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CV 12 - 5074

BIANCO, J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
PARIS HILTON &
PARLUX FRAGRANCES, LLC,

Plaintiffs,

-against-

INTERNATIONAL PERFUME PALACE, INC.
& JOHN DOE DEFENDANTS 1-10,

Defendants.
----- X

BROWN, M. J.

Case No. 12 Civ. _____

Plaintiff Demands Trial By Jury

2012 OCT 10 PM 2:46
U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

FILED
CLERK

COMPLAINT

Plaintiffs Paris Hilton and Parlux Fragrances, LLC, through their undersigned counsel, hereby allege as follows, on personal knowledge as to their own acts and otherwise on information and belief:

PARTIES

1. Plaintiff Paris Hilton is an individual who, at all times relevant hereto, was domiciled in Los Angeles, California. Hilton is the owner of the trademark PARIS HILTON for fragrances and other beauty products. A copy of the U.S. Patent and Trademark Office's registration for PARIS HILTON is annexed hereto as **Exhibit 1**.

2. Plaintiff Parlux Fragrances, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 5900 North Andrews Avenue, Suite 500, Fort Lauderdale, Florida 33309. Parlux Fragrances, LLC is successor by merger to Parlux Fragrances, Inc. Parlux Fragrances, Inc. is the assignee of Design Patent No. US D518,382 (the “D382 Patent”). A copy of the U.S. Patent and Trademark Office’s Design Patent D518,382 is annexed hereto as **Exhibit 2**.

3. Parlux is engaged, inter alia, in the manufacturing and wholesale distribution, both domestically and internationally, of fragrances, colognes, perfumes and related accessories.

4. Upon information and belief, Defendant International Perfume Palace (“IPP”) is a corporation organized and existing under the law of the State of New York having a principal place of business located at 194 Roxton Road, Plainview, New York 11803. IPP is a seller of perfumes and fragrances, including the infringing Paris Paris products complained of herein.

5. Upon information and belief, defendants John Does 1 through 10 are individuals and companies involved in the manufacture, distribution and sale of Paris Paris men’s and women’s fragrance products. Other than as alleged in this Complaint, Plaintiff is ignorant of the true identities of Does 1 through 10, inclusive, and therefore sues them by such fictitious names. Upon information and belief, each of the defendants designated as a Doe defendant is liable in some manner for the acts and omissions, damages, and injuries of which Plaintiff alleges in this Complaint. Plaintiff will seek to amend this Complaint to state the true identities of Does 1 through 10 when ascertained.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121, 35 U.S.C. §§ 271 and 289, and 28 U.S.C. §§ 1331, 1332, and 1338 and has

supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a). The amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391, as this is the district where a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred and IPP is subject to personal jurisdiction here.

PLAINTIFF PARIS HILTON'S TRADE DRESS AND TRADEMARK

8. Ms. Hilton is the worldwide owner of several trademarks in connection with various goods and services, including but not limited to, clothing and footwear, cosmetics, retail store services, fragrance, watches and a wide variety of fashion accessories worldwide. Ms. Hilton is the owner of numerous trademark registrations in the U.S. and in 60 additional countries throughout the world.

9. Ms. Hilton is an international celebrity, actress, fashion designer, musician and socialite. She has appeared in movies and on television. Paris Hilton stores are found worldwide and the Paris Hilton brand includes handbags, watches and footwear, in addition to fragrances. Millions of bottles of her fragrances have been sold.

10. Ms. Hilton owns an incontestable United States trademark registration under number 3,059,587 for the trademark PARIS HILTON for "fragrances, namely, perfumes, eau de parfum, cologne, eau de toilet, body lotion, bath gel, hand soap, perfumed soap and cosmetics" in Class 3.

11. Ms. Hilton has continuously and exclusively used this PARIS HILTON mark in connection with the PARIS HILTON line of fragrances and related beauty products since at least 2004.

12. The PARIS HILTON fragrances and beauty products feature a line for women and a line for men. (Both the PARIS HILTON men's and women's fragrance line will be collectively referred to herein as the "PARIS HILTON fragrances and beauty products" if not otherwise specified.)

13. The fragrances and related beauty products bearing the PARIS HILTON trademark are marketed and sold nationally by well-known retailers such as Macy's, Perfumania, Wal-Mart, and Kohls, as well as online.

14. The PARIS HILTON fragrances are sold individually and also as part of a packaged gift set that includes other beauty products, such as body lotion and shower gel for women and hair and body wash and deodorant for men.

15. Plaintiff also owns distinctive trade dress packaging in connection with her PARIS HILTON trademark (the "PARIS HILTON trade dress").

16. The PARIS HILTON trade dress is intended to establish an identity in packaging design among the PARIS HILTON fragrances and beauty products.

17. The fragrances bearing the PARIS HILTON trademark have a unique trade dress that has contributed to the successful marketing and sales of the fragrance lines. Among the key elements of this distinctive trade dress are: (i) cylindrical-shaped bottles; (ii) clear pink bottles for the women's fragrance and clear blue for the men's fragrance; (iii) a vertical black wave design overlaid on the bottle; and (iv) the brand name Paris Hilton written in black, lower case, and cursive font against a silver background.

18. The beauty products bearing the PARIS HILTON trademark have a unique trade dress that has contributed to the successful marketing and sales of the fragrance lines. Among the key elements of this distinctive trade dress are: (i) black tubes and (ii) the brand name Paris

Hilton written in cursive lettering and displayed vertically in metallic pink (for women) or metallic blue (for men).

19. The packaging for individual fragrances bearing the PARIS HILTON trademark have a unique trade dress that has contributed to the successful marketing and sales of the fragrance lines. Among the key elements of this distinctive trade dress are: (i) metallic pink (for women) or metallic blue (for men) boxes; (ii) a vertical black wave design overlaid on the box; (iii); and the brand name Paris Hilton written in metallic silver, lower case, and cursive font running vertically up the right side of the box.

