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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LA PRINTEX INDUSTRIES, INC.,

Plaintiff,

vs.

SEARS HOLDINGS CORP., a Delaware Corporation; HYMAN FAMILY, LP., a California Limited Partnership, individually, and doing business as "SUSIE'S DEALS"; ROSS STORES, INC., a Delaware Corporation, individually, and doing business as "dd's discounts"; L.A. FASHION HUB, INC., a California Corporation; JASMINE FASHION, INC., a California Corporation; UNGER FABRIK, LLC, a California Limited Liability Company; and DOES 1-10,

Defendants.

CASE NO.: CV10-8886 JFW (FFM~~x~~)

[PROPOSED] ORDER ON STIPULATED PROTECTIVE ORDER FOR CONFIDENTIAL TREATMENT OF DOCUMENTS OR INFORMATION

Action Filed: November 18, 2010

NOTE CHANGES MADE BY COURT

Pursuant to the stipulation of the parties, AND GOOD CAUSE APPEARING THEREFORE, THE COURT HEREBY ORDERS THAT:

STATEMENT OF GOOD CAUSE: This action involves claims for copyright infringement under the Copyright Act of 1976, Title 17 U.S.C., § 101 *et seq.* The parties, who are variously manufacturers and vendors of textile designs and apparel retailers, are direct and/or indirect competitors of each other. A primary

GERSH DERBY
ATTORNEYS AT LAW

1 element of this case is related to Plaintiff’s claim that because of Defendants’ alleged
 2 wrongful acts, Plaintiff has lost substantial business relating to its copyrighted
 3 designs. The parties therefore recognize that extensive discovery requesting
 4 information from the parties, their vendors, customers and clients, including financial
 5 information, market information and other commercially and competitively sensitive
 6 information may be necessary to prove and/or disprove Plaintiff’s claims and
 7 Defendants’ defenses thereto. There will also be multiple depositions of the parties’
 8 employees or agents and third party vendors, customers or clients and such persons
 9 will likely be asked to answer questions on these potentially sensitive subject areas.
 10 The parties, as competitors in the industry, will likely be placed at a competitive or
 11 economic disadvantage if such confidential and/or proprietary information is disclosed
 12 to other parties and/or the public at large. This protective order (“Protective Order” or
 13 “Order”) is therefore necessary to avoid any prejudice or harm in the form of loss of
 14 competitive advantage which would likely result if such information was disclosed in
 15 the absence of the protections set forth herein. This Order is also necessary for the
 16 orderly management of this litigation. Without this Order, the exchange of party
 17 information, as well as information needed from third parties, including most
 18 importantly the parties’ vendors, customers or clients may become logistically very
 19 difficult, time consuming and expensive.
 20

21 **A. Definition of “Confidential Information”**

22 1. “Confidential Information,” as used herein, means all information in
 23 whatever form, such as oral, written, documentary, tangible, intangible, electronic, or
 24 digitized now or hereafter in existence that:

25 (a) is regarded by the designating party as being confidential,
 26 private, or proprietary in nature such that it qualifies for protection under FRCP Rule
 27 26(c)(1)(g); and/or
 28

1 (b) is the subject of efforts that are reasonable under the
2 circumstances to maintain its secrecy; and

3 (c) is protected under the Uniform Trade Secrets Act, California
4 Civil Code section 3426, *et. seq.*, in that such information derives independent
5 economic value, actual or potential, from not being generally known to, and not being
6 readily ascertainable by proper means, by other persons who can obtain economic
7 value from its disclosure or use; and

8 (d) as illustrative examples only, the parties anticipate that the
9 following descriptive categories will be designated as Confidential Information under
10 this Order, including, but not limited to, customer lists, confidential financial
11 information of the parties, including profit margins, sales data, profits, and retail sales
12 summaries, vendor lists, order summaries, confidential contracts, and proprietary
13 fabric/style specifications.

14
15 2. Confidential Information is unlimited in kind or form and includes,
16 by way of example only and without limitation thereto, information relating to the
17 following: any products, designs, specifications, tests, plans, studies, surveys,
18 manufacture, distribution, marketing, promotion, advertisement, sales, opportunities,
19 vendors, customers, financial matters, costs, sources, prices, profits, research,
20 development, analysis, know-how, show-how, personnel, strategies, or competition.

21 **B. Production of Confidential Information**

22 1. All efforts by any party or witness in this matter to designate any
23 information as “Confidential,” shall be governed by the terms of this Order. The party
24 by whom any disclosure is made is the “Disclosing Party” and the party to whom any
25 disclosure is made is the “Receiving Party.” By receiving any property designated as
26 “Confidential,” the Receiving Party agrees not to disclose, publish, disseminate, or
27 use, other than as expressly permitted herein, any such property and will assure that all
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1 reasonable efforts are made to prevent any unauthorized use, disclosure, publication or
2 dissemination of such property.

