

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Southern District of Indiana on the following Patents or Trademarks:

DOCKET NO. 1:08-cv-1014-WTL-JMS	DATE FILED 7/29/2008	U.S. DISTRICT COURT Southern District of Indiana
PLAINTIFF THE HERSHEY COMPANY and HERSHEY CHOCOLATE & CONFECTIONERY CORP.		DEFENDANT CURRENT USA, INC.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 <i>§ 710c pg. 3</i>		** SEE ATTACHED COMPLAINT **
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In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY			
	<input checked="" type="checkbox"/> Amendment	<input checked="" type="checkbox"/> Answer	<input checked="" type="checkbox"/> Cross Bill	<input checked="" type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK		
1				
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE 8/14/2008
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

08 JUL 29 PM 4:07

THE HERSHEY COMPANY)
)
 &)
)
 HERSHEY CHOCOLATE &)
 CONFECTIONERY CORPORATION, Delaware)
 Corporations.)
)
 Plaintiffs,)
)
 vs.)
)
 CURRENT USA, Inc.,)
)
 Defendant.)

Case No. 1:08-cv-1014 WTL-JMS

COMPLAINT

For their causes of action against Defendant, Plaintiffs, THE HERSHEY COMPANY and HERSHEY CHOCOLATE & CONFECTIONERY CORPORATION (collectively, "Hershey") allege:

Introduction

1. This is an action for injunction, damages, and other appropriate relief arising out of Defendant. Current USA, Inc.'s ("Current") violations of the Lanham Act, 15 U.S.C. § 1114(a), 15 U.S.C. § 1125(a) and 15 U.S.C. § 1125(c), 15 U.S.C. § 1117(c), as well as, *inter alia*, Current's state and common law trademark and trade dress infringement, trademark misuse, false designation of origin, and unfair competition.

2. Hershey Chocolate & Confectionery Corporation is the owner, and The Hershey Company is the licensee, of the famous "KISSES® Trade Dress," which includes but is not limited to multiple federally registered trademarks that specifically protect the look and appearance of the

world famous KISSES® brand candy and related products. The KISSES® Trade Dress includes the conically-shaped chocolate candy itself (product trade dress), packaging trade dress consisting of a conical foil-wrapped packaging similar in shape to the product trade dress, and packaging trade dress consisting of foil-wrapped packaging with a paper plume device extending from the top of the product. All of these trade dresses are used by Hershey in connection with the sale of chocolate, gift and novelty items, including but not limited to stationary, cards and stickers (herein and as further defined below, collectively, the KISSES® Trade Dress). As the owner of the KISSES® Trade Dress, Hershey seeks relief, including relief to enjoin Current's wrongful use of the KISSES® Trade Dress in commerce.

Parties, Jurisdiction, and Venue

3. This Court's subject-matter jurisdiction is based on 28 U.S.C. §1338(a) and (b) (Acts of Congress pertaining to trademarks and related actions), 15 U.S.C. §1121 (Federal Lanham Act), 28 U.S.C. §1331 (Federal Question), and 28 U.S.C. §1367 (Supplemental Jurisdiction), as well as the federal and state common law and the statutory law of the state of Indiana.

4. Hershey Chocolate & Confectionery Corporation and The Hershey Company are corporations organized and existing under the laws of the state of Delaware.

5. Upon information and belief, Current is a Minnesota Corporation with a business address of 1725 Roe Crest Drive, North Mankato, Minnesota 56003, and does business throughout the entire United States via mail order catalogues and over the Internet from a number of interactive e-commerce websites including: www.currentcatalogue.com and www.currentinc.com, and has engaged in the illegal and unauthorized production, dissemination, display and/or sale of merchandise in the state of Indiana, which infringes Hershey's rights.

6. This Court has personal jurisdiction over Current.

7. Venue is proper in this district under 28 U.S.C. §1391.

Factual Allegations

8. Hershey incorporates by reference the allegations contained in all previous paragraphs of this Complaint, as if separately repeated herein.

9. Hershey and its affiliate companies are engaged in the primary business of manufacturing and selling chocolate, candy, confectionery and related products throughout the world, including the entire United States of America.

