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WRITER'S DIRECT DIAL NUMBER

September 30, 2010

**Case No. A-570-504**

**Total Pages: 22**

**Comments on the Scope of the AD Order in  
Petroleum Wax Candles  
from the People's Republic of China**

**PUBLIC DOCUMENT**

**VIA HAND DELIVERY**

Secretary of Commerce  
U.S. Department of Commerce  
Import Administration  
APO/Dockets Unit  
Room 1870  
U.S. Department of Commerce  
14th Street & Constitution Avenue, NW  
Washington, DC 20230

Attn: Tim Lord

Re: Rebuttal Comments on the Scope of the Antidumping Duty Order and the  
Impact on Scope Determination in *Petroleum Wax Candles from the  
People's Republic of China* (A-570-504)

Dear Mr. Secretary:

On behalf of our client, HSE USA, Inc. ("HSE"),<sup>1</sup> we hereby submit rebuttal  
comments in response to the comments submitted on behalf of National Candle

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<sup>1</sup> HSE is an importer and distributor of subject merchandise and is therefore an "interested party" pursuant to 19 U.S.C. 1677(9)(A).

Association (“NCA”) and Universal Candle Company (“Universal”) on the Department’s Preliminary Results of Request for Comments on the Scope of the Petroleum Wax Candles from the People’s Republic of China Antidumping Duty Order.<sup>2</sup> HSE agrees with the Department’s preliminary interpretation that the shapes listed within the scope of the order are exclusive, and all other shapes are excluded. HSE strongly urges the Department to reject the proposals made by NCA and Universal to include all candle shapes within the scope of the order.

## **I. BACKGROUND**

On August 21, 2009, the Department of Commerce published a request for comments on the best method to consider whether novelty candles should or should not be included within the scope of the Order, in light of the large number of scope ruling requests in recent years.<sup>3</sup> The Department proposed two options:

Option A: The Department would consider all candle shapes identified in the scope of the Order, (i.e., tapers, spirals, and straight-sided dinner candles; rounds, columns, pillar, votives; and various wax-filled containers) to be within the scope of the Order, regardless of etchings, prints, moldings, or other artistic or decorative enhancements including any holiday-related art. All other candle shapes would be considered outside the scope of the Order.

Option B: The Department would consider all candle shapes, including novelty candles, to be within the scope of the Order including those not in the shapes listed in the scope of the Order, as that is not an exhaustive list of shapes, but simply an illustrative list of common candle shapes.<sup>4</sup>

In response to the request for comments, HSE responded that the plain language of the antidumping duty order and during the course of the original investigation demonstrated

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<sup>2</sup> See 75 Fed. Reg. 49,475 (Aug. 13, 2010) [hereinafter Preliminary Scope Interpretation].

<sup>3</sup> See Petroleum Wax Candles from the People’s Republic of China: Request for Comments on the Scope of the Antidumping Duty Order and the Impact on Scope Determinations, 74 Fed. Reg. 42,230 (Aug. 21, 2009)

<sup>4</sup> Id. at 42,231.

that the scope was intended to cover only the enumerated shapes. HSE also argued that the Department's decision in 2001 in the JC Penney scope ruling that the shape of the candle would no longer be dispositive,<sup>5</sup> was incorrect and contrary to the clear language of the investigation, limiting the scope to the enumerated shapes.

On August 13, 2010, the Department published the preliminary results of its request for comments. The Department largely agreed with HSE. The Department stated that:

[A] close review of the investigation record shows that, although addressing a key enforcement concern, the JC Penney methodology did not fully take into account record evidence from the investigation. While JC Penney stated that the scope of the Order was inclusive, the language of the Order indicates that the scope is exclusive, whereby only those candles in the enumerated shapes are considered inside the scope. For instance, the scope of the Order covers “{c}ertain scented or unscented petroleum wax candles’ that are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers” (emphasis added). **That is, the language of the scope is overt in its exclusivity.**<sup>6</sup>

HSE agrees with and supports the Department's analysis with respect to the shapes of candles covered by the antidumping duty order. The scope language is clear that the products covered by the order are petroleum wax candles in the shapes listed. HSE urges Commerce to confirm in its final results that petroleum wax candles not of the shapes listed are excluded from the antidumping duty order.

