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Attorneys for Defendant
HENRI BENDEL, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SILLAGE, LLC, a California Limited Liability Company,

Plaintiff,

v.

URBAN OUTFITTERS.COM LP, a Pennsylvania Limited Partnership; URBAN OUTFITTERS HOLDINGS, LLC, a Pennsylvania Limited Liability Company; and, HENRI BENDEL, INC., a Delaware Corporation,

Defendants.

Case No. SACV 14-686 MWF (RNBx)

DEFENDANT HENRI BENDEL, INC.'S ANSWER TO COMPLAINT

Defendant Henri Bendel, Inc. ("Henri Bendel"), by and through its undersigned counsel, hereby files its Answer to the Complaint of Sillage, LLC ("Sillage" or "Plaintiff"), denying all allegations of the Complaint, unless specifically admitted, and respectfully stating:

1. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1.

2. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.

3. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3.

4. Henri Bendel admits that Henri Bendel is a Delaware corporation, with its principal place of business at 666 Fifth Avenue, 5th Floor, New York, New York 10103, and with its registered agent for service of process at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. Henri Bendel denies the remaining allegations of paragraph 4.

5. Henri Bendel admits that this purports to be an action arising under the patent laws of the United States, Title 35 of the United States Code and that the Court therefore has subject matter jurisdiction over Claims I-III pursuant to 28 U.S.C. §§ 1331 and 1338 (a). Henri Bendel admits that the Court has supplemental jurisdiction over Claim IV pursuant to 28 U.S.C. § 1367.

6. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6.

7. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7.

8. Henri Bendel admits that the Court has personal jurisdiction over Henri Bendel. Henri Bendel further admits that it owns and operates a retail store located at 6600 Topanga Canyon Blvd., Canoga Park, CA 91303. Henri Bendel denies the remaining allegations of paragraph 8.

9. Henri Bendel admits that venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b). Henri Bendel denies the remaining allegations of paragraph 9.

10. Henri Bendel admits that U.S. Patent D693,224 ("the '224 patent") issued on November 12, 2013 to Nicole Mather as inventor, is entitled "Display Bottle," and that what purports to be a copy of the '224 patent is attached as Exhibit A to the Complaint. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 10.

11. Henri Bendel admits that U.S. Patent D658,503 ("the '503 patent") issued on May 1, 2012 to Nicole Mather as inventor, is entitled "Bottle," and that what purports to be a copy of the '503 patent is attached to the complaint as Exhibit B. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 11.

12. Henri Bendel denies the allegations of this paragraph 12 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 12.

13. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13.

14. Henri Bendel admits that on April 2, 2013, the CHERRY GARDEN mark published for opposition in the USPTO's *Official Gazzette*, and that no oppositions were filed.

15. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15.

16. Henri Bendel admits that the CHERRY GARDEN mark issued as U.S. Trademark Registration No. 4,429,539 on November 5, 2013, and that what purports to be a copy of the registration for the CHERRY GARDEN mark is attached as Exhibit C to the complaint. Henri Bendel lacks knowledge or

information sufficient to form a belief as to the truth of the remaining allegations in paragraph 16.

17. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17.

18. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18.

19. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19.

20. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20.

21. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21.

22. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22.

23. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23.

24. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24.

25. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25.

26. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26.

27. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27.

28. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28.

29. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29.

30. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30.

31. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31.

32. Henri Bendel denies the allegations in paragraph 32 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 32.

33. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33.

34. Henri Bendel denies the allegations of paragraph 34 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 34

35. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35.

36. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36.

37. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37.

38. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38.

39. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39.

40. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40.

41. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41.

42. Henri Bendel denies the allegations in paragraph 42.

43. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43.

44. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44.

45. Henri Bendel denies the allegations in paragraph 45 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 45.

46. Henri Bendel hereby incorporates by reference each of its responses to the allegations contained in paragraphs 1-45 of the Complaint as if fully stated herein.

47. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47.

48. Henri Bendel denies the allegations of paragraph 48 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 48.

49. Henri Bendel denies the allegations of paragraph 49 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 49.

50. Henri Bendel denies the allegations of paragraph 50 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 50.

51. Henri Bendel denies the allegations of paragraph 51 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 51.

52. Henri Bendel hereby incorporates by reference each of its responses to the allegations contained in paragraphs 1-51 of the Complaint as if fully stated herein.

53. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53.

54. Henri Bendel denies the allegations of paragraph 54 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 54.

55. Henri Bendel denies the allegations of paragraph 55 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 55.

56. Henri Bendel denies the allegations of paragraph 56 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 56.

57. Henri Bendel denies the allegations of paragraph 57 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 57.

58. Henri Bendel hereby incorporates by reference each of its responses to the allegations contained in Paragraphs 1-57 of the complaint as if fully stated herein.

59. Henri Bendel denies the allegations of paragraph 59 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 59.

60. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60.