10. Hershey is the owner of multiple famous and federally registered trademarks and trade dress, state registered trademarks and trade dress and trademarks and trade dress that are protected by state, federal and common law including, but not limited to, the famous KISSES® Trade Dress, which have been used in commerce by Hershey or its affiliate or related companies for nearly 100 years in connection with KISSES® brand chocolate and related products.

11. The KISSES® Trade Dress is protected by a variety of state, federal, and common laws including, but not limited to: U.S. Reg. No. 1,584,608 for the HERSHEY'S KISSES® design, and U.S. Reg. Nos. 186,828, 1,031,836; 1,038,025; 1,236,602; 1,986,822; 2,187,189; and 2,138,566 for the distinctive configuration of the product, including the foil wrap and plume.

12. Examples of designs included in the KISSES® Trade Dress are depicted below:



13. Hershey and its affiliate companies have extensively used and promoted the KISSES® Trade Dress at considerable expense, and Hershey has acquired significant goodwill and public recognition of same. Hershey and its affiliate companies use the KISSES Trade Dress with a variety of different words and trademarks on the plume on the plume device.

14. Apart from chocolate-related sales, Hershey maintains a large and prosperous business of selling ancillary KISSES® brand products and licensing the right to sell products to other manufacturers, including stickers and stationary items, bearing the famous KISSES® Trade Dress. Consistent with its obligations in connection with protecting the KISSES® Trade Dress, Hershey establishes and maintains standards of high quality for these licensed products.

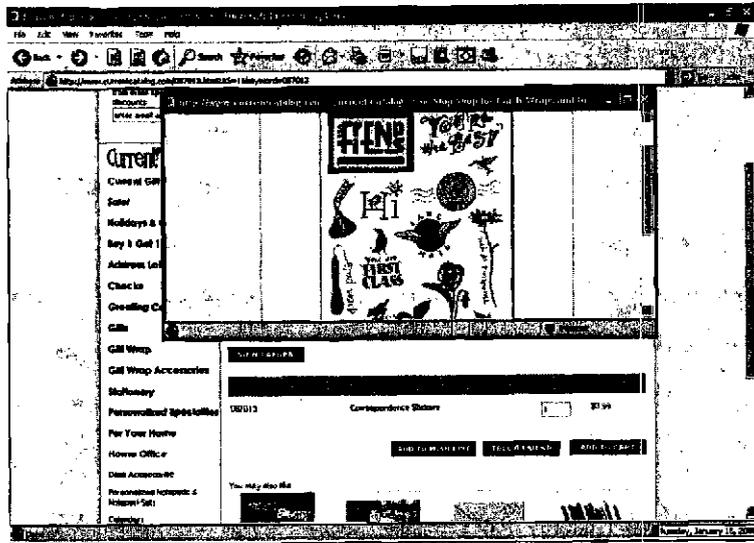
15. The KISSES® Trade Dress is extremely well known and, as a result of Hershey's extensive sales and advertising, products bearing the KISSES® Trade Dress, including licensed products, have come to mean, and are identified with Hershey and its affiliate companies only.

16. Hershey's use of the KISSES® Trade Dress is a principal means by which consumers distinguish Hershey products from similar or identical goods and services produced or sold by others, including competitors.

17. The KISSES® Trade Dress is distinctive and/or has developed secondary meaning and significance in the minds of the purchasing public. Furthermore, products bearing the KISSES® Trade Dress, including but not limited to, stationary, stickers, cards, etc., are recognized by the purchasing public nationwide and are immediately identified by the purchasing public with Hershey, its affiliate companies, and their high quality goods and services.

18. As a result of the goodwill, immediate recognition and extensive sales and advertising, the KISSES® Trade Dress has become highly valuable.

19. Upon information and belief, Current is engaged in the business, among other things, of manufacturing, advertising, selling, and/or distributing certain products, including *inter alia*, stickers bearing the KISSES® Trade Dress. An example of such stickers sold by Current is pictured below:



20. Current's use of the KISSES® Trade Dress is a deliberate effort to trade upon, diminish, dilute and damage Hershey's intellectual property rights. Such unauthorized use of the KISSES® Trade Dress infringes on Hershey's exclusive rights in the KISSES® Trade Dress.

21. Current uses the abbreviation S.W.A.K. on the plume device. This abbreviation is commonly understood by consumers to mean "Sealed with a Kiss" and thereby serves to reinforce the association of Current's product with Hershey and its KISSES products.