3 2. All Confidential Information produced by the Disclosing Party to the
4 Receiving Party in whatever form (e.g., documents, materials, things, testimony or
5 other information) during the course of this matter shall be designated “Confidential”
6 or “Confidential-Attorneys’ Eyes Only” in accordance with the terms of this Order,
7 *infra*, prior to disclosure, by use of a reasonably conspicuous and prominent mark. In
8 the case of documents, the mark shall be on every page.

9 **C. Levels of Confidentiality**

10 Any information designated as “Confidential” or “Attorneys’ Eyes Only”
11 shall be restricted in accordance with the following levels of confidentiality:

12 1. “Attorneys’ Eyes Only” -- Information designated as “Attorneys’
13 Eyes Only” shall be restricted to viewing, or copying by, and disclosure to:

14 (a) Attorneys acting on behalf of the parties in this matter;

15 (b) The office personnel employed by the counsel working under
16 the direct supervision of said counsel;

17 (c) The United States District Court for the Central District of
18 California and all clerks and other personnel in the United States District Court for the
19 Central District of California, before which this action is pending; and

20 (d) Experts and consultants necessarily retained by counsel of
21 record in this litigation, but only if these experts and consultants comply with this
22 agreement in full and read, sign, and agree to be bound by all of its terms.

23 (e) Information relating to a defendant’s financial matters and
24 information relating to the source of any design at issue in this action may be
25 disclosed to Plaintiff’s owner, Jae Nah, only, for purposes of settlement negotiations,
26 only.

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1 2. “Confidential” -- Information designated as “Confidential” shall be
2 restricted to viewing, copying by, and disclosure to:

3 (a) All “Attorneys’ Eyes Only” persons; and

4 (b) All employees, officers, and directors of each party of record.

5 It is not necessary that each such person sign this order, provided that the Receiving
6 Party has previously notified all employees, officers, and directors of the existence of
7 this order, its terms, and the consequences of an unauthorized disclosure.
8

9 **D. Depositions**

10 1. Any party may designate testimony on oral deposition as
11 “Confidential” or “Attorneys’ Eyes Only”. The designation of such testimony shall be
12 made at any point during the deposition by so stating on the record and identifying the
13 level of protection desired.

14 2. Once testimony has been designated as “Confidential” or
15 “Attorneys’ Eyes Only”, only the following persons shall be present for the answer:

16 i. Persons authorized under this Order;

17 ii. The deponent; and

18 iii. The reporter and videographer.

19 3. Each court reporter and videographer participating in any
20 deposition shall be provided with a copy of this Order and shall adhere to its
21 provisions. Each court reporter must separately bind those portions of deposition
22 transcript and related exhibits deemed confidential and shall further separate into
23 separate bound deposition transcripts--by the various levels of confidentiality--and
24 shall thereon place a reasonably conspicuous and prominent designation on the first
25 page of each such bound transcript or exhibits.

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1 4. A deponent and/or party shall have until thirty (30) days after
2 receipt of a deposition transcript to designate additional portions of the transcript
3 under this Order.

4 5. Each party shall cause each copy of the transcript in its custody or
5 control or that comes into its custody or control to be immediately marked as
6 designated.

7 6. Prior to the expiration of the thirty (30) days, a deposition
8 transcript and/or the substance of a deponent's answers may be disclosed only to those
9 persons authorized to receive items designated as "Attorneys' Eyes Only" and the
10 deponent.

11
12 **E. Items Filed with the Court**

13 1. When any documents, things, or testimony in whatever form is
14 filed or lodged with Court that is designated as "Confidential" or "Attorneys' Eyes
15 Only", they shall be maintained under seal with the United States District Court for
16 the Central District of California, pursuant to this Order, after the parties comply with
17 the procedures set forth in Local Rule 79-5 for the filing of records under seal, or as
18 otherwise ordered by the Court. In so doing, they will be filed in a sealed envelope.
19 The envelope will contain an indication of the general nature of the contents of the
20 envelope, and shall have endorsed thereon the title and docket number of this action
21 and a boldface label conspicuously placed on the front of the said envelope stating:

22 THIS ENVELOPE CONTAINS DOCUMENTS, THINGS, OR TESTIMONY
23 WHICH ARE 'CONFIDENTIAL" (OR "CONFIDENTIAL-ATTORNEYS' EYES
24 ONLY") AND SUBJECT TO THE TERMS OF A PROTECTIVE ORDER OF THE
25 UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA.
26 IT IS NOT TO BE OPENED OR THE CONTENTS DISPLAYED OR REVEALED
27 EXCEPT TO THIS COURT AND ITS STAFF.

1 2. To the extent practicable, designated items or the substance of
2 designated items shall be filed separately or in severable portions of filed papers, so
3 that non-designated items may be freely disseminated.

4 **F. Inadvertent Disclosure**

5 1. The inadvertent or unintentional disclosure of “Confidential” or
6 “Attorneys’ Eyes Only” or any other privileged or protected item, regardless of
7 whether the item was so designated at the time of disclosure, shall not be deemed a
8 waiver in whole or in part of a party’s claim of protection or privilege either as to the
9 specific information disclosed therein or on the same or related subject matter,
10 provided that the party later asserting a claim of protection or privilege informs the
11 opposing parties of its claim within a reasonable time after learning of the disclosure.

