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**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

THE HERSHEY COMPANY,

Plaintiff/Counterclaim Defendant,

v.

HOTTRIX LLC,

Defendant/Counterclaim Plaintiff.

No. 1:10-cv-1178-JEJ

JUDGE JOHN E. JONES III

**MOTION OF THE HERSHEY COMPANY TO DISMISS
COUNTERCLAIMS AND FOR JUDGMENT ON THE PLEADINGS**

Plaintiff / counterclaim defendant The Hershey Company (“Hershey”) hereby moves pursuant to Rule 12(b)(6), Fed. R. Civ. P., to dismiss the counterclaims of defendant / counterclaim plaintiff Hottrix LLC, and for judgment on the pleadings pursuant to Rule 12(c), Fed. R. Civ. P., with respect to Hershey’s claim for declaratory judgment of non-infringement. Hershey relies, in support of

this application, upon this Motion, the pleadings in this action, the accompanying Declaration of Victoria Haje, dated September 24, 2010, and exhibits thereto, and the accompanying Brief in support of Hershey's application.

Dated: September 27, 2010

McNEES WALLACE & NURICK LLC

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and that the document is being served electronically upon counsel of record through the Court's electronic transmission facilities, with the exception of the physical exhibits to the Declaration of Victoria Haje, which were hand-delivered to the Court and counsel.

/s/ Harvey Freedenberg
Harvey Freedenberg

Of Counsel for Plaintiff/Counterclaim
Defendant, The Hershey Company

Dated: September 27, 2010