20. The packaging for boxed gift sets bearing the PARIS HILTON trademark have a distinctive trade dress that has contributed to the successful marketing and sales of the fragrance lines. Among the key elements of this distinctive trade dress are: (i) metallic pink (for women) or metallic blue (for men) boxes; (ii) a vertical black wave design overlaid on the box; (iii); and the brand name Paris Hilton written in silver, lower case, and cursive font running vertically up the right side of the box.

21. The PARIS HILTON trade dress is distinctive of Ms. Hilton's products and has become a valuable element of their reputation and goodwill and is recognized as such by the trade and consuming public.

22. The PARIS HILTON trade dress is inherently distinctive in that the choice and arrangement of colors and graphics in addition to the shape and size is arbitrary, suggestive, and/or fanciful.

23. The PARIS HILTON trade dress has acquired secondary meaning due to Ms. Hilton's longstanding and consistent use of the PARIS HILTON trade dress throughout her PARIS HILTON product line and extensive promotion and sales since at least 2004. As a result,

consumers who see fragrance or beauty products with the distinctive PARIS HILTON trade dress immediately recognize these products as Ms. Hilton's products.

24. PARIS HILTON trade dress is not functional and is used as a source identifier for Ms. Hilton's products.

**DEFENDANT'S INFRINGEMENT OF
PLAINTIFF PARIS HILTON'S TRADEMARK AND TRADE DRESS**

25. In or about August of 2012, a trade show for style and beauty products was held in Las Vegas, Nevada.

26. Defendant IPP had a booth at that show at which it exhibited, and made available samples of, various products which it was offering for sale. Among the products IPP exhibited, and made available samples of, at the trade show were a men's and women's fragrance and cosmetics called "Paris Paris."

27. Defendant IPP is not affiliated with either Plaintiff. Plaintiffs have not authorized or endorsed Defendant's use of, sale and/or distribution of any products.

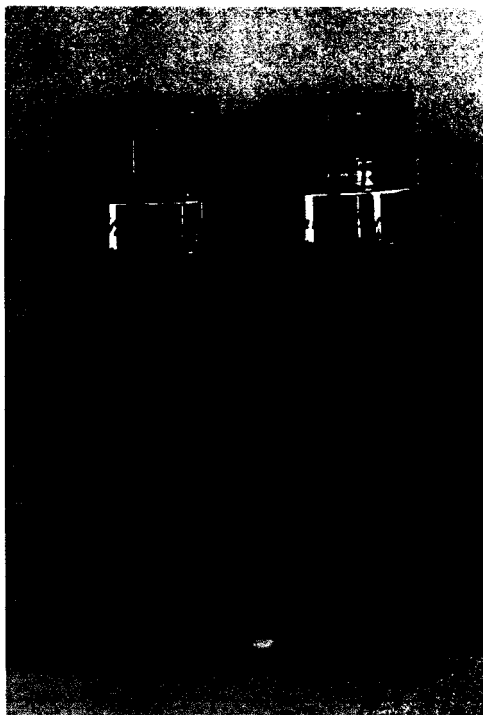
28. At that trade show IPP exhibited and offered for sale Paris Paris fragrances and cosmetics, including an individual bottle of the women's fragrance, a gift set for the men's fragrance and a gift set for the women's fragrance. Samples of those products were acquired at the trade show and are currently in the possession of Plaintiffs' counsel.

29. IPP exhibited and sold both the men's and women's 3.4 oz. bottle of Paris Paris fragrance in individual units and as part of a gift set that included perfumed shower gel, perfumed body lotion, and a .25 oz. bottle of fragrance for women and shaving balm, body lotion, and a .25 oz. bottle of fragrance for men.

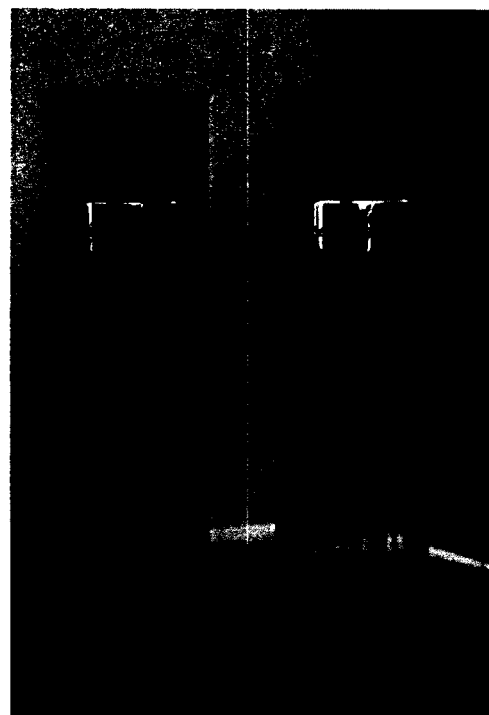
30. Upon information and belief, IPP is and has been actively engaged in manufacturing, distributing and/or selling these and other Paris Paris products in interstate commerce.

31. The Paris Paris fragrances and beauty products sold by IPP are packaged and labeled in a style and manner intentionally and confusingly similar to the PARIS HILTON products.

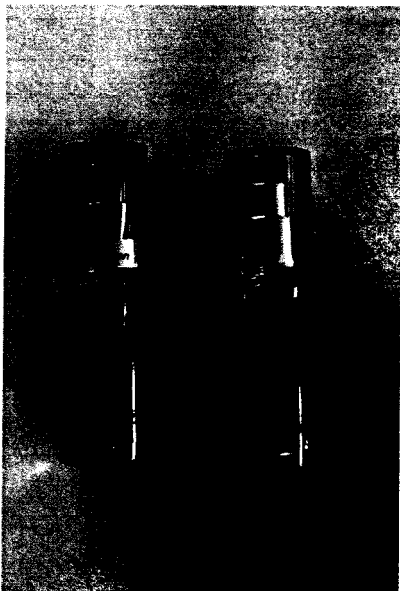
32. Specifically, the Paris Paris 3.4 oz. and .25 oz. fragrances feature the following characteristics which are identical or confusingly similar to the PARIS HILTON trade dress: (i) a cylindrical bottle in clear pink for the women's fragrance and clear blue for the men's, both with a black wave design overlaid; and (ii) the name Paris Paris written in black, lower case, and cursive font against a silver background on the 3.4 oz bottles. Side by side comparisons of the men's and women's PARIS HILTON and Paris Paris 3.4 oz. bottles and the women's .25 oz. fragrances are pictured below.