22. Current has not received permission to manufacture, advertise, sell or distribute any products bearing the KISSES® Trade Dress from Hershey or anyone acting on Hershey's behalf.

23. Upon information and belief, Current willfully and intentionally engaged in the foregoing business with the knowledge that the KISSES® Trade Dress was registered to Hershey and that the manufacture, advertisement, sale and/or distribution of products bearing the KISSES® Trade Dress was unauthorized.

24. Current's conduct of manufacturing, advertising, selling and/or distributing products bearing the KISSES® Trade Dress is a deliberate attempt to trade on the valuable trade dress and trademark rights and substantial goodwill established by Hershey and its affiliate companies.

25. Upon information and belief, Current engaged in the foregoing business with the intent that its use of the KISSES® Trade Dress would cause confusion, mistake, or deception among members of the general public.

26. Current has traded on and profited from the enormous goodwill and reputation established by Hershey.

Count I: Federal Trademark Infringement

27. Hershey incorporates by reference the allegations contained in all previous paragraphs of this Complaint, as if separately repeated here.

28. Current's conduct as described herein violates 15 U.S.C. § 1114(1) which specifically forbids Current to:

a. use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which use is likely to cause confusion, or to cause mistake, or to deceive, or

b. reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in

connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.

29. The famous foil-wrapped conical product configuration and plume device used by Current (the KISSES® Trade Dress) are identical or nearly identical and confusingly similar to, and a colorable imitation of, the KISSES® Trade Dress, and infringe Hershey's trademark rights and interests in the KISSES® Trade Dress. Current's unauthorized use of the KISSES® Trade Dress is likely to cause confusion and mistake and to deceive the public as to the approval, sponsorship, license, source or origin of Current's products.

30. Upon information and belief, these wrongful acts were committed with knowledge that such imitation, as described was intended to be used to cause confusion, or to cause mistake, or to deceive, and Current has profited and been unjustly enriched by sales that it would not otherwise have made but for its unlawful conduct.

31. As a result of Current's conduct, Hershey has been damaged and is entitled to damages, including but not limited to, Current's profits from the sale of all infringing goods, actual damages, statutory damages, treble damages, corrective advertising damages, costs of litigation, and attorney's fees.

32. Current's willful and deliberate acts described above have caused irreparable injury to Hershey's goodwill and reputation, and, unless enjoined, will cause further irreparable injury, whereby Hershey has no adequate remedy at law.

Count II: Federal False Designation of Origin

33. Hershey incorporates by reference the allegations contained in all previous paragraphs of this Complaint, as if separately repeated here.

34. Current's conduct as described herein violates 15 U.S.C. § 1125(a) (1) (A) which specifically prohibits Current from making:

in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which:

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the original, sponsorship, or approval of his or her goods, services of commercial activities by another person

35. Hershey has been damaged and/or is likely to be damaged by the wrongful conduct of Current.

36. Upon information and belief, Current's acts of false designation of origin and unfair competition have been done willfully and deliberately and Current has profited and been unjustly enriched by sales that it would not otherwise have made but for its unlawful conduct.

37. Current's violations of 15 U.S.C. § 1125(a) entitle Hershey to recover damages, including but not limited to, Current's profits from the sale of all infringing goods, actual damages, treble damages, corrective advertising damages, litigation costs, and attorney's fees.

Count III: Federal Trademark Dilution

38. Hershey incorporates by reference the allegations contained in all previous paragraphs of this Complaint, as if separately repeated herein.

39. Current's conduct as set forth above violates 15 U.S.C. § 1125(c), in that Current willfully and in bad faith intended to profit from the KISSES® Trade Dress by trading on the valuable reputation of Hershey and caused dilution of the distinctive quality of this famous trade dress.

40. The KISSES® Trade Dress is distinctive and famous within the meaning of 15 U.S.C. § 1125(c), and was distinctive and famous prior to the date of Current's conduct challenged herein.

41. Current's conduct as set forth above violates 15 U.S.C. § 1125(c), as amended by the Trademark Dilution Revision Act of 2006, in that it is likely to dilute, or is diluting, the distinctive quality of the KISSES® Trade Dress. Current's use of the KISSES® Trade Dress is likely to create, or has created, an association between Current's products with the KISSES® Trade Dress, which impairs the distinctiveness of the KISSES® Trade Dress and lessens the capacity of the KISSES® Trade Dress to identify and distinguish products marketed and sold by Hershey and/or its licensees.

