.

**COUNT 4**  
**INFRINGEMENT OF COPYRIGHTS IN**  
**THE SPA MIST & SPA VAPOR DIFFUSERS**  
**BY SILVER AND WHITE BH&G AND M DIFFUSERS**

73. Greenair incorporates by reference the foregoing allegations contained in paragraphs 1 through 72 as if fully set forth herein.

74. The Spa Mist and Spa Vapor Diffusers are original pictorial, graphic and sculptural work of authorship fixed in a tangible medium of expression.

75. Greenair applied for a copyright registration for the copyrightable aspects of the

Spa Mist Diffuser. A true and accurate copy of that Application is attached hereto and incorporated herein as Exhibit R. The U.S. Copyright Office issued a rejection of same on May 16, 2017. A true and accurate copy of the letter of rejection is attached hereto and made a part hereof as Exhibit S.

76. Greenair applied for a copyright registration for the copyrightable aspects of the Spa Vapor Diffuser. A true and accurate copy of that Application is attached hereto and incorporated herein as Exhibit T. The U.S. Copyright Office issued a rejection of same on May 16, 2017. A true and accurate copy of the letter of rejection is attached hereto and made a part hereof as Exhibit U.

77. Defendants, without authorization from Greenair, are displaying, selling, distributing, advertising, and have sold goods bearing a design that is copied from and substantially similar to the design of the Spa Mist and Spa Vapor Diffusers, including the copyrightable elements of the Spa Mist and Spa Vapor Diffusers.

78. A side-by-side comparison of the Spa Mist Diffuser, Spa Vapor Diffuser, the Silver BH&G Diffuser, and the Silver M Diffuser show the substantial similarity of the four diffusers.



Spa Mist



Spa Vapor



BH&G



M

79. A side-by-side comparison of the Spa Mist Diffuser, Spa Vapor Diffuser, the White BH&G Diffuser, and the White M Diffuser show the substantial similarity of the four diffusers.



Spa Mist



Spa Vapor



BH&G



M

80. Defendants, without authorization from Greenair, are displaying, selling, distributing, advertising, and have sold goods packaged in packaging that includes photographs of goods copied from and substantially similar to the Spa Mist and Spa Vapor Diffusers, including the copyrightable elements of the Spa Mist and Spa Vapor Diffusers.

81. Defendants have thereby infringed Greenair's copyrights in the copyrightable elements of the Spa Mist and Spa Vapor Diffusers.

82. Defendants' infringing acts were committed with knowledge or in reckless disregard of Greenair's exclusive rights in the Spa Mist and Spa Vapor Diffusers under the United States Copyright Act.

83. As a direct and proximate result of the acts complained of herein, Defendants have made substantial profits and gains that they are not in law or in equity entitled to retain.

84. The aforementioned acts have damaged and, if not enjoined, will continue to damage Greenair and cause Greenair irreparable harm, for which Greenair has no adequate remedy at law.

**COUNT 5**  
**INFRINGEMENT OF COPYRIGHTS IN**  
**THE SPA MIST, SPA VAPOR & SPA VAPOR 2.0 DIFFUSERS**  
**BY THE WHITE BH&G AND M DIFFUSERS**

85. Greenair incorporates by reference the foregoing allegations contained in paragraphs 1 through 84 as if fully set forth herein.

86. The Spa Vapor 2.0 Diffuser is an original pictorial, graphic and sculptural work of authorship fixed in a tangible medium of expression.

87. Greenair applied for a copyright registration for the copyrightable aspects of the Spa Vapor 2.0 Diffuser. A true and accurate copy of that Application is attached hereto and incorporated herein as Exhibit V. The U.S. Copyright Office issued a rejection of same on May 16, 2017. A true and accurate copy of the letter of rejection is attached hereto and made a part hereof as Exhibit W.

