

**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, |) | Hon. Virginia M. Kendall |
| |) | |
| Defendant. |) | |

NOTICE OF RECENT RELATED DECISION

Defendant Maybelline LLC (“Maybelline”), by and through its undersigned counsel, respectfully submits this Notice of Recent Related Decision. Since the recent briefing on Maybelline’s Motion to Transfer [dkt. No. 25], the United States District Court for the Northern District of California, San Jose Division, in *San Francisco Technology, Inc. v. The Glad Products Company, et al.*, Case No. 10-00966, severed and transferred plaintiff’s false marking complaint against Maybelline to the Southern District of New York, the exact remedy sought by Maybelline in this case. A copy of the opinion is attached hereto as Exhibit A. A copy of San Francisco Technology, Inc.’s (“SFTT”) complaint (which pre-dates the complaint in the instant case) is attached hereto as Exhibit B.

The presence of a related litigation in the transferee forum is relevant to transfer. *Keppen v. Burlington Northern Railroad Co.*, 749 F. Supp. 181, 184 (N.D. Ill. 1990). The instant case and the recently transferred case both involve the alleged false marking of the same expired patents by the same entity (Maybelline) on one of the same product lines (Lash Discovery®). (*Compare* Ex. B, ¶ 100 *with* Dkt. 1.)

Maybelline also submits as Exhibit C a recent decision out of the United States District Court for the Eastern District of Pennsylvania in *Hollander v. Etymotic Research, Inc.*, No. 10-

cv-526 (E.D. Pa. July 2010). That decision, in particular Section III beginning on page 7, is relevant to the issues raised by Maybelline in its motion to dismiss (Dkt. 20).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeffrey M. Drake, hereby certify that on the July 20, 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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