

**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,)	Honorable Virginia M. Kendall
)	
Defendant.)	

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant Maybelline LLC (“Maybelline”), by and through its undersigned counsel, respectfully submits this Notice of Supplemental Authority.

Attached as Exhibit A is a recent decision out of the United States District Court for the District of Delaware in *Brinkmeier v. BIC Corp.*, No. 09-860-SLR and *Brinkmeier v. Bayer Healthcare LLC*, No. 10-01-SLR (D. Del. August 25, 2010). Judge Robinson’s opinion addresses issues that are relevant to Maybelline’s Motion to Dismiss (Dkt. No. 19-20). In particular, Judge Robinson held that false marking claims under 35 U.S.C. § 292 were subject to the heightened pleading requirements of Fed. R. Civ. P. 9(b) and that pleadings containing more factual assertions than those asserted by Plaintiff Simonian in the present case were insufficient to demonstrate that markings were for “purposes of deceiving the public.”

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeffrey M. Drake, hereby certify that on the August 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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