88. Defendants, without authorization from Greenair, are displaying, selling, distributing, advertising, and have sold goods bearing a design that is copied from and substantially similar to the design of the Spa Mist, the Spa Vapor and the Spa Vapor 2.0 Diffusers, including the copyrightable elements of the Spa Mist, the Spa Vapor, and Spa Vapor 2.0 Diffusers. A side-by-side comparison of the Spa Mist Diffuser, the Spa Vapor Diffuser, Spa Vapor 2.0 Diffuser, the White BH&G Diffuser, and the White M Diffuser show the substantial similarity of the five diffusers.



Spa Mist



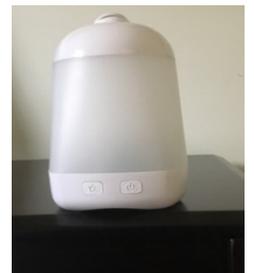
Spa Vapor



Spa Vapor 2.0



BH&G



M

89. Defendants, without authorization from Greenair, are displaying, selling, distributing, advertising, and have sold goods packaged in packaging that includes photographs of goods copied from and substantially similar to the design of the Spa Mist Diffuser, the Spa Vapor Diffuser, and the Spa Vapor 2.0 Diffuser, including the copyrightable elements of the Spa Mist Diffuser, the Spa Vapor Diffuser, and the Spa Vapor 2.0 Diffuser.

90. Defendants have thereby infringed Greenair's copyright in the copyrightable elements of the Spa Mist Diffuser, the Spa Vapor Diffuser, and the Spa Vapor 2.0 Diffuser.

91. Defendants' infringing acts were committed with knowledge or in reckless disregard of Greenair's exclusive rights in the Spa Mist, the Spa Vapor and the Spa Vapor 2.0 Diffusers under the United States Copyright Act.

92. As a direct and proximate result of the acts complained of herein, Defendants have made substantial profits and gains which they are not in law or in equity entitled to retain.

93. The aforementioned acts have damaged and, if not enjoined, will continue to damage Greenair and cause Greenair irreparable harm, for which Greenair has no adequate remedy at law.

**COUNT 6**  
**INFRINGEMENT OF THE COPYRIGHTS IN THE**  
**SPA VAPOR & SPA VAPOR + INSTRUCTION**  
**MANUALS BY THE WALMART DIFFUSER INSTRUCTION MANUALS**

94. Greenair incorporates by reference the foregoing allegations contained in paragraphs 1 through 93 as if fully set forth herein.

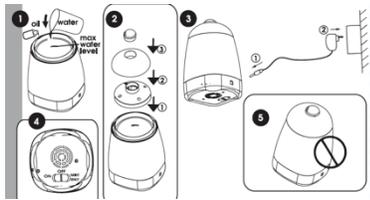
95. The Spa Vapor Diffuser Instruction & Care Manual is an original textual, pictorial and graphic work of authorship fixed in a tangible medium of expression.

96. The Spa Vapor Diffuser + Instruction & Care Manual is a derivative work of a prior work, the Spa Vapor Diffuser Instruction & Care Manual.

97. Greenair applied for a copyright registration for the Spa Vapor Instructions & Care Manual. A true and accurate copy of that Application is attached hereto and incorporated herein as Exhibit X. The U.S. Copyright Office granted Greenair a Certificate of Registration for the Spa Vapor Instructions & Care Manual under Registration No. TX0008341991, with an effective date of May 15, 2017. A true and accurate copy of the Certificate of Registration is attached hereto and incorporated herein as Exhibit Y.

98. Greenair applied for a copyright registration for the Spa Vapor + Instructions & Care Manual. A true and accurate copy of that Application is attached hereto and incorporated herein as Exhibit Z. The U.S. Copyright Office granted Greenair a Certificate of Registration for the Spa Vapor + Instructions & Care Manual under Registration No. TX0008341996, with an effective date of May 15, 2017. A true and accurate copy of the Certificate of Registration is attached hereto and incorporated herein as Exhibit AA.