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<sup>5</sup> See Final Scope Ruling; Antidumping Order on Petroleum Wax Candles from the People's Republic of China: JC Penney Purchasing Corporation (Nov. 9, 2001), available at <http://ia.ita.doc.gov/download/candles-prc-scope/index.html> [“JC Penney Methodology”]

<sup>6</sup> See Preliminary Scope Interpretation, 75 Fed. Reg. at 49,479.

## **II. NCA'S ARGUMENTS TO MODIFY THE DEPARTMENT'S PRELIMINARY RESULTS HAVE NO SUPPORT FROM THE ORIGINAL INVESTIGATION**

### **A. The Staab Affidavit is a Post-Hoc Rationalization Unsupported by Record Evidence from the Investigation**

The Department should reject NCA's belated attempts to redefine the scope of the antidumping order. In determining whether a product is within the scope of an antidumping duty order, the actual language of the AD order should receive the greatest weight. See, e.g., Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1097 (Fed. Cir. 2002) (noting that "a predicate for the interpretive process is language in the order that is subject to interpretation."). The Department may also consider the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department and the International Trade Commission ("ITC") to assist in interpreting the language of the AD Order. 19 CFR § 351.225(k)(1); Allegheny Bradford Corp. v. United States, 342 F. Supp. 2d 1172, 1183-84 (Ct. Int'l Trade 2004). Commerce has the inherent authority to define and clarify the scope of an antidumping duty investigation. See Koyo Seiko v. United States, 17 CIT 1076, 1078, F. Supp. 1401, 1403 (1993), aff'd 31 F.3d 1177 (Fed. Cir. 1994). However, Commerce only has the power to interpret the scope of the antidumping duty order once it is issued; it cannot change or expand the scope of the order. See, e.g., Ericsson GE Mobile Communications, Inc. v. United States, 60 F.3d 778, 782 (Fed. Cir. 1995).

Here, NCA is attempting to expand the scope of the antidumping order by indicating that the list of shapes in the order is inclusive and not exclusive. In their comments on the preliminary results, NCA included an affidavit from Robert J. Staab

(“Staab Affidavit”), Chairman of the NCA at the time the petition was filed.<sup>7</sup> Robert J.

Staab states that:

Our intent was to have the scope of the Order to be as broad as possible, which is why we broadly described the candles as “petroleum wax candles.” That meant all petroleum wax candles.<sup>8</sup>

Mr. Staab’s characterization of the scope is incorrect based on the plain language used during the course of the antidumping investigation. The language of initiation clearly indicates that some petroleum wax candles would not be covered by the investigation:

The products covered by this investigation are *certain scented or unscented petroleum wax and having fiber or paper-cored wicks*. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars; votives; and various wax-filled containers. The products are classified under the Tariff Schedules of the United States (TSUS) item 755.25, Candles and Tapers.<sup>9</sup>

This scope description, notably the use of “certain,” undermines Mr. Staab’s contention that petitioners intended all petroleum wax candles to be covered by the investigation. Furthermore, there is no indication that the list of shapes was intended to be illustrative rather than exclusive. Petitioners could have easily stated that the list of shapes was descriptive, by using phrases like “such as” or “for example.” Instead, petitioners merely stated the petroleum wax candles under investigation are sold in the listed shapes. The Department should give no deference to Mr. Staab’s affidavit and his contention that it “would not have made sense to limit the Order to certain shapes, and not others, as that would be contrary to what we were trying to accomplish by bringing the antidumping

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<sup>7</sup> See NCA’s Comments in Response to the Department’s Preliminary Results, at Exhibit A (Sept. 20, 2010).

<sup>8</sup> Id. at Exhibit 1, p. 2.

<sup>9</sup> See Petroleum Wax Candles From the People’s Republic of China; Initiation of Antidumping Duty Investigation, 50 Fed. Reg. 3,743 (Dep’t Commerce Sept. 30, 1985) (emphasis added).

case.”<sup>10</sup> This statement is a post-hoc rationalization and is unsupported by record evidence from the investigation. NCA may wish now that the scope of the Order covered all candle shapes, but the clear language used throughout the original investigation and within the antidumping order show otherwise.