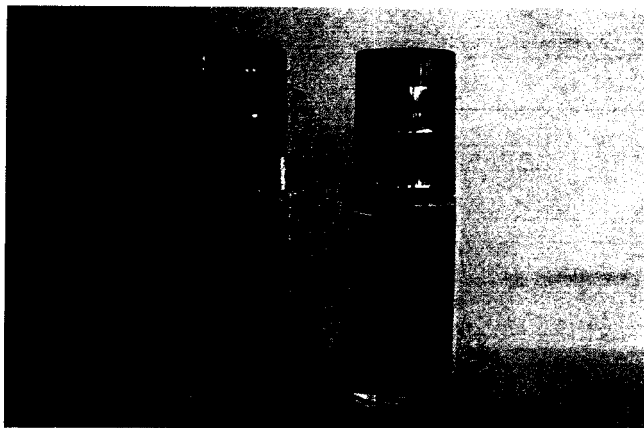
(PARIS HILTON, left; Paris Paris, right)



(PARIS HILTON, left; Paris Paris, right)



(PARIS HILTON, left; Paris Paris, right)

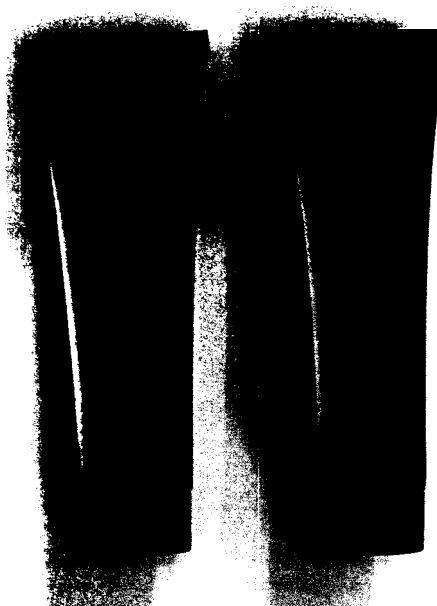


(PARIS HILTON, left; Paris Paris, right)

33. The Paris Paris perfumed shower gel and perfumed body lotion for women also feature characteristics which are identical or confusingly similar to the PARIS HILTON trade dress, specifically, a black tube with Paris Paris written in cursive lettering and displayed vertically in metallic pink. Side by side comparisons of the PARIS HILTON and Paris Paris beauty products are pictured below.

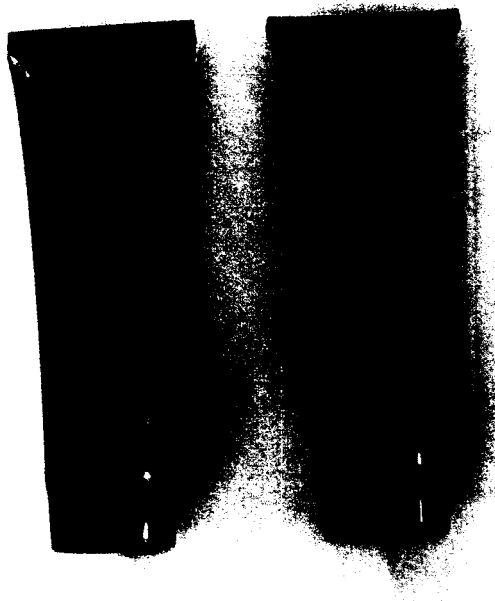


(PARIS HILTON, left; Paris Paris, right)



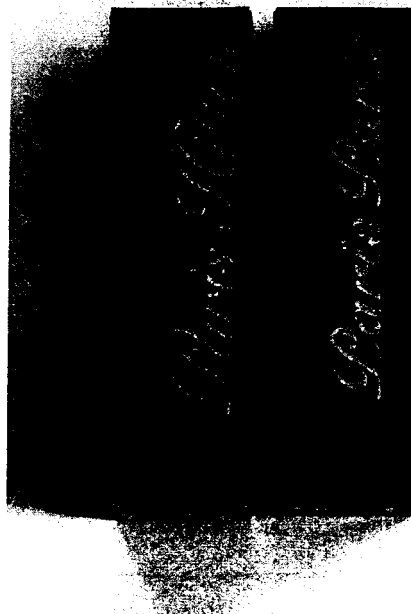
(PARIS HILTON, left; Paris Paris, right)

34. The Paris Paris shower gel for men also feature characteristics which are identical or confusingly similar to the PARIS HILTON trade dress, specifically, a black tube with Paris Paris written in cursive lettering and displayed vertically in metallic blue. A side by side comparison of the PARIS HILTON men's body wash and the Paris Paris men's shower gel is pictured below.



(PARIS HILTON, left; Paris Paris, right)

35. The Paris Paris packaging for the women's 3.4 oz. fragrance also feature characteristics which are identical or confusingly similar to the PARIS HILTON trade dress, specifically, metallic pink boxes with a black wave design and Paris Paris written in metallic silver, lower case, and cursive font running vertically up the right side of the box. A side by side comparison the PARIS HILTON and Paris Paris packaging for the individual 3.4 oz. fragrances is pictured below.