42. To the extent that Current's products are viewed as being less than satisfactory to consumers, something which Hershey has no ability to control, Hershey's business reputation and goodwill and the reputation and goodwill associated with the KISSES® Trade Dress, are likely to be tarnished and injured.

43. Upon information and belief, Current willfully and in bad faith intended to profit from the KISSES® Trade Dress by trading on the valuable reputation of Hershey and causing dilution of the distinctive quality of and tarnishing Hershey's famous trade dress.

44. Current's violations of 15 U.S.C. § 1125(c) entitle Hershey to recover damages, including but not limited to, Current's profits from the sale of all infringing goods, actual damages, treble damages, corrective advertising damage, costs of suit, and attorney's fees.

45. Current's willful and deliberate acts described above have caused irreparable injury to Hershey's goodwill and reputation, and, unless enjoined, will cause further irreparable injury, whereby Hershey has no adequate remedy at law.

Count IV: Federal Trademark Counterfeiting/Statutory Damages

46. Hershey incorporates by reference the allegations contained in all previous paragraphs of this Complaint, as if separately repeated herein.

47. This claim is for counterfeiting of trademarks registered in the United States Patent and Trademark Office, pursuant to Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), as amended.

48. Current's infringing acts included, but were not limited to, the use of unauthorized or "counterfeit marks."

49. Long after the adoption and use by Hershey of the KISSES® Trade Dress, and with at least constructive notice of the federal registration of the KISSES® Trade Dress, Current has manufactured, advertised, distributed and/or sold counterfeit products bearing counterfeits, reproductions, copies or colorable imitations of KISSES® Trade Dress. Upon information and belief, Current engaged in this conduct with the express intent of profiting from Hershey's valuable KISSES® Trade Dress by confusing the trade and the consuming public as to the source and quality of its goods and creating the false impression and belief that its goods originated from, or were authorized, sponsored or approved by, Hershey or the source of genuine Hershey products.

50. The activities of Current complained of herein constitute willful and intentional counterfeiting in violation of the Lanham Act, 15 U.S.C. § 1141(1), have caused injury and damage to Hershey and have caused and, unless enjoined, will continue to cause irreparable harm and injury to Hershey for which Hershey has no adequate remedy at law, and that such willfully infringing products be subject to pre-trial and/or summary seizure in order to protect Hershey's rights in and to its trade dress and trademarks from being yet further damaged.

51. Current has profited and been unjustly enriched by sales that Current would not otherwise have made but for their unlawful conduct.

52. As a result, in addition to, or in lieu of other damages and penalties, whichever Hershey may elect or the Court may award, Hershey is entitled to statutory damages pursuant to 15 U.S.C. § 1117(c) and/or other statutory authorities.

53. Current's use of counterfeit marks entitles Hershey, at its option, to be awarded up to \$100,000.00 per violated mark.

54. To the extent that Current's uses of counterfeit marks was willful, Hershey is entitled to statutory damages of not more than \$1,000,000.00 per counterfeit mark per type sold, offered for sale, or distributed, as the Court considers just under 15 U.S.C. § 1117(c)(2).

Count V: Unfair Competition

55. Hershey incorporates by reference the allegations in all previous paragraphs of this Complaint.

56. Hershey has existing contractual relationships which involve granting licenses to various manufacturers and distributors authorizing their manufacture and sale of various items that use or incorporate the KISSES® Trade Dress in their products.

57. Current's unlawful and unauthorized use of the KISSES® Trade Dress constitutes unfair competition with Hershey and its licensees. Current's conduct was designed to cause confusion in the public mind as to the source and origin of such unauthorized products. Current's conduct was calculated to cause damage to Hershey in its lawful business and done with the unlawful purpose of causing such damage without right or justifiable cause.

58. Current's conduct as described herein has directly and proximately caused Hershey and its licensees to incur substantial monetary damages.

59. Current acted willfully and maliciously and with full knowledge of the adverse effect of this wrongful conduct upon Hershey and its licensees and with the conscious disregard for the rights of those parties.

60. Current's unfair competition entitles Hershey to recover damages including, but not limited to, Current's profits from the sale of the infringing products, actual damages, corrective advertising damages, costs of suit and attorney's fees.