The Department should also reject NCA’s misguided comments which have no bearing in interpreting the scope of the antidumping order. NCA states that:

The narrow definitions proposed by the Department will stifle creativity and innovation within the U.S. candle industry. Creativity and innovation are vital to the current position and future of the U.S. industry. The many candles that will be outside the scope would be a gift to Chinese producers, giving them the only opportunity to produce many candles that are currently held to be within the scope of the Order.<sup>11</sup>

Stifling creativity and innovation have absolutely no significance in determining the appropriate scope of the antidumping order. The Department’s only task is to evaluate the scope of the order;<sup>12</sup> it cannot modify or expand the scope simply because petitioners believe that a narrowly-defined scope would inhibit industry creativity.

**B. NCA’s Proposal to Narrowly Define “Figurine” Candles is Contrary to the Industry Definition**

The Department should also reject NCA’s attempt to establish an overly narrow definition of the exclusion for “figurine candle.” NCA proposed that the Department redefine the term as a “small figure of a human, animal, or deity, and does not include representations solely of inanimate objects, such as flipflops {sic}, watering cans, or flowers.”<sup>13</sup> However, NCA fails to recognize that the Department does not define the scope of an AD or CVD order solely based on dictionary definitions because the industry

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<sup>10</sup> NCA’s Comments, at Exhibit 1, p. 2.

<sup>11</sup> Id. at 20.

<sup>12</sup> Ericsson GE Mobile Communications, Inc. v. United States, 60 F.3d 778, 782 (Fed. Cir. 1995)

<sup>13</sup> Id. at 22.

definition is often quite different.<sup>14</sup> In this case, the recognized industry definition of “figurine” candle is much broader than a human, animal, or deity. For example, on the “figurine candle” section of one U.S.-based candle company’s website, they list candles such as rose candles, rose and bud candles, candles in the shapes of hearts, and a candle in the shape of a fireman’s hat.<sup>15</sup> Another company advertises figurines in the shapes of stars, hearts, flowers, beehives, among others.<sup>16</sup> These examples show that the candle industry clearly advertises “figurine” candles in a much broader sense than the definition proposed by NCA. The manner in which figurine candles are advertised and displayed is very relevant in clarifying the scope of an AD/CVD order,<sup>17</sup> and the Department should reject NCA’s attempt to institute a dictionary definition that is incongruous with the commercial meaning of figurine.

### **III. THE DEPARTMENT SHOULD REJECT THE ATTEMPTS BY UNIVERSAL CANDLE TO CHANGE THE SCOPE OF THE ORDER**

The Department should also reject the arguments by Universal Candle Company to modify the Department’s preliminary interpretation of the scope of the order. Universal first argues that household candles, emergency candles, and utility candles should be included within the scope of the order. Universal states that

Because of their like appearance and production costs as well as exchangeable function, this type of candle that is commonly manufactured in the People’s Republic of China could be packaged and shipped as utility candles and once in the United States be repacked as tapers and straight-sided dinner candles to avert paying the anti-dumping duty.<sup>18</sup>

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<sup>14</sup> See, e.g., *Cablesa S.A. de C.V. v. United States*, 31 CIT 252, 257-60 (2007) (rejecting a party’s attempt to establish a definition for “galvanized” based on an overly simplistic dictionary definition, when the industry defined the term had a more specific meaning).

<sup>15</sup> See “Mountain View Candles,” Exhibit 1.

<sup>16</sup> See “Hinode Farm,” Exhibit 2. Note that while these products in Exhibit 2 are made from beeswax, the fact that they are

<sup>17</sup> See 19 C.F.R. § 351.225(k)(2)(v).

<sup>18</sup> See Universal’s Comments on the Department’s Preliminary Scope Determination, at 1 (Sept. 20, 2010).

Universal's argument has no relevance in determining whether these products are properly within the scope of the AD order. As previously stated, the Department's task is to interpret the language of the AD order; it cannot redefine or expand the scope. See, e.g., Ericsson GE Mobile Communications, Inc. v. United States, 60 F.3d 778, 782 (Fed. Cir. 1995). In the preliminary results, the Department provided clear evidence, via a memorandum with counsel for petitioners during the investigation, that household candles, emergency candles, and utility candles were excluded:

On March 20, 1986, Mr. Randolph Stayin of Taft, Stettinus & Hollister, who represents the petitioner, advised by telephone that candles described as household candles, household emergency candles, or utility candles, which are white in color and 5" long x 3/4" diameter, do not fit the product description included in this petition and are therefore outside the scope of the investigation.<sup>19</sup>

Based on this straightforward evidence, these three types of candles are properly outside the scope of the order. Universal's claim of repackaging and evading payment of AD duties would be relevant in an anti-circumvention inquiry, but is irrelevant for the purposes of clarifying the scope of the order.