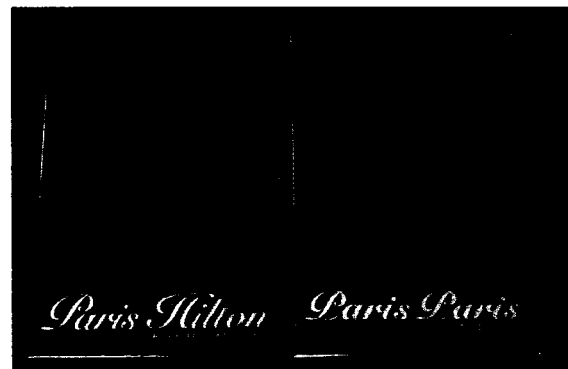


(PARIS HILTON, left; Paris Paris, right)

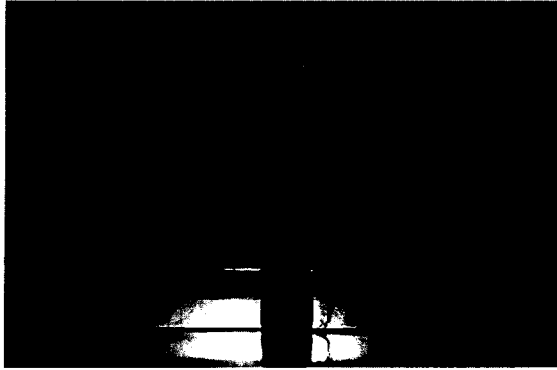
36. The Paris Paris packaging for the men's and women's boxed sets also feature characteristics which are identical or confusingly similar to the PARIS HILTON trade dress, specifically, metallic pink boxes with a black wave design and Paris Paris written in metallic silver, lower case, and cursive font running vertically up the right side of the box (women) and blue boxes with a black wave design (men). Side by side comparisons of the PARIS HILTON and Paris Paris packaging for the boxed sets is pictured below.



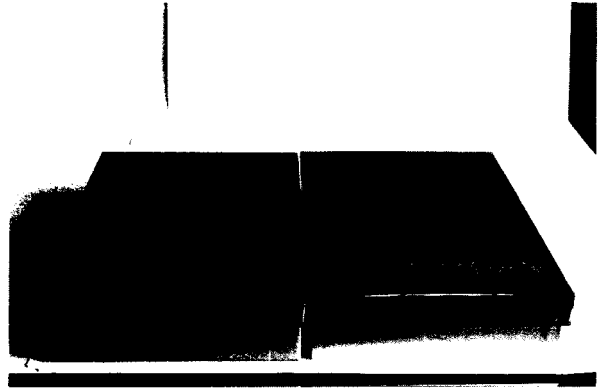
(PARIS HILTON, left; Paris Paris, right)



(PARIS HILTON, left; Paris Paris, right)



(PARIS HILTON, left; Paris Paris, right)

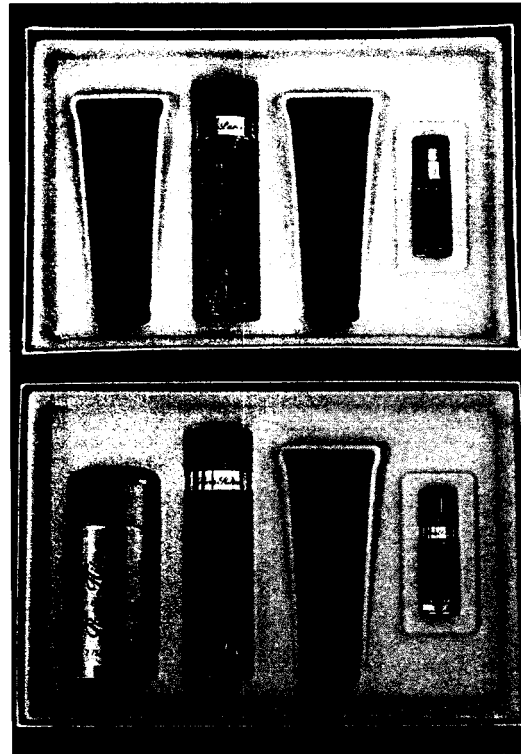


(PARIS HILTON, left; Paris Paris, right)

37. The Paris Paris inside packaging for the men's and women's boxed sets also feature characteristics which are identical or confusingly similar to the PARIS HILTON trade dress, specifically, the bottles and tubes of shower gel, body lotion, 3.4 oz. fragrance and .25 oz. fragrance displayed side by side (women) and the bottles of 3.4 oz. fragrance and shower gel displayed side by side (men). Side by side comparisons of the PARIS HILTON and Paris Paris inside packaging for the boxed sets is pictured below.



(PARIS HILTON, bottom; Paris Paris, top)



(PARIS HILTON, bottom; Paris Paris, top)

38. The Paris Paris fragrances and products do not display the name of the manufacturer or distributor. The failure of Defendant to display the name of the manufacturer and distributor on its Paris Paris fragrances and beauty products is a violation of the Federal Fair Packaging and Labeling Act and causes and is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Plaintiff Hilton, or as to the origin, sponsorship, or approval of Defendant's goods by Plaintiff Hilton.

PLAINTIFF PARLUX'S DESIGN PATENT

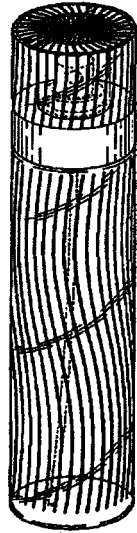
39. On April 4, 2006 the United States Patent and Trademark Office duly and lawfully issued to Parlux Fragrances, Inc., as assignee, United States Patent D518,382. (**Exhibit 2.**)

40. Parlux Fragrances, LCC, as successor by merger to Parlux Fragrances, Inc., owns all right, title, and interest in and to the asserted design patent D518,382.

41. The Parlux design patent covers many of the famous ornamental features of the PARIS HILTON fragrance bottle, such as the transparent cylindrical bottle and cap with a helical pattern continuing around the surface of the bottle.

**DEFENDANT'S INFRINGEMENT OF
PLAINTIFF PARLUX'S DESIGN PATENT**

42. Defendant has misappropriated Plaintiff Parlux's patented fragrance bottle design or a colorable imitation thereof in the accused products, including the Paris Paris fragrance bottles. A side-by-side comparison of the 'D382 Patent design and Defendant's Paris Paris fragrance bottle is pictured below.



(Parlux Design)



(Paris Paris bottle)

43. An ordinary observer familiar with the prior art would be deceived into thinking that the Paris Paris design was the same as Parlux's design.