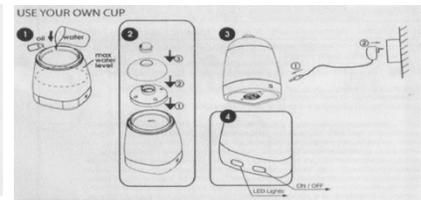
99. Defendants, without authorization from Greenair, are displaying, selling, distributing, advertising, and have sold goods accompanied by an instruction manual that includes text and graphics that are copied from and substantially similar to the Spa Vapor and Spa Vapor + Diffuser Instructions & Care Manuals. The instruction manuals for the Silver BH&G and M Diffusers and the White BH&G and M Diffusers are all identical. A side-by-side comparison of the pictorial portions of the Instructions & Care Manuals for the Spa Vapor, the Spa Vapor + and the Walmart Diffusers show the substantial similarity between the manuals:



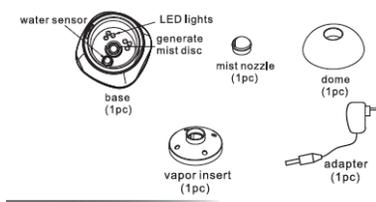
Spa Vapor



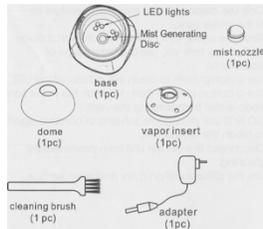
Spa Vapor +



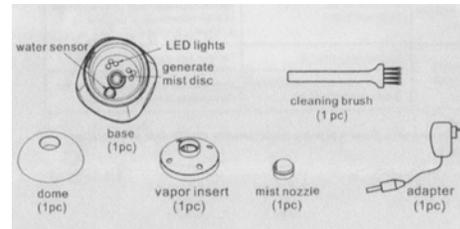
Walmart



Spa Vapor



Spa Vapor +



Walmart

Likewise, a side-by-side comparison of the “Troubleshooting” guide in the Instructions & Care Manual for the Spa Vapor + and the Walmart Diffuser instruction manuals shows the substantial similarity between the manuals:

SYMPTOM	CAUSE	SOLUTION
No Mist	Using incorrect water, distilled or purified	Use Tap Water (without filter)
	Unit is out of water	Add additional water
No Mist or Little Mist	Unit needs to be cleaned. Oils are clinging to ceramic disc or sensor	Clean unit as advised in instructions with clean water & clean ceramic disc/sensor with brush or swab.
	Water level is higher than max level line	Clean unit and add water 1/2 way to fill line and additional water after getting mist.
Blinking Lights	Water level indicator is dirty	Clean unit as advised. Pay particular attention to swab the sensor/disc inside the bottom of unit.
Unit will not stop running even though empty	Water level indicator is dirty	Clean unit as advised. Pay particular attention to swab the sensor/disc inside the bottom of unit.
No misting and unit is spraying water	Water is too cold	Change to warmer water
	Vapor insert is not inserted under dome	Make sure all 3 parts are assembled on top of unit

SYMPTOM	CAUSE	SOLUTION
No Mist	Using incorrect water type	Use Tap Water that is not filtered
	Unit is out of water	
No Mist or Little Mist	Unit needs to be cleaned	Clean unit as advised in instruction manual
Mist	Water Level is higher than max level line	Clean unit and add water 1/2 way to fill line and add additional water as needed
Blinking Lights	Water Level indicator is dirty	Clean unit as advised in instruction manual. Pay special attention to the sensor /disc inside the bottom of the unit
Unit will not stop running even when water is empty	Water Level indicator is dirty	Clean unit as advised in instruction manual. Pay special attention to the sensor /disc inside the bottom of the unit
No misting and unit is spraying water	Water is too cold	Change to warmer water
	Vapor Insert is not inserted under dome cover correctly	Ensure that all 3 parts are assembled correctly on top of the unit

Spa Vapor +

Walmart

100. Defendants have thereby infringed Greenair’s copyright in the Spa Vapor and Spa Vapor + Diffuser Instructions & Care Manuals.

101. Defendants' infringing acts were committed with knowledge or in reckless disregard of Greenair's exclusive rights in the Spa Vapor and Spa Vapor + Diffuser Instructions & Care Manuals under the United States Copyright Act.

102. As a direct and proximate result of the acts complained of herein, Defendants have made substantial profits and gains which they are not in law or in equity entitled to retain.