Universal also argues that candles not of the enumerated shapes should be included within the scope of the order. Universal states that

by encompassing everything but candles for birthday party occasions under the dutiable scope, all the above mentioned problems and potential others would be eliminated and a more even playing field for all domestic and importing producers would be created.<sup>20</sup>

Again, these arguments are misguided. The Department is seeking to clarify the scope of this AD order, but it cannot alter the scope in order to "level the playing field."

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<sup>19</sup> Preliminary Scope Interpretation, 75 Fed. Reg. at 49,477.

<sup>20</sup> Universal's Comments, at 2.

Therefore, the Department should reject Universal's attempts to redefine the scope of the order.

**IV. CONCLUSION**

There is clear and convincing evidence from the antidumping duty investigation that petitioners did not intend shapes of candles other than those listed to be included within the scope of the order. Petitioners' post-hoc rationalization that it intended all shapes to be covered simply has no evidentiary foundation. Additionally, the commercial meaning of "figurine" in the candle industry does not support the narrow definition proposed by petitioners. For these reasons, the Department of Commerce should affirm its preliminary determination that the scope of the antidumping duty only covers the enumerated shapes and should not redefine the term "figurine."

\*\*\*\*\*

Please contact the undersigned should you have any further questions regarding this matter.

Sincerely,

Grunfeld Desiderio Lebowitz  
Silverman & Klestadt, LLP



Mark E. Pardo  
Nikolas E. Takacs

**PUBLIC CERTIFICATE OF SERVICE**

There are currently no parties on the service list at this time.

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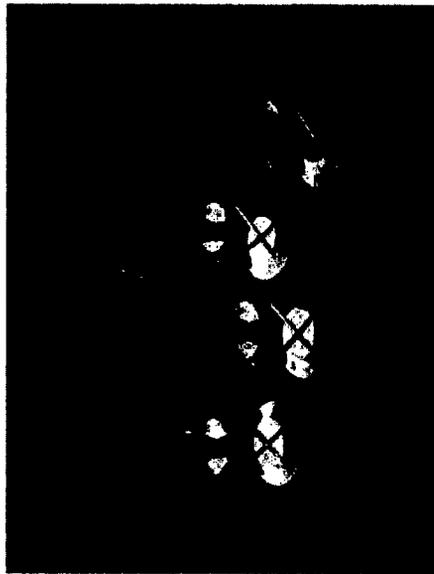
# **Exhibit 1**



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Handmade in the USA

### ROSE CANDLE



Color & Stand

Scented Cinnamon-Rust/Yellow: Gold Heart Stand

~~\$15.95~~ **\$15.95** [Add to Cart](#)

Our single roses are beautiful... they will bring joy to any room and a smile to any face! :)

### ROSE & BUD CANDLE



Color & Stand

Scented Cinnamon-Rust/Yellow: Gold Leaf Stand

~~\$24.95~~ **\$24.95** [Add to Cart](#)

Our roses are beautifully decorated with glitter and coated in a gloss for that perfect shine.

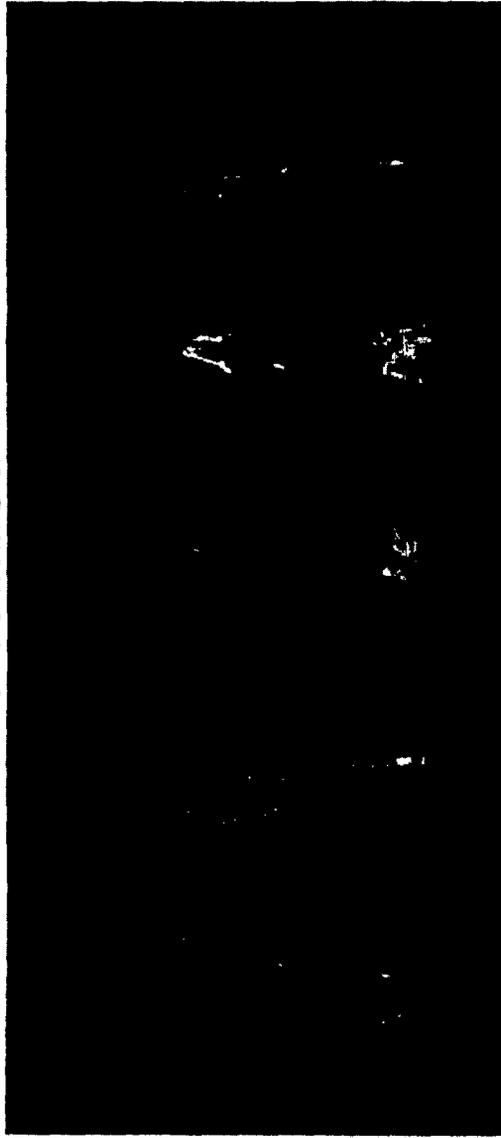
Stand is included.