44. Defendant's actions have been without license or authority of Parlux.

45. Defendant's action have been taken knowingly and willingly.

CAUSES OF ACTION

COUNT I: TRADEMARK INFRINGEMENT (15 U.S.C. § 1114)

46. Ms. Hilton repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth herein.

47. Ms. Hilton owns United States trademark registration number 3,059,587 for the trademark PARIS HILTON for "fragrances, namely, perfumes, eau de parfum, cologne, eau de toilet, body lotion, bath gel, hand soap, perfumed soap and cosmetics" in Class 3.

48. This trademark is uncontestable.

49. Certain of Defendant's Paris Paris products, which Defendant has manufactured, promoted, distributed, and/or sold in commerce uses reproductions, copies and colorable imitations of the registered PARIS HILTON trademark in connection with the manufacture, sale, advertising, and distribution of Defendant's Paris Paris products. Defendant's manufacture, distribution, sale and promotion of the offending products are likely to cause confusion and mistake and to deceive customers as to the source, origin, or sponsorship of the Paris Paris products. Consumers seeing the offending products in the marketplace likely will believe that they are produced by, sponsored by, associated with, or otherwise affiliated with Ms. Hilton or her PARIS HILTON fragrances and beauty products. Consumers are also likely to be confused in the post-sale context.

50. Defendant's deceptive marketing and sales practices in connection with its Paris Paris products constitute infringement of the registered PARIS HILTON trademark in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

51. Defendant's acts of trademark infringement were and are willful and deliberate.

52. Upon information and belief, Defendant has profited from its illegal and bad faith activities.

53. As a consequence of these wrongful acts, Ms. Hilton has suffered monetary damages, loss and injury in an amount not yet determined, and Ms. Hilton will continue to suffer irreparable damages for which there is no adequate remedy at law, unless and until Defendant's infringing activities are enjoined by this Court.

COUNT II: TRADE DRESS INFRINGEMENT
(15 U.S.C. § 1125(a))

54. Ms. Hilton repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth herein.

55. On the basis of the foregoing paragraphs, Defendant is using product trade dress that is identical or confusingly similar to the trade dress of the men's and women's PARIS HILTON fragrances and beauty products in a manner that has caused and is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Ms. Hilton, or as to the origin, sponsorship, or approval of Defendant's goods by Plaintiff.

56. The PARIS HILTON trade dress used in packaging its fragrances and beauty products is inherently distinctive in that it is arbitrary, suggestive, and/or fanciful.

57. The PARIS HILTON trade dress used in packaging its fragrances and beauty products has acquired distinctiveness through secondary meaning.

58. The PARIS HILTON trade dress is non-functional.

59. Defendant's acts in manufacturing, offering for sale, selling and distributing products which are confusingly similar to the men's and women's PARIS HILTON fragrances and beauty products constitute infringement of the PARIS HILTON trade dress in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

60. Defendant's acts of trade dress infringement were and are willful and deliberate.

61. Upon information and belief, Defendant has profited from its illegal and bad faith activities.

62. As a consequence of these wrongful acts, Ms. Hilton has suffered monetary damages, loss and injury in an amount not yet determined, and Ms. Hilton will continue to suffer irreparable damages for which there is no adequate remedy at law, unless and until Defendant's infringing activities are enjoined by this Court.

COUNT III: UNFAIR COMPETITION
(15 U.S.C. § 1125(a))

63. Ms. Hilton repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth herein.

64. On the basis of the foregoing paragraphs, Defendant is using product trade dress that is identical or confusingly similar to the trade dress of the men's and women's PARIS HILTON fragrances and beauty products in a manner that has caused and is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Ms. Hilton, or as to the origin, sponsorship, or approval of Defendant's goods by Plaintiff.

65. Defendant's acts in offering for sale, selling and distributing products which are confusingly similar to the men's and women's PARIS HILTON fragrances and beauty products constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

66. Defendant's acts of unfair competition were and are willful and deliberate.

67. Upon information and belief, Defendant has profited from its illegal and bad faith activities.

68. As a consequence of these wrongful acts, Ms. Hilton has suffered monetary damages, loss and injury in an amount not yet determined, and Ms. Hilton will continue to suffer irreparable damages for which there is no adequate remedy at law, unless and until Defendant's infringing activities are enjoined by this Court.

COUNT IV: FALSE DESIGNATION OF ORIGIN
(15 U.S.C. § 1125(a))

69. Ms. Hilton repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth herein.

70. On the basis of the foregoing paragraphs, Defendant used and continues to use in commerce a word, term, name, symbol or device, or any combination thereof, or a false designation of origin, false or misleading description of fact or false or misleading representation of fact which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Ms. Hilton, or as to the origin, sponsorship, or approval of Defendant's goods by Ms. Hilton.

71. Defendant's acts in manufacturing, promoting, offering for sale, selling and distributing products which are confusingly similar to the men's and women's PARIS HILTON fragrances and beauty products constitute false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

72. Defendant's acts of using a false designation of origin were and are willful and deliberate.

73. Upon information and belief, Defendant has profited from its illegal and bad faith activities.

74. As a consequence of these wrongful acts, Ms. Hilton has suffered monetary damages, loss and injury in an amount not yet determined, and Ms. Hilton will continue to suffer irreparable damages for which there is no adequate remedy at law, unless and until Defendant's infringing activities are enjoined by this Court.

COUNT V: FEDERAL TRADEMARK DILUTION
(15 U.S.C. § 1125(c))

75. Ms. Hilton repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth herein.

76. Ms. Hilton's Trademark is distinctive and famous within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

77. Defendant has manufactured, promoted, distributed and/or sold products in commerce whose trade dress is confusingly similar to the trade dress of the men's and women's PARIS HILTON fragrances and beauty products. The Defendant's acts tend to and do falsely create the impression with consumers that the Paris Paris line of products it manufactures, promotes, distributes and/or sells are authorized or affiliated with Ms. Hilton, and are of the same quality as Ms. Hilton's products when they are not. These acts are likely to dilute the distinctive quality of Ms. Hilton's Trademark and/or Ms. Hilton's Trademark's reputation in violation of the Lanham Act, 15 U.S.C. § 1125(c).