103. The aforementioned acts have damaged and, if not enjoined, will continue to damage Greenair and cause Greenair irreparable harm, for which Greenair has no adequate remedy at law.

**COUNT 7**  
**TRADE DRESS INFRINGEMENT AND FALSE DESIGNATION**  
**OF ORIGIN UNDER LANHAM ACT § 43(a)**  
**SPA VAPOR, SPA VAPOR + & SPA VAPOR 2.0**

104. Greenair incorporates by reference the foregoing allegations contained in paragraphs 1 through 103 as if fully set forth herein.

105. During its years in business, Greenair has developed a variety of essential oils diffusers employing several different technologies to atomize the essentials oils, several different sizes, and numerous different diffuser designs and trade dress. Much of what Greenair learned during its time in the industry is reflected in the choices made by Greenair in the design of the Spa Vapor line of essential oils diffusers, particularly the Spa Vapor, the Spa Vapor + and the Spa Vapor 2.0 Diffusers.

106. Greenair has devoted substantial time, money, and effort to marketing and promoting its products, particularly the Spa Vapor line of essential oils diffusers.

107. Greenair has exercised great care, skill, and diligence in the conduct of its business, and has maintained uniform standards of high quality in making and selling the Spa Vapor, the Spa Vapor + and the Spa Vapor 2.0 Diffusers.

108. The Spa Vapor, the Spa Vapor + and the Spa Vapor 2.0 trade dress involve several features all of which contribute to the overall impression of the Spa Vapor, the Spa Vapor + and the Spa Vapor 2.0 Diffusers. This overall impression is associated with Greenair both to retailers and to the ultimate consumer, particularly those who make purchases over the Internet.

109. Among the distinctive features of the Spa Vapor and Spa Vapor + trade dress are the color and shape of the silver spherically-shaped top cover of the diffuser, the color and shape of the smaller silver spherically-shaped discharge and the placement and shape of the horizontal notch situated atop the center of the cover, the color and shape of the slightly larger silver square-shaped base with chamfered corners and slightly concave bottom, the color, material, shape and inclination of the outwardly inclined four white translucent walls which also feature chamfered corners, the colors that the walls change to during operation of the diffuser from blue to green to purple to red, the placement and shape of the two silver rectangular buttons aligned horizontally on the base of the diffuser, the graphical elements that appear on the rectangular buttons on the base of the diffuser, and the overall three dimensional, multi-colored, trapezoidal shape of the diffuser.

110. Among the distinctive features of the Spa Vapor 2.0 trade dress are the color and shape of the silver spherically-shaped top cover of the diffuser, the color and shape of the smaller silver spherically-shaped discharge and the placement and shape of the horizontal notch situated atop the center of the cover, the color and shape of the slightly larger silver square-shaped base with chamfered corners and slightly concave bottom, the color, material, shape and inclination of the outwardly inclined four white translucent walls which also feature chamfered corners, the colors that the walls change to during operation of the diffuser from blue to green to purple to

red, the placement and shape of the three silver rectangular buttons aligned horizontally on the base of the diffuser, the graphical elements that appear on the rectangular buttons on the base of the diffuser, and the overall three dimensional, multi-colored, trapezoidal shape of the diffuser.

111. The Spa Vapor, Spa Vapor + and Spa Vapor 2.0 trade dress is distinctive and serves as a source identifier.

112. The Spa Vapor, Spa Vapor + and Spa Vapor 2.0 trade dress have achieved substantial recognition among retailers and consumers as source identifiers and have come to represent and embody Greenair's valuable goodwill and reputation for quality and value.

113. The marketing and sales success of the Greenair Spa Vapor, Spa Vapor + and Spa Vapor 2.0 are directly linked to the use of the Spa Vapor, Spa Vapor + and Spa Vapor 2.0 trade dress and Defendants were well aware of this association and the enormous goodwill associated therewith prior to their adoption of substantially similar trade dress on the BH&G Diffusers and the M Diffusers.