61. Henri Bendel denies the allegations of paragraph 61 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 61.

62. Henri Bendel denies the allegations of paragraph 62 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 62.

63. Henri Bendel denies the allegations of paragraph 63 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 63.

64. Henri Bendel denies the allegations of paragraph 64 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 64.

65. Henri Bendel denies the allegations of paragraph 65 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 65.

66. Henri Bendel denies the allegations of paragraph 66 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 66.

67. Henri Bendel hereby incorporates by reference each of its responses to the allegations contained in paragraphs 1-66 of the Complaint as if fully stated herein.

68. Henri Bendel denies the allegations of paragraph 68 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 68.

69. Henri Bendel denies the allegations of paragraph 69 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 69.

70. Henri Bendel denies the allegations of paragraph 70 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 70.

71. Henri Bendel denies the allegations of paragraph 71 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 71.

72. Henri Bendel denies the allegations of paragraph 72 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 72.

73. Henri Bendel hereby incorporates by reference each of its responses to the allegations contained in paragraphs 1-72 of the Complaint as if fully stated herein.

74. Henri Bendel denies the allegations of paragraph 74 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 74.

75. Henri Bendel denies the allegations of paragraph 75 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 75.

76. Henri Bendel denies the allegations of paragraph 76 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 76.

77. Henri Bendel denies the allegations of paragraph 77 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 77.

78. Henri Bendel denies the allegations of paragraph 78 as they relate to Henri Bendel. Henri Bendel lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 78.

RELIEF REQUESTED

79. Henri Bendel denies that Plaintiff is entitled to any relief requested in its Prayer for Relief or any other relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

80. Plaintiff's Complaint fails to state any claim against Henri Bendel upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Non-Infringement of Patents)

81. Henri Bendel has not infringed, and is not infringing, any valid and enforceable claim of the '503 patent and/or the '224 patent, nor has Henri Bendel induced or contributed to the infringement of any valid and enforceable claim of the '503 patent and/or the '224 patent by others.

THIRD AFFIRMATIVE DEFENSE

(Invalidity of Patents)

82. The '503 patent and/or the '224 patent are invalid for failure to comply with one or more of the statutory requirements of patentability specified by 35 U.S.C. § 101 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, and 103.

FOURTH AFFIRMATIVE DEFENSE

(Prosecution History Estoppel)

83. The actions taken and representations made before the United States Patent and Trademark Office in procuring the '503 patent and/or the '224 preclude Plaintiff from asserting or construing the claim of said patent in a way that would cover or read upon any product or service made, used, sold, or offered for sale by Henri Bendel, or made, used, or offered for sale by another entity whose conduct forms the basis of an allegation that Henri Bendel contributed to or induced infringement.

FIFTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

84. Plaintiff's Complaint, and each and every cause of action contained therein, is barred by the applicable statutes of limitations. To the extent Plaintiff seeks to recover for any alleged patent infringement more than six years prior to the filing of the Complaint, such recovery is barred by 35 U.S.C. § 286.

SIXTH AFFIRMATIVE DEFENSE

(Notice)

85. Upon information and belief, Plaintiff has failed to comply with the patent marking and notice requirements of 35 U.S.C. § 287 with respect to the asserted patents, which limits Plaintiff's recovery of damages, if any, for alleged infringement of the asserted patents.

SEVENTH AFFIRMATIVE DEFENSE

(Defective Registration)

86. The CHERRY GARDEN mark is unenforceable because the registration is fraudulent, improper, or invalid.

EIGHTH AFFIRMATIVE DEFENSE

(Acquiesence)

87. Plaintiff is estopped from brining this action against Henri Bendel by its acquiescence that it will not assert its rights in the CHERRY GARDEN mark.

NINTH AFFIRMATIVE DEFENSE

(No Injunctive Relief Warranted)

88. Plaintiff is not entitled to a preliminary or permanent injunction because (1) Plaintiff is not likely to prevail on the merits; (2) Plaintiff has not suffered nor will it suffer irreparable harm because of Henri Bendel's conduct; (3) any harm to Plaintiff would be outweighed by the harm to Henri Bendel if an injunction were entered; (4) Plaintiff has an adequate remedy at law if it were to prevail in this action; (5) the public interest would not be served by an injunction.

TENTH AFFIRMATIVE DEFENSE

(Equitable Defenses)

89. Any claim for damages or equitable relief by Plaintiff is barred, in whole or in part, by the equitable doctrines of laches, estoppel, waiver, acquiescence, implied licenses, and/or unclean hands.

PRAYER FOR RELIEF

WHEREFORE, Henri Bendel prays that the Court enter judgment

(1) that Plaintiff's claims be dismissed, with prejudice, and that Plaintiff take nothing;

(2) that judgment be entered declaring that this is an exceptional case and that Henri Bendel be awarded its costs and attorneys' fees in this matter; and

(3) that Henri Bendel be awarded such other relief as the Court deems just and proper.

Dated: May 27, 2014

Dechert LLP

By: */s/ Daniel B. Epstein*
Christopher S. Ruhland
Daniel B. Epstein

Attorneys for Defendant
HENRI BENDEL, INC.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Henri Bendel demands a jury trial as to all issues so triable.

Dated: May 27, 2014

Dechert LLP

By: */s/ Daniel B. Epstein*
Christopher S. Ruhland
Daniel B. Epstein

Attorneys for Defendant
HENRI BENDEL, INC.