78. On information and belief, Defendant's use of the infringing products began after the PARIS HILTON trademark became famous.

79. Defendant committed these acts of trademark dilution with the intent to trade on Ms. Hilton's reputation and/or to cause dilution of Ms. Hilton's Trademark.

80. Upon information and belief, Defendant has profited from its illegal and bad faith activities.

81. As a consequence of these wrongful acts, Ms. Hilton has suffered monetary damages, loss and injury in an amount not yet determined, and Ms. Hilton will continue to suffer irreparable damages for which there is no adequate remedy at law, unless and until Defendant's infringing activities are enjoined by this Court.

**COUNT VI: UNFAIR COMPETITION
UNDER NEW YORK COMMON LAW**

82. Ms. Hilton repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth herein.

83. Ms. Hilton has created and promoted her PARIS HILTON line of fragrances and beauty products, including her Trademark, packaging, and trade dress, through extensive time, labor, skill and money.

84. Defendant has misappropriated the results of that labor and skill and those expenditures of Ms. Hilton.

85. Defendant has used designs and trade dress that are identical to or confusingly similar to Ms. Hilton's designs and trade dress, for identical or highly similar goods, in competition with Ms. Hilton, gaining an unfair advantage, because Defendant bore little or no burden of expense of development and promotion of the designs and trade dress.

86. By knowingly using confusingly similar designs and trade dress for identical or highly similar goods to compete against Ms. Hilton's goods, Defendant has misappropriated a commercial advantage belonging to Ms. Hilton.

87. Defendant has also engaged in bad faith misappropriation of the labors of Ms. Hilton which is likely to cause confusion, and to deceive purchasers as to the origin of the goods, and which diluted the value of the Ms. Hilton's product designs and trade dress.

88. Defendant's acts of misappropriation and unfair competition have caused significant commercial damage to Ms. Hilton.

89. Defendant's business conduct is illegal and actionable under the common law of unfair competition in the State of New York.

90. Upon information and belief, Defendant has profited from its illegal and bad faith activities.

91. As a consequence of these wrongful acts, Ms. Hilton has suffered monetary damages, loss and injury in an amount not yet determined, and Ms. Hilton will continue to suffer irreparable damages for which there is no adequate remedy at law, unless and until Defendant's infringing activities are enjoined by this Court.

COUNT VII: DECEPTIVE ACTS AND PRACTICES
(N.Y. G.B.L. § 349)

92. Ms. Hilton repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth herein.

93. Defendant has been and is engaging in willfully deceptive acts or practices in New York against Ms. Hilton and the public in the conduct of its business, through the imitation of the PARIS HILTON trademark and PARIS HILTON trade dress, by manufacturing, designing, distributing, and/or selling products that are confusingly similar to the distinctive PARIS HILTON mark trade dress. Defendant's adoption and use of the PARIS HILTON trade dress constitutes deceptive acts and practices in violation of the New York General Business Law § 349.

94. Defendant's acts have caused, and are likely to continue to cause injury to the public, including consumers in New York, and injury to Ms. Hilton's sales and business reputation.

95. As a consequence of these wrongful acts, Ms. Hilton has suffered monetary damages, loss and injury in an amount not yet determined, and Ms. Hilton will continue to suffer irreparable damages for which there is no adequate remedy at law, unless and until Defendant's infringing activities are enjoined by this Court.

96. Defendant's willful and knowing violation of Section 349(h) warrants treble damages and the recovery of attorneys' fees.

**COUNT VIII: TRADE DRESS DILUTION
UNDER NEW YORK STATUTORY LAW
(N.Y. G.B.L. § 360-1)**

97. Ms. Hilton repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth herein.

98. Defendant's misappropriation and infringement through the sale, offer for sale and distribution of products bearing trade dress identical to or substantially similar to that of Ms. Hilton's products create a likelihood of injury to Ms. Hilton's business reputation and likelihood of dilution of the distinctive quality of Plaintiff's PARIS HILTON fragrances and beauty products in violation of Section 360-1 of the New York General Business Law.

99. Defendant's activities has also caused actual injury to Ms. Hilton's business reputation and actual dilution of the distinctive quality of PARIS HILTON fragrances and beauty products.

100. As a consequence of these wrongful acts, Ms. Hilton has suffered monetary damages, loss and injury in an amount not yet determined, and Ms. Hilton will continue to suffer irreparable damages for which there is no adequate remedy at law, unless and until Defendant's infringing activities are enjoined by this Court.

**COUNT IX: TRADEMARK AND TRADE DRESS
INFRINGEMENT UNDER NEW YORK STATUTORY LAW
(N.Y. G.B.L. § 360-k)**

101. Ms. Hilton repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth herein.

102. Defendant's acts, as described above, constitute trademark and trade dress infringement in violation of Section 360-k of the New York General Business Law.

103. Defendant's acts, as described above, were committed with the intent to cause confusion or mistake or to deceive.

104. As a consequence of these wrongful acts, Ms. Hilton has suffered monetary damages, loss and injury in an amount not yet determined, and Ms. Hilton will continue to suffer irreparable damages for which there is no adequate remedy at law, unless and until Defendant's infringing activities are enjoined by this Court.

COUNT X: DESIGN PATENT INFRINGEMENT
(35 U.S.C. § 271; 35 U.S.C. § 289)

105. Parlux repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth herein.

106. Defendant has infringed and continues to infringe the 'D382 Patent by manufacturing, distributing, promoting, using, selling and/or offering to sell in the United States, and/or importing into the United States one or more of the Paris Paris fragrance bottles identified in this Complaint, which embody the design covered by the 'D382 design patent. Defendant's actions constitute infringement of Parlux's design patent pursuant to 35 U.S.C. § 271 and 35 U.S.C. § 289.

107. Defendant's acts of infringement were and are willful and deliberate.

108. Upon information and belief, Defendant has profited from its illegal and bad faith activities.

109. Upon information and belief, Defendant's conduct renders this case exceptional within the meaning of 35 U.S.C. § 285 such that Parlux is entitled to its reasonable attorneys' fees for this case.