Our roses our handmade so no two will be alike or the same color design but we can assure you that you will be pleased!

Stand is included.

Our roses our handmade so no two will be alike or the same color design but we can assure you that you will be pleased!

### PRAYING HANDS CANDLE



(Aqua, Green, Pink, Seafoam Green, Blue)

Color

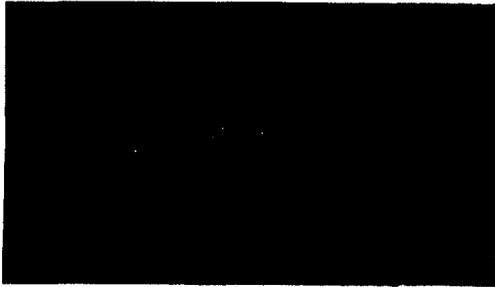
~~\$12.95~~

The act of praying is very meaningful for many and our Praying Hands Candle is perfect for adding spiritual meaning to any room.

Non-Scented... 6" Tall

Includes a plastic white dove at the base of the hands.

MADONNA CANDLE



Color **Pink**



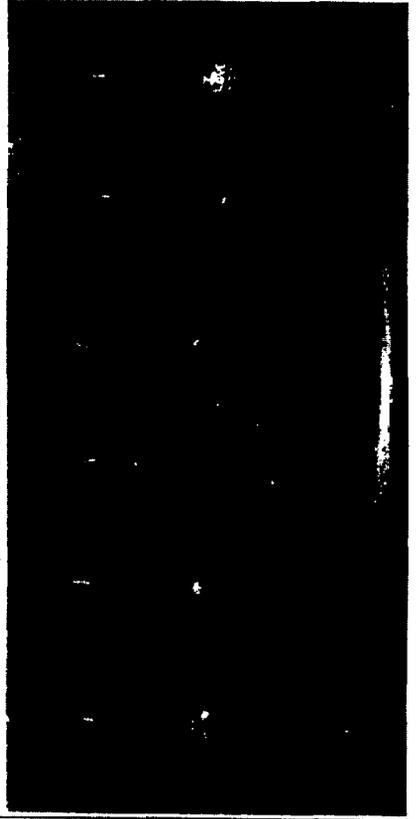
\$12.95

A beautiful figurine of the Virgin Mary "Madonna".

This is artistically moulded, non-scented candle creation stands 11" tall.

Available in Pink or Blue

**MESSAGE BEAR CANDLE**



For with God nothing shall be impossible.

Luke 1:37



**MESSAGE HEART CANDLE**

Color & Message **Purple w/ Pink Heart: Jesus Loves You**

**\$7.95**

Express your feelings openly either as a gift for that special someone in your life or just for yourself.

Non-scented  
5" tall

**Messages:**

Jesus Loves You  
Hug Me  
Kiss me  
Bear Hugs  
I Love You

**Colors:**

Purple w/ Pink heart  
Blue w/ Pink heart  
Brown w/ Red heart  
Green w/ Sea Foam heart  
Green w/ Green heart  
Red w/ Blue heart

\* If there is a special color bear/heart or special message you would like together, please just e-mail us and we will get back to you as soon as possible! :)



Color & Message **Red: Jesus Loves You**

**\$6.95**

"Showing your feelings openly" with a personalized embedded heart!

Non-scented candle

**7 Colors Available: Red, Green, Purple, Sea Foam Green, Pink, Blue, Aqua**  
**Standard Messages:**

I Love You  
I Love My Wife  
I Love My Husband  
Jesus Loves You  
#1 Coach  
#1 Teacher  
Get Well Soon  
Happy Birthday  
I Love You Mom  
I Love You Dad  
A Special Sister  
A Special Brother

\* Please e-mail us if you would like a special message or name on the heart..