114. The trade dress associated with the Silver BH&G Diffuser and the Silver M Diffuser is essentially identical to the Spa Vapor and Spa Vapor + trade dress and substantially similar to the Spa Vapor 2.0 trade dress. Both the Silver BH&G Diffuser and the Silver M Diffuser employ the same color and shape of the top cover as the Spa Vapor and Spa Vapor +, which is very similar, except for the color, to that on the Spa Vapor 2.0. The color and shape of the smaller silver spherically-shaped discharge and the placement and shape of the horizontal notch situated atop the center of the cover on the infringing diffusers are identical to the Spa Vapor and Spa Vapor + Diffusers and substantially similar to that on the Spa Vapor 2.0. The color and shape of the slightly larger silver square-shaped base with chamfered corners and slightly concave bottom on the infringing diffusers are also identical to those on the Spa Vapor

and Spa Vapor + Diffusers and substantially similar to that on the Spa Vapor 2.0. The color, material, shape and inclination of the outwardly inclined four white translucent walls on the infringing diffusers which also feature chamfered corners are identical to the Spa Vapor, Spa Vapor + and Spa Vapor 2.0 Diffusers. The colors to which the walls change during operation of the diffuser from blue to green to purple to red are the same as on the Spa Vapor, Spa Vapor + and the Spa Vapor 2.0 Diffusers. The placement and shape of the two silver rectangular buttons aligned horizontally on the base of the Silver BH&G and the Silver M Diffusers are identical to those on the Spa Vapor and the Spa Vapor + Diffusers and substantially similar to those on the Spa Vapor 2.0 Diffuser. The graphical elements that appear on the rectangular buttons on the base of the Silver BH&G and Silver M Diffusers are the same as those on the Spa Vapor and Spa Vapor + Diffusers and substantially similar to those on the Spa Vapor 2.0 Diffuser. Further, the overall three dimensional, multi-colored, trapezoidal shape of the diffusers are the same as the Greenair diffusers.

115. The trade dress associated with the White BH&G Diffuser and the White M Diffuser is very similar to the Spa Vapor, Spa Vapor + and Spa Vapor 2.0 trade dress. Both the White BH&G Diffuser and the White M Diffuser employ the same color and shape of the top cover as the Spa Vapor 2.0 Diffuser, which is very similar, except for the color, to that on the Spa Vapor and Spa Vapor + Diffusers. The color and shape of the smaller white spherically-shaped discharge and the placement and shape of the horizontal notch situated atop the center of the cover are identical to the Spa Vapor 2.0 Diffuser and very similar, except for color, to the Spa Vapor and Spa Vapor + Diffusers. The color and shape of the slightly larger white square-shaped base with chamfered corners and slightly concave bottom are also identical to the Spa Vapor 2.0 and substantially similar to that on the Spa Vapor and Spa Vapor 2.0. The color,

material, shape and inclination of the outwardly inclined four white translucent walls which also feature chamfered corners are identical to the walls on the Spa Vapor, Spa Vapor + and the Spa Vapor 2.0 Diffusers. The colors to which the walls change during operation of the diffuser from blue to green to purple to red are the same as on the Spa Vapor, Spa Vapor + and the Spa Vapor 2.0 Diffusers. The placement and shape of the two white rectangular buttons aligned horizontally on the base of the diffusers are identical to those on the Spa Vapor and Spa Vapor + Diffusers, except for the color, and substantially similar to those on the Spa Vapor 2.0 Diffuser. The graphical elements that appear on the rectangular buttons on the base of the diffusers are the same as the Spa Vapor and Spa Vapor + Diffusers and substantially similar to the Spa Vapor 2.0 Diffuser. Further, the overall three dimensional, multi-colored, trapezoidal shape of the diffusers are the same as the Greenair diffusers.

116. Greenair's distinctive trade dress plays a major role in promoting its Spa Vapor, Spa Vapor + and Spa Vapor 2.0 Diffusers on Internet web sites. When the product is displayed on a retail seller's web page, it is Greenair's distinctive trade dress that is displayed in a photograph of the product.