110. As a consequence of these wrongful acts, Parlux has suffered monetary damages, loss and injury in an amount not yet determined, and Parlux will continue to suffer irreparable damages for which there is no adequate remedy at law, unless and until Defendant's infringing activities are enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court, upon final hearing of this matter, grant the following relief against Defendant IPP:

- A. That Defendant be adjudged to have engaged in trademark infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114;
- B. That Defendant be adjudged to have engaged in trade dress infringement, unfair competition and/or trademark dilution under Section 43 of the Lanham Act, 15 U.S.C. § 1125;
- C. That Defendant be adjudged to have engaged in unfair competition, trade dress and trademark infringement, trade dress dilution, and unfair and deceptive acts under New York common and statutory law;
- D. That Defendant be adjudged to have engaged in patent infringement under 35 U.S.C. §§ 271 and 289;
- E. That the Defendant, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendant be permanently enjoined from engaging in any activities which infringe any of Plaintiffs' rights;
- F. That the Defendant, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendant be permanently enjoined pursuant to 35 U.S.C. § 283 from engaging in any activities which infringe Parlux's rights in the 'D382 Patent, including manufacturing, distributing, promoting, selling or offering to sell

product that directly infringe or contributorily or actively induce infringement of the 'D382 patent.

G. That the Defendant, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendant be permanently enjoined from offering for sale, selling, distributing or marketing merchandise in any way that tends to deceive, mislead or confuse the public into believing that Defendant's merchandise in any way originates with, is sanctioned by, or affiliated with Ms. Hilton;

H. That the Defendant, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendant be permanently enjoined from otherwise competing unfairly with Ms. Hilton;

I. That the Defendant, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendant be permanently enjoined from engaging in further acts of misrepresentation or infringement regarding Ms. Hilton and Ms. Hilton's products;

J. That the Defendant, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with Defendant be permanently enjoined from engaging in further deceptive and unfair business practices with respect to Ms. Hilton;

K. That Defendant be required to account for and pay over to Ms. Hilton all damages sustained by Ms. Hilton, as well as any and all of Defendant's gains, revenues, profits and advantages attributable to or derived by the acts complained of in this Complaint, including an assessment of interest on the damages so computed, and that the damages be trebled, pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117 and New York General Business Law § 349(h), and all other applicable law;

L. That Defendant be required to account for and pay over to Parlux all damages sustained by Parlux, as well as any and all of Defendant's gains, revenues, profits and advantages attributable to or derived by the acts complained of in this Complaint, including an assessment of interest on the damages so computed, and that the damages be trebled, pursuant to 35 U.S.C. §§ 284 and 289, and all other applicable law;

M. That each such award of damages be enhanced to the maximum available for each infringement in view of Defendant's willful infringement of Plaintiffs' rights;

N. That Defendant be required to deliver for impoundment during the pendency of this action, and for destruction thereafter, all copies of the infringing materials in its possession or under its control and all materials used for making same;

O. That Plaintiffs be awarded punitive or exemplary damages because of the egregious, malicious, and tortious conduct of Defendant complained of herein;

P. That Ms. Hilton recover the costs of this action including her expenses and reasonable attorney's fees pursuant to 15 U.S.C. § 1117, New York General Business Law § 349(h) and all other applicable law, because of the deliberate and willful nature of the infringing activities of Defendant sought to be enjoined hereby, which make this an exceptional case warranting such award;

Q. That Parlux recover the costs of this action including its expenses and reasonable attorney's fees pursuant to 35 U.S.C. § 285 and all other applicable law, because of the deliberate and willful nature of the infringing activities of Defendant sought to be enjoined hereby, which make this an exceptional case warranting such award;

R. That Plaintiffs be awarded pre-judgment and post-judgment interest;

S. That Plaintiffs obtain all further relief permitted under the laws of the United States and State of New York;

T. That Plaintiffs obtain all such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand trial of their claims for relief herein before a jury.

Dated: October 10, 2012



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Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51, and 52

United States Patent and Trademark Office

Reg. No. 3,059,587

Registered Feb. 14, 2006

**TRADEMARK
PRINCIPAL REGISTER**

PARIS HILTON

HILTON, PARIS (UNITED STATES INDIVIDUAL)
C/O RICHARD H. HILTON
THE WALDORF TOWERS, 100 EAST 50TH STREET
NEW YORK, NY 10022

FOR: FRAGRANCES, NAMELY, PERFUMES, EAU DE PARFUM, COLOGNE, EAU DE TOILET, BODY LOTION, BATH GEL, HAND SOAP, PERFUMED SOAP AND COSMETICS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 10-15-2004; IN COMMERCE 10-15-2004.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

THE NAME(S), PORTRAIT(S), AND/OR SIGNATURE(S) SHOWN IN THE MARK IDENTIFIES A LIVING INDIVIDUAL, WHOSE CONSENT(S) TO REGISTER IS SUBMITTED.

SN 78-412,749, FILED 5-4-2004.

LA TONIA FISHER, EXAMINING ATTORNEY



US00D518382S

(12) **United States Design Patent** (10) **Patent No.:** **US D518,382 S**
McGuinness (45) **Date of Patent:** **** Apr. 4, 2006**

(54) **BOTTLE AND CAP**

GB 1056846 * 8/1989

(75) **Inventor:** **Palmer McGuinness**, Coral Springs, FL (US)

OTHER PUBLICATIONS

(73) **Assignee:** **Parlux Fragrances, Inc.**, Ft. Lauderdale, FL (US)

Modern Packaging, "Facial Tissue Dispenser", © Sep. 1970, Hoxy Corp., Tokyo & NY, p. 52, upper left.*
Aerosol Age, "Fragrances", © Aug. 1981, p. 34, New Products, Fragrances, Bottle by Barbara Cortlandlower right.*

(**) **Term:** **14 Years**

* cited by examiner

(21) **Appl. No.:** **29/213,979**

Primary Examiner—Carol Rademaker

(22) **Filed:** **Sep. 23, 2004**

Assistant Examiner—Dana Sipos

(51) **LOC (8) Cl.** **09-01**

(74) *Attorney, Agent, or Firm*—Blakely, Sokoloff, Taylor & Zafman LLP

(52) **U.S. Cl.** **D9/504; D9/552; D28/89**

(58) **Field of Classification Search** D9/446-449, D9/500, 502-505, 529, 551, 552, 558, 564, D9/686-688, 690, 692, 693, 694, 723-727, D9/900; D28/7, 85 89, 90
See application file for complete search history.

