

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

THOMAS A. SIMONIAN,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:10-cv-01615
)	
MAYBELLINE LLC)	Judge Virginia M. Kendall
)	
Defendants.)	

DEFENDANT’S MOTION TO DISMISS

Defendant Maybelline LLC (“Maybelline”) hereby respectfully moves to dismiss this action without leave to amend under Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 9(b), and the first to file rule. Plaintiff Thomas A. Simonian (“Simonian”) lacks Article III standing sufficient to give this Court subject matter jurisdiction, failed to plead fraud with the specificity required under Rule 9(b), failed to state a claim upon which relief can be granted as the marking of expired patents is not a false marking under 35 U.S.C. § 292, and filed a duplicative action to a currently pending suit in the Northern District of California. The reasons for dismissal and underlying legal authority are set forth more fully in Maybelline’s accompanying memorandum of law.

Dated: April 30, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeffrey M. Drake, hereby certify that on the April 30, 2010 the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing to the registered attorney(s) of record that the document is available for viewing and downloading from CM/ECF:

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