

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

9

VIP Products, LLC, an Arizona limited liability company,

No. CV-10-0998-PHX-LOA

10

Plaintiff,

**ORDER**

11

vs.

12

13

The Kong Company, LLC, a Colorado limited liability company; Margherita J. Arvanites, an individual,

14

Defendants.

15

16

17

This matter is before the Court on Plaintiff’s Emergency Motion for an Order Permitting Plaintiff to File Portions of its Amended Complaint and Motion for Temporary Restraining Order Under Seal. (docket # 8)

18

19

20

21

Plaintiff commenced this action on May 7, 2010. (docket # 1) Defendants have not yet answered or otherwise appeared, thus Plaintiff does not need leave of the Court to file an amended complaint. Fed. R.Civ.P. 15. Rather, Plaintiff seeks an order to file an Amended Complaint and related Motion for Temporary Restraining Order under seal pursuant to LRCiv. 5.6.

22

23

24

25

26

Plaintiff and Defendant The Kong Company, LLC (“Kong”) are competitors in the business of designing and distributing dog toys. Defendant Margherita J. Arvanites was previously a party to a Product License Agreement with Plaintiff and is now, Plaintiff

27

28

1 contends, a party to a license agreement with Kong. Plaintiff's Complaint contains claims  
2 that fall into two general categories: (1) Lanham Act claims for false advertising, trademark  
3 and trade dress infringement; and (2) breach of contract claims against Defendant Arvanites.  
4 (docket # 1)

5 Plaintiff and Arvanites allegedly entered into a Product License Agreement,  
6 effective April 16, 2004. On September 23, 2008, Plaintiff and Arvanites allegedly entered  
7 into a written agreement terminating their business relationship, the "Confidential  
8 Termination Agreement." Plaintiff states that the terms of the Confidential Termination  
9 Agreement provide that the agreement shall be held in "strictest confidence" by the parties.  
10 (docket # 8 at 2) Plaintiff further states that a central issue in this case is Plaintiff's allegation  
11 that Defendant Arvanites, in the course of her current business relationship with Kong, has  
12 violated certain terms of the Confidential Termination Agreement.

13 Because Plaintiff's claims are based on information that is confidential under  
14 the Confidential Termination Agreement, Plaintiff's original Complaint includes only "bare  
15 bones" allegations that Defendant Arvanites violated terms of the Confidential Termination  
16 Agreement. Plaintiff has prepared an Amended Complaint which includes the details of the  
17 contract terms, the nature of Plaintiff's contentions regarding Arvanites' alleged breaches,  
18 and Plaintiff's rights under the terms of the parties' Confidential Termination Agreement.  
19 Plaintiff seeks leave of the Court to file its Amended Complaint under seal to protect the  
20 confidentiality of the parties' Confidential Termination Agreement. Plaintiff also seeks  
21 leave to file a related Motion for Temporary Restraining Order under seal.

22 Federal Rule of Civil Procedure 26(c) provides that the court may enter  
23 protective orders which, in the court's judgment, in view of all of the surrounding  
24 circumstances, "justice requires" upon a showing of "good cause." Fed. R. Civ. P. 26 (c).  
25 Courts have "considerable discretion in deciding whether the circumstances warrant entry  
26 of a protective order and, if so, what provisions should be included." *In re Pizza Time*  
27 *Theatre Securities Litigation*, 113 F.R.D. 94, 97 (N.D. Cal. 1986). In view of the  
28 confidential nature of Plaintiff's allegations against Defendant Arvanites, the Court will

1 grant Plaintiff's motion to file its Amended Complaint and Motion for Temporary  
2 Restraining Order under seal.

3 Accordingly,

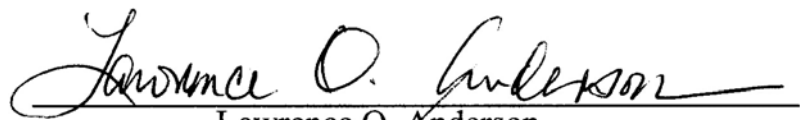
4 **IT IS ORDERED** that Plaintiff's Emergency Motion for an Order Permitting  
5 Plaintiff to File Portions of its Amended Complaint and Motion for Temporary Restraining  
6 Order Under Seal, including its request for expedited consideration, docket # 8, are  
7 **GRANTED.**

8 **IT IS FURTHER ORDERED** that Plaintiff VIP Products, LLC, may file  
9 under seal: (1) Plaintiff's Amended Complaint; and (2) Plaintiff's Motion for Temporary  
10 Restraining Order.

11 **IT IS FURTHER ORDERED** that the parties shall not use emphasis (such  
12 as bold text) in the caption of pleadings, motions or other court filings as contrary to the  
13 District's Local Rules. LRCiv 7.1(a), n. 2.

14 Upon the filing of Plaintiff's Motion for Temporary Restraining Order and  
15 except upon the written consent of all parties to magistrate-judge jurisdiction pursuant to 28  
16 U.S.C. 636(c)(1), this Magistrate Judge will direct the Clerk of the Court to randomly  
17 reassign this case to a United States District Judge as a magistrate judge is without  
18 jurisdiction to consider Plaintiff's request for injunctive relief. 28 U.S.C. § 636(b)(1)(A).

19 DATED this 17<sup>th</sup> day of May, 2010.

20  
21  
22 

23 Lawrence O. Anderson  
24 United States Magistrate Judge