

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

_____	)	
THOMAS A. SIMONIAN,	)	
Plaintiff,	)	Civil Action No. 1:10-cv-01615
	)	
v.	)	Hon. Virginia M. Kendall
	)	
MAYBELLINE LLC,	)	<b>Jury Demand</b>
	)	
Defendant.	)	
_____	)	

**NOTICE OF SUPPLEMENTAL AUTHORITY**

Thomas A. Simonian, as *qui tam* relator (“Relator”), respectfully submits the attached supplemental authority in support of his Response to the Motion to Dismiss filed by Defendant Maybelline LLC.

With regard to the issue of whether the Relator has adequately plead his false marking claim, the Relator cites the Court to the following decisions:

1. Judge Hibbler’s September 27, 2010 opinion in *Simonian v. Fiskars Brands Inc.* (1:10-cv-1225–N.D. IL) denying Defendant’s Motion to Dismiss, attached as **Exhibit A** (“In addition, numerous courts in this District have rejected Fiskars’s arguments concerning the adequacy Simonian’s pleadings. ...The Court adopts the reasoning contained in those orders and opinions.”).
2. Judge Kennelly’s September 1, 2010 Order in *Heathcote Holdings Corp., Inc. v. Revlon Inc., et al.* (1:10-cv-01936-N.D. IL) denying Defendant’s motion to dismiss, attached as **Exhibit B** (“... defendants’ argument that Rule 9(b) requires that intent be pleaded with particularity is lacking in merit; the Rule expressly provides that ‘intent, knowledge, and other conditions of a person’s mind may be alleged generally.’”).

Dated: October 4, 2010

Respectfully submitted,

THOMAS A. SIMONIAN, as Relator

/s/ John Bjork

John Bjork

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### **CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on October 4, 2010 a true and correct copy of **RELATOR'S NOTICE OF SUPPLEMENTAL AUTHORITY** was filed electronically with the Clerk of the Court and was served via the Court's CM/ECF System which will automatically provide electronic notice upon all counsel of record.

s/ John Bjork

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John Bjork

# **EXHIBIT A**

CA

**United States District Court, Northern District of Illinois**

Name of Assigned Judge or Magistrate Judge	William J. Hibbler	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	10 C 1225	DATE	September 27, 2010
CASE TITLE	Simonian v. Fiskars Brands, Inc.		

**DOCKET ENTRY TEXT:**

The Court DENIES Fiskars's Motions Motions to Dismiss and to Stay (doc. #20, 23, 27). The Court orders Fiskars to answer the Complaint on or before October 18, 2010. Status set for October 21, 2010 at 9:30 a.m.

[ For further details see below.]

Docketing to mail notice.

**STATEMENT**

Thomas Simonian brings a *qui tam* action under 35 U.S.C. § 292 alleging that Fiskars Brands, Inc. had falsely marked some of its scissors. Fiskars moves to dismiss arguing that Simonian lacked standing and that he had not pleaded its intent to deceive with sufficient particularity. Fiskars also moves to stay pending the resolution of an appeal in the Federal Circuit concerning its standing argument.

The Federal Circuit has ruled, holding that § 292 gives relators standing to sue on behalf of the United States. *Stauffer v. Brooks Brothers, Inc.*, — F.3d —, 2010 WL 3397419, at \*3-4 (Fed. Cir. Aug. 31, 2010). In addition, numerous courts in this District have rejected Fiskars's arguments concerning the adequacy of Simonian's pleadings. *See, e.g., Simonian v. Irwin Indus. Tool Co.*, No. 10-cv-1260 (Aug. 27, 2010 Order); *Simonian v. Oreck Corp.*, No. 10-cv-1224 (Aug. 23, 2010 Memorandum Opinion and Order); *Simonian v. Advanced Vision Research, Inc.*, No. 10-cv-1310 (Aug. 13, 2010 Order); *Simonian v. Cisco Sys., Inc.*, No. 10-cv-1306 (Jul. 29, 2010 Order). The Court adopts the reasoning contained in those orders and opinions.

The Court DENIES Fiskars's Motion to Dismiss and DENIES the Motion to Stay as moot. The Court orders Fiskars to answer the Complaint on or before October 18, 2010. Status hearing set for October 21, 2010 at 9:30 a.m.

*William J. Hibbler*

*[Signature]*

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## **EXHIBIT B**

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 4.1.1  
Eastern Division**

Heathcote Holdings Corp., Inc.

Plaintiff,

v.

Case No.: 1:10-cv-01936

Honorable Matthew F. Kennelly

Revlon Inc., et al.

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, September 1, 2010:

MINUTE entry before Honorable Matthew F. Kennelly: Defendants' motion to stay [8] is denied as moot, because the Federal Circuit has now decided the Stauffer case. Defendants' motion to dismiss [5] is denied. First, based on the Stauffer decision, the plaintiff has standing to sue. Second, defendants' argument that Rule 9(b) requires that intent be pleaded with particularity is lacking in merit; the Rule expressly provides that "intent, knowledge, and other conditions of a person's mind may be alleged generally." In any event, the facts alleged are sufficient to support an inference of the requisite intent to deceive. Third, defendants' argument that the product is marked with both expired and unexpired patents and thus is not an "unpatented article" relies on matters outside the complaint that the Court cannot properly address on a motion to dismiss for failure to state a claim. The Court also notes that defendants' argument that a product marked with both expired and unexpired patents is not "unpatented" is not developed sufficiently for the Court to decide it definitively at this point, particularly because of the possible nuances involved in determining what aspects of the product are covered by which expired or unexpired patents. Defendants are directed to answer the complaint by no later than 9/22/10. The case is set for a status hearing on 10/7/10 for the purpose of setting a pretrial and discovery schedule. Counsel are directed to confer prior to that date to attempt to agree on a schedule to propose to the Court. (mk)

**ATTENTION:** This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).