Count VI: Corrective Advertising Damages

61. Hershey incorporates by reference the allegations contained in all previous paragraphs of this Complaint.

62. Current has published and advertised in certain venues, including but not necessarily limited to the Internet, pictures of infringing merchandise, including, but not necessarily limited to, the product depicted in paragraph 20 of this Complaint.

63. Such publication and advertising was unauthorized, and the acts of publishing and advertising, standing alone, are wrongful and caused damages to Hershey.

64. Hershey seeks an award of such damages as necessary to remedy those wrongs and to correct the misinformation in the marketplace resulting from the unauthorized and unlawful publications and advertisements.

Prayer for Relief

WHEREFORE, Hershey seeks the following relief:

- a. A judgment that Current has:
 - (i) Violated 15 U.S.C. § 1114 and other statutory and common law authority by selling unauthorized and counterfeit goods and thus infringing upon the KISSES® Trade Dress;
 - (ii) Violated 15 U.S.C. § 1125(a) and other statutory and common law authority

by falsely designating the origin of goods or engaging in false or misleading descriptions or representations of fact with respect to the origin of goods in a manner likely to cause confusion, mistake or deception among consumers as to the affiliation, connection or association of Current and Current's goods with Hershey;

(iii) Violated 15 U.S.C. § 1125(c) and other statutory and common law authority by willfully and in bad faith intending to profit from the KISSES® Trade Dress by trading on the reputation of Hershey and also caused dilution of the distinctive quality of the famous KISSES® Trade Dress;

(iv) Engaged in trademark misuse, and unfair competition by the acts aforesaid, by misusing the KISSES® Trade Dress and by causing confusion in the minds of consumers and general public as to the source, sponsorship, and/or approval of goods sold by Current; and

(v) Exercised unlawful use of the KISSES® Trade Dress without the permission of Hershey;

b. That, pursuant to 15 U.S.C. § 1116, Current and its owners, partners, officers, directors, agents, servants, employees, representatives, licensees, subsidiaries, manufacturers and distributors, jointly and severally, are enjoined during the pendency of this action, and permanently thereafter, from:

- (i) Infringing on the KISSES® Trade Dress in any manner;
- (ii) Manufacturing, marketing, advertising, distributing, selling, promoting, licensing, exhibiting or displaying any product or service using the KISSES® Trade Dress or any copies or counterfeits thereof or anything confusingly similar thereto;
- (iii) Otherwise infringing on the KISSES® Trade Dress;
- (iv) Using any false description, representation, or designation, or otherwise

engaging in conduct that is likely to create an erroneous impression that Current's products are endorsed by Hershey or any related company, sponsored by Hershey or any related company, or are connected in any way with Hershey or any related company;

(v) Using the KISSES® Trade Dress in any manner whatsoever;

(vi) Holding themselves out as licensees or otherwise authorized users of the KISSES® Trade Dress; and

(vii) Using the KISSES® Trade Dress in promotional literature or materials, such as product advertisements, including those posted on the Internet.

c. That, pursuant to 15 U.S.C. § 1117, Hershey be awarded such damages available under the Lanham Act and common law, including but not limited to, actual damages, Current's profits, treble damages, statutory damages, costs of suit and attorney's fees;

d. That, pursuant to 15 U.S.C. § 1118, Current be required to deliver to the Court, or to some other person that the Court may designate, for ultimate destruction, any and all articles of merchandise or other items in the possession or control of Current which might, if sold or distributed for sale, violate the injunction granted herein;

e. An accounting of all gains, profits, savings and advantages realized by Current from their aforesaid acts of trademark infringement, counterfeiting and dilution, false designation of origin, unfair competition and injury to business reputation;

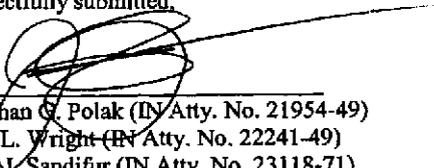
f. That Hershey be awarded its reasonable attorney's fees and costs;

g. That Hershey is awarded its corrective advertising damages and all other damages arising from the unlawful and unauthorized advertisements and publications;

h. That Hershey is awarded such other damages, including but not limited to, punitive damages, to which may show itself entitled to recover; and

- i. All other just and proper relief.

Respectfully submitted,



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