

**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.	)	
	)	Honorable Virginia M. Kendall
MAYBELLINE LLC,	)	
	)	
Defendants.	)	

**NOTICE OF SUPPLEMENTAL AUTHORITY**

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

1. Contrary to Maybelline’s last Notice of Supplemental Authority, briefing in *In re BP Lubricants USA, Inc.* had not been completed as of that time. BP Lubricants submitted a reply brief on November 12, 2010, which is attached as **Exhibit A**. It is now believed that briefing in *In re BP Lubricants USA, Inc.* is complete. Arguments made by BP Lubricants are relevant to arguments raised by Maybelline in its motion to dismiss, namely whether Rule 9(b) should apply, and what needs to be plead under that rule. The decision of the Court of Appeals for the Federal Circuit in that case will be directly relevant to issues raised by Maybelline in its motion to dismiss, namely whether Rule 9(b) should apply, and what needs to be plead under that rule for a false marking case. As briefing is now complete and the case is in front of the Federal Circuit on a mandamus petition, that decision is expected relatively soon.

2. Attached as **Exhibit B** is a recent recommendation from Magistrate Judge Mitchell of the Western District of Pennsylvania in *U.S. ex rel. Alchemy Asset Services, Inc. v. Glaxosmithkline Consumer Healthcare, LP*, Civil Action No. 10-680 (WDPA Nov. 16, 2010). Mitchell recommends that Alchemy Asset Services’ complaint be dismissed for failure to meet

the heightened pleading requirements of Fed. R. Civ. P. 9(b). Mitchell's recommendation contains reasoning relevant to Maybelline's motion to dismiss, particularly Maybelline's argument that Simonian's complaint, which contains similar conclusory statements, should be dismissed under Fed. R. Civ. P. 9(b).

Respectfully submitted,

/s/Jeffrey M. Drake

Jeffrey M. Drake  
Wood Phillips  
500 West Madison Street  
Suite 3800  
Chicago, IL 60661-2562  
Ph: (312) 876-1800  
jmdrake@woodphillips.com

Of Counsel:

Francis DiGiovanni  
Geoffrey A. Zelle  
Connolly Bove Lodge & Hutz LLP  
1007 N. Orange Street  
Wilmington, Delaware 19899  
Ph: (302) 658-9141  
fdigiovanni@cblh.com  
gzelle@cblh.com

*Attorneys for Defendant Maybelline LLC*

## CERTIFICATE OF SERVICE

I, Jeffrey M. Drake, hereby certify that on the November 18, 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:

Joseph M. Vanek, Esquire  
David P. Germaine, Esquire  
Jeffrey R. Moran, Esquire  
VANEK, VICKERS & MASINI, P.C.  
111 S. Wacker Drive  
Suite 4050  
Chicago, IL 60606  
Ph: (312) 224-1500  
Fax: (312) 224-1510  
(jvanek@vaneklaw.com)  
(dgermaine@vaneklaw.com)  
(jmoran@vaneklaw.com)

Bruce S. Sperling, Esquire  
Robert D. Cheifetz, Esquire  
SPERLING & SLATER, P.C.  
55 West Monroe Street  
Suite 3200  
Chicago, IL 60603  
Ph: (312) 641-3200  
Fax: (312) 641-6492  
(bss@sperling-law.com)  
(robc@sperling-law.com)

Eugene M. Cummings, Esquire  
David M. Mundt, Esquire  
David Lesht, Esquire  
Martin Goering, Esquire  
Konrad V. Sherinian, Esquire  
Panasarn Aim Jirut, Esquire  
Jessica Rissman, Esquire  
EUGENE M. CUMMINGS, P.C.  
One North Wacker Drive  
Suite 4130  
Chicago, IL 60606  
Ph: (312) 984-0144  
Fax: (312) 984-0146  
(ecummings@emcpc.com)  
(dmundt@emcpc.com)  
(dlesht@emcpc.com)  
(mgoering@emcpc.com)  
(ksherinian@emcpc.com)  
(ajirut@emcpc.com)  
(jrissman@emcpc.com)

*Attorneys for Plaintiff  
Thomas A. Simonian*

By: /s/Jeffrey M. Drake  
Jeffrey M. Drake