Please keep maximum words to 3.

## FIREHAT CANDLE



Design

\$14.95 ~~14.95~~

### ***A New Candle Creation to honor a fireman or your local fire department!***

*These brave men and women work long hours in hazardous conditions. Thousands of lives and billions of dollars of property are lost each year.*

*Because your local firemen respond rapidly to many types of emergencies - they deserve to be honored for their unique position and this "fireman's hat candle" is the perfect gift or Fundraiser for your local fire department.*

#### ***Features :***

- *Fire hats are available in the plain style or you may have them hand-painted with the fire department name and/or number for a real personal gift.*
- *Fire hat candles are also available in your choice of two styles - one fire hat is totally scented with either cinnamon or hot apple cobbler with a wick in the center of the hat.*
- *The other style has a scented tealight candle which is available in your choice of vanilla scent or cinnamon scent , this hat you will only burn the tea light. the hat will not burn up, you just replace the tealight.*
  - *Size of hat : length 7" width 5 1/2;" height 3 1/2 "*
- *We can also personalize with your fire station logo on the front of the hat, ask for details!*

*\* If you choose to personalize the hat, please email me the details of your request.*

~~~~~  
*For more unique great fundraiser ideas go to our website at [www.mtviewcandles.com](http://www.mtviewcandles.com) To contact us please call 570-673-8829 or e-mail us at [mtviewcandles1@frontiernet.net](mailto:mtviewcandles1@frontiernet.net)*

*1. We give 40% of total sales.*

*2. Our message bears & hearts make a great fundraiser for youth groups.*

*3. The sky is the limit , the more you sell the more you make.*

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# **Exhibit 2**

*Hinode Farm* inc

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# Beeswax Figurine Candles

Beeswax Figurine Candles

We offer a plethora of beeswax candles in shapes of rabbits, owls, angels, hearts, stars, and everything in between. Choose your favorite décor and bring the sweet aroma of the beehive any room in your home.



Figurine Candles



Beeswax Flowers



Beeswax Beehives



Beeswax Animals



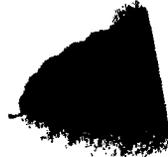
Beeswax Angels



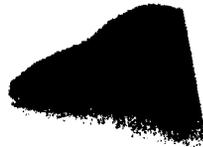
Beeswax Hearts



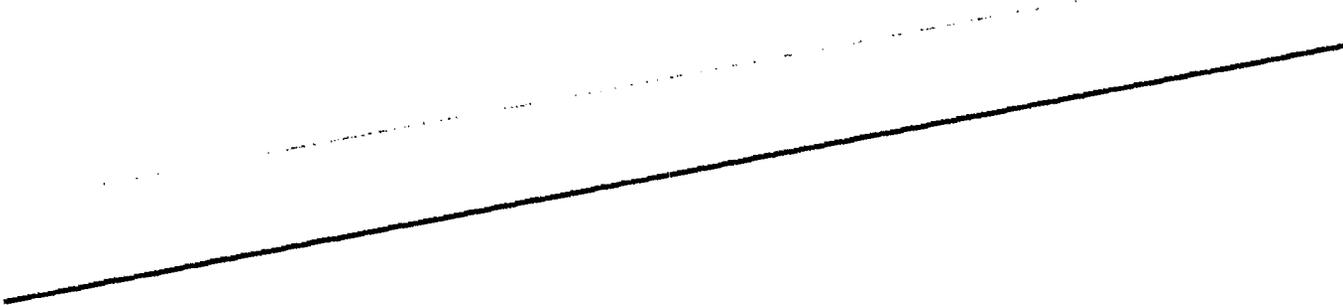
Star Candles



Specialty Figurines



Holiday Figurines



Beeswax Shakespeare Bust Candle  
Q23  
\$11.00



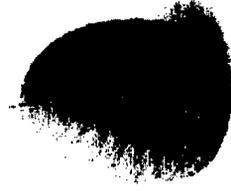
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\$9.00

Beeswax Pumpkin Candle Q16  
\$8.00



Beeswax Owl Candle Q53  
\$8.00

Beeswax Plain Heart Candle Q15  
\$14.00



Beeswax Beehive Candle Q10  
\$14.00

Beeswax Embossed Birds Candle  
Q07  
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