(57) **CLAIM**

The ornamental design for a bottle and cap, as shown and described.

(56) **References Cited**

DESCRIPTION

U.S. PATENT DOCUMENTS

FIG. 1 is a perspective view showing my new design; FIG. 2 is a front elevational view thereof, the rear elevational view being identical, except for the unclaimed environment; and, FIG. 3 is a top plan view thereof.

- D196,413 S * 9/1963 McCormick D28/89
- D242,221 S * 11/1976 Lonegren D9/688
- D249,928 S * 10/1978 DE Nijs D9/690
- D260,564 S * 9/1981 Jedzinak et al. D28/89
- D378,492 S * 3/1997 Salle D9/690
- D403,123 S * 12/1998 Sgariboldi D28/76
- D421,567 S * 3/2000 Caporella et al. D9/668
- D438,065 S * 2/2001 Young et al. D7/591
- D492,601 S * 7/2004 Ogata et al. D9/506

The bottom is flat and devoid of surface ornamentation. The broken lines shown in the drawings are for illustrative purposes only and form no part of the claimed design. For clarity of illustration, the helical pattern shown on the sidewall in FIGS. 1 and 2 has not been shown on the opposing sidewall as would be seen through the transparent surface. However, the helical line pattern is continuous around the sidewall.

FOREIGN PATENT DOCUMENTS

GB 1009999 * 10/1983

1 Claim, 2 Drawing Sheets



U.S. Patent

Apr. 4, 2006

Sheet 1 of 2

US D518,382 S

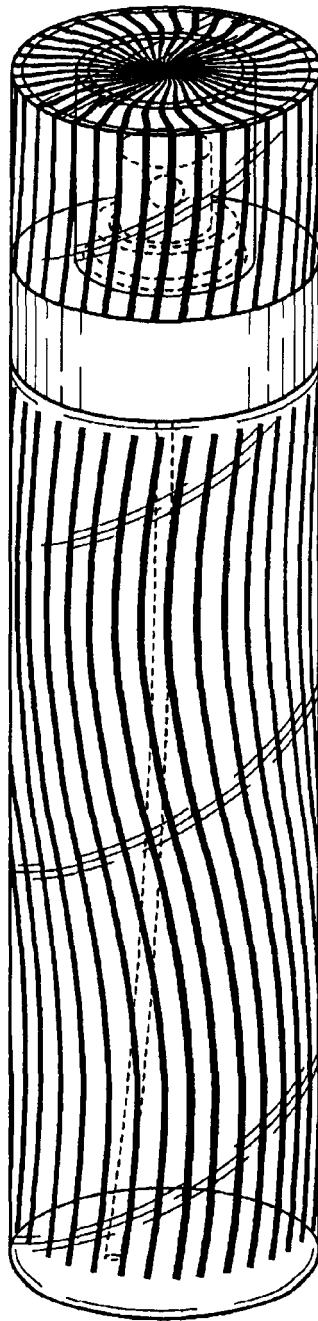


FIG. 1

U.S. Patent

Apr. 4, 2006

Sheet 2 of 2

US D518,382 S

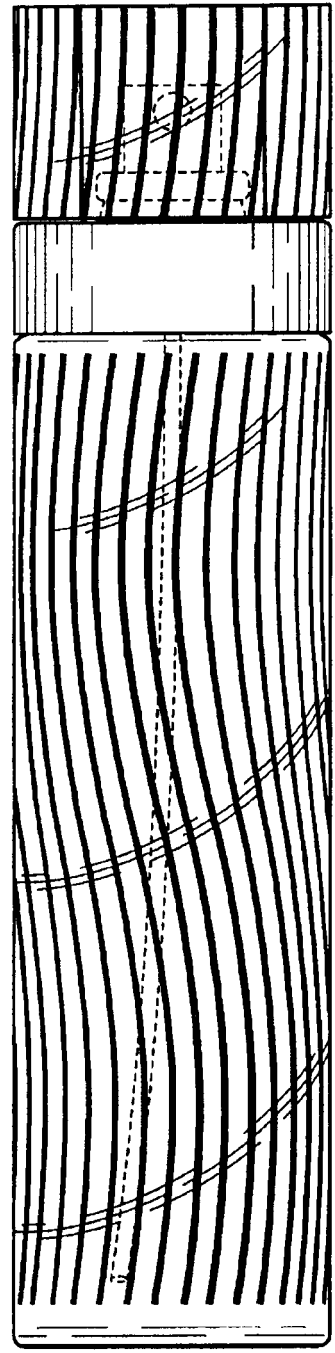


FIG. 2

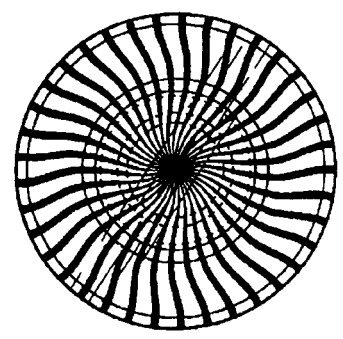


FIG. 3

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : Des. 518,382 S
APPLICATION NO. : 29/213979
DATED : April 4, 2006
INVENTOR(S) : McGuinness

Page 1 of 1

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the Title Page, in Item [56], Other Publications, line #2, please insert -- D9 Cosmetic Beauty Supplies Box #2, Design Library -- following "upper left".

On the Title Page, in Item [56], Other Publications, line #5, please insert -- D9 Cosmetic Bottles Box #1, Design Library -- following "right".

Signed and Sealed this

Twentieth Day of November, 2007



JON W. DUDAS
Director of the United States Patent and Trademark Office