117. Likewise, the BH&G Diffuser and the M Diffuser display this same trade dress when those products are displayed on the Meredith and Walmart web pages through photographs of the products. For example, a true and accurate photocopy of a Walmart web site display of the BH&G Diffuser is attached hereto as incorporated herein as Exhibit BB and a true and accurate photocopy of a Meredith web site display of the BH&G Diffuser is attached hereto and incorporated herein as Exhibit CC.

118. Defendants have displayed, made, and sold and continue to sell in commerce the BH&G Diffuser and on information and belief the M Diffuser featuring trade dress that is

confusingly similar to the trade dress employed in the Spa Vapor, Spa Vapor + and the Spa Vapor 2.0 Diffusers and promotion of these essential oils diffusers by Defendants is likely to cause confusion and mistake and to deceive consumers as to the source, origin, or sponsorship of these products.

119. Defendants have not been authorized by Greenair to make, display or sell essential oils diffusers employing the trade dress used on its Spa Vapor, Spa Vapor + and Spa Vapor 2.0 products or any confusingly similar version thereof.

120. Consumers are likely to be confused that Defendants' essential oils diffusers displayed using the trade dress employed on the BH&G Diffuser and the M Diffuser originate from or are otherwise sponsored by or affiliated with Greenair when they are not.

121. Defendants' infringement of the Spa Vapor, Spa Vapor + and Spa Vapor 2.0 trade dress constitute false designation of origin which is likely to cause confusion, or to cause mistake, or to deceive as to affiliation, connection or association with Greenair, or as to origin, sponsorship or approval of Defendants' essential oils diffusers by Greenair, in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

122. Upon information and belief, Defendants' unlawful acts have been committed willfully, with the intention to cause confusion, mistake, and deception.

123. Defendants' acts have caused immediate irreparable injury to Greenair and will continue to irreparably harm Greenair unless enjoined.

124. Defendants have profited from their unlawful actions and have been unjustly enriched to the detriment of Greenair.

125. Defendants' unlawful actions have caused Greenair monetary damages in an amount presently unknown, but in an amount to be determined at trial.

**COUNT 8**  
**(State Law Unfair Competition)**

126. Greenair incorporates by reference the foregoing allegations contained in paragraphs 1 through 125 as if fully set forth herein.

127. Defendants have employed and continue to employ, on and in connection with the promotion and sale of the BH&G Diffusers and the M Diffusers, trade dress that causes a likelihood of confusion or misunderstanding as to their source, sponsorship, approval, or certification.

128. Defendants are passing off their BH&G Diffusers and M Diffusers as the products of Greenair.

129. As a direct and proximate result of Defendants' use of infringing trade dress, Greenair has seen a significant drop in sales of its Spa Vapor, Spa Vapor +, and Spa Vapor 2.0 Diffusers and Defendants have realized profits from their exploitation of Greenair's goodwill.

130. Defendants' use of infringing trade dress on and in connection with their BH&G Diffusers and M Diffusers violate Ohio Revised Code Section 4165.02 and constitute deceptive trade practices and unfair competition.

WHEREFORE, Greenair respectfully requests that the Court:

A. Declare the following elements of the Spa Mist Diffuser to be copyrightable and hence protected by copyright and registrable in the U.S. Copyright Office: the color and shape of the silver spherically-shaped top cover of the diffuser, the color and shape of the smaller silver spherically-shaped discharge and the placement and shape of the horizontal notch situated atop the center of the cover, the color and shape of the slightly larger silver square-shaped base with chamfered corners and slightly concave bottom, the color, material, shape and inclination of the outwardly inclined four white translucent walls which also feature chamfered corners, the colors

that the walls change to during operation of the diffuser from blue to green to purple to red, the placement and shape of the two silver rectangular buttons aligned horizontally on the base of the diffuser, the graphical elements that appear on the rectangular buttons on the base of the diffuser, and the overall three dimensional, multi-colored, trapezoidal shape of the diffuser.

B. Declare the following elements of the Spa Vapor Diffuser to be copyrightable and hence protected by copyright and registrable in the U.S. Copyright Office: the placement and shape of the two silver rectangular buttons aligned horizontally on the base of the diffuser and the graphical elements that appear on the rectangular buttons on the base of the diffuser.

C. Declare the following elements of the Spa Vapor 2.0 Diffuser to be copyrightable and hence protected by copyright and registrable in the U.S. Copyright Office: the color of the pearl white spherically-shaped top cover of the diffuser, the color of the smaller pearl white spherically-shaped discharge and the placement and shape of the horizontal notch situated atop the center of the cover, the color of the slightly larger pearl white square-shaped base with chamfered corners and slightly concave bottom, the placement, color of the three white rectangular buttons aligned horizontally on the base of the diffuser, and the graphical elements that appear on the rectangular buttons on the base of the diffuser.

D. Enter judgment that the Defendants have infringed upon Greenair's copyright in the Spa Mist, Spa Vapor and Spa Vapor 2.0 Diffusers.

E. Enter judgment that the Defendants have infringed upon Greenair's copyright in the Spa Vapor and the Spa Vapor + Diffuser instruction manuals.

F. Permanently enjoin Defendants, their officers, directors, agents, partners, employees and related companies, and all persons acting for, with, by through or under them, from manufacturing, copying, displaying, reproducing, distributing, advertising, promoting,

offering for sale or selling any product or articles bearing any design identical or substantially similar to the designs of the Spa Mist Diffuser, Spa Vapor Diffuser and the Spa Vapor 2.0 Diffuser.

G. Permanently enjoin Defendants, their officers, directors, agents, partners, employees and related companies, and all persons acting for, with, by through or under them, from manufacturing, copying, displaying, reproducing, distributing, advertising, promoting, offering for sale or selling any product or articles bearing any design identical or substantially similar to the designs of the Spa Vapor Diffuser Instructions & Care Manual or the Spa Vapor + Diffuser Instructions & Care Manual.

H. Order the impoundment of the infringing goods pursuant to 17 U.S.C. § 503.

I. Order the Defendants, their officers, directors, agents, partners, employees and related companies, and all persons acting for, with, by through or under them, to destroy all products or articles infringing the copyrights in the Spa Mist Diffuser, the Spa Vapor Diffuser, the Spa Vapor 2.0 Diffuser, the Spa Vapor Diffuser Instructions & Care Manual, and the Spa Vapor + Diffuser Instructions & Care Manual.

J. Award to Greenair its actual damages incurred as a result of Defendants' acts of copyright infringement, and all profits Defendants realized as a result of their acts of copyright infringement, in amounts to be determined at trial.

K. Award to Greenair, pursuant to 17 U.S.C. § 505, its costs and attorneys' fees incurred as a result of Defendants' acts of copyright infringement.

L. Enter judgment that Defendants have violated § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

M. Pursuant to Section 35(a) of the Lanham Act, 15 U.S.C. § 1116(a), direct Defendants to file with the Court and serve upon Greenair's counsel within 30 days after service on Defendants of an injunction in this action, or such extended period as the Court may direct, a report in writing under oath, setting forth in detail the manner and form in which Defendants have complied herewith.

N. Award to Greenair all Defendants' profits realized by their wrongful acts pursuant to § 35(a) of the Lanham Act, 15 U.S.C. § 1117(a), enhanced as appropriate to compensate Greenair for the damages caused thereby, and the amount of its actual damages sustained as a result of Defendants' violations of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), together with costs of this action.

O. Declare that this is an exceptional case pursuant to § 35(a) of the Lanham Act, 15 U.S.C. § 1117(a), and award to Greenair treble the amount of its actual damages sustained as a result of Defendants' violations of 15 U.S.C. § 1125(a) and Ohio Rev. Code 4165.03, as well as its attorney fees and costs.

P. Declare that Defendants acted willfully in violation of Ohio Rev. Code § 4165.02(A) knowing it to be deceptive and awarding Greenair its attorney fees pursuant to Ohio Rev. Code § 4165.03.

Q. Award Greenair interest, including prejudgment interest and post-judgment interest, on the foregoing sums.

R. Award Greenair the costs of suit.

S. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Alan N. Hirth

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**JURY DEMAND**

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

/s/ Alan N. Hirth