12 2. The Receiving Party shall promptly destroy, sequester, or return to
13 the Disclosing Party any protected or privileged item discovered by the Disclosing
14 Party to have been inadvertently or unintentionally disclosed to the Receiving Party
15 upon being notified of the Disclosing Party’s claim of protection or privilege. If the
16 Receiving Party disclosed the protected or privileged item before being notified of the
17 Disclosing Party’s claim of protection or privilege, it must take reasonable steps to
18 retrieve the item for destruction, sequestering, or return to the Disclosing Party.

19 **G. Acknowledgment of Order**

20 Each person required by this Order to sign a statement agreeing to be
21 bound by the Order must sign a statement to be delivered to and maintained by the
22 Disclosing Party which states the following:
23

24 I have read the PROTECTIVE ORDER issued by the United States
25 District Court for the Central District of California in the matter of *L.A. Printex*
26 *Industries, Inc. v. Sears Holdings Corp., et al.*, case number CV10-08886 JFW
27 (~~FFMx~~) (**FFMx**) regarding confidentiality of materials designated by the parties and
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1 their counsel. I understand and agree to be bound by the terms of this Order.

2 **H. Agreement of Parties to Order**

3 All parties to this action, their counsel, and all other persons subject to
4 this Order shall be bound by this Order and shall abide by all of the terms of this
5 Order until otherwise ordered by the United States District Court for the Central
6 District of California, or by written notice releasing them from the respective
7 obligations received from the pertinent Disclosing Party.

8 In the event that information designated as Confidential Information is
9 contemplated to be used at trial, the Receiving Party seeking to use such information
10 shall give notice to the Court and the Designating Party of its intention to use the
11 Confidential Information at trial sufficiently in advance of its contemplated use so that
12 the Court can have the matter heard. The Designating Party continues to bear the
13 burden of showing to the Court that there is good cause to keep the materials sought to
14 be used at trial as subject to and treated under the terms of ~~a this Protective Order that~~
15 **the judicial officer conducting the proceedings deems appropriate so that the**
16 ~~Court may keep the Confidential Information exempt from public disclosure even~~
17 ~~though the Confidential Information is used at trial. (FFM)~~

18 **I. Continuing Effect of Order**

19 At the conclusion of this matter by lapse of all appeal right after entry of final
20 judgment from which no further rights of appeal exist, or by settlement of this matter,
21 all Confidential Information produced in this litigation, including all copies made of
22 such material shall, upon demand by the party that produced it, be returned to counsel
23 for that party that produced it. If no request for return is received within one year of
24 final disposition, the party in possession may destroy such Confidential Information
25 with written confirmation of such destruction. The Court and Court personnel are
26 exempt from the provisions of this Paragraph I.

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1 **J. Additional Relief**

2 No party is prevented from seeking relief not provided by this Order, or
3 otherwise seeking relief from the United States District Court for the Central District
4 of California, as may be appropriate to protect its interests or otherwise prepare this
5 matter for trial.

6 To the extent that there are any disputes relating to the Protective Order,
7 such as the designation of confidential documents, Local Rule 37 governs the
8 procedure for resolving such disputes. In making or opposing any motion relating to
9 the designation of Confidential Information, the party seeking to maintain a document
10 under the Protective Order shall bear the burden of showing specific prejudice or harm
11 if the information sought to be protected is disclosed to the public. *See e.g., Phillips*
12 *ex rel. Byrd v. General Motors Corp.*, 307 F.3d 1206, 1210-1211 (9th Cir. 2002).

13 **K. Use for This Litigation Only**

14 1. Items designated under this Order shall not be used by any
15 recipient or disclosed to anyone for any purpose other than in connection with the
16 above-captioned action.

17 2. In the event that any party and/or recipient of Confidential
18 Information pursuant to this Order is served with legal process or otherwise requested
19 to disclose any Confidential Information (the “Disclosing Entity”) by any person or
20 entity not covered by this Order, including, without limitation, other insurance
21 carriers, state, local or federal agencies, or litigants in other litigation (the “Requesting
22 Entity”), the Disclosing Entity shall give notice thereof, by telephone and facsimile, as
23 soon as practicable but in any event sufficiently prior to the requested disclosure to
24 afford an opportunity to intervene for any party who may be adversely affected by the
25 disclosure except to the extent that such notice is precluded by law. **Nothing herein**
26 **shall be construed as relieving any person or entity from complying with its**
27 **obligations pursuant to a lawfully issued subpoena or other court process.**

1 (FFM)

2 L. **Challenge to Designation**

3 1. A party shall have sixty (60) days to commence the meet and
4 confer process with respect to raising a challenge to a Designating Party's
5 confidentiality designation. In the event that a party fails to timely make such a
6 challenge, the party shall thereafter be required to demonstrate good cause justifying
7 its failure to timely raise a challenge as an initial burden of proof with respect to any
8 motion to challenge the confidentiality designation.

9 2. A Party that elects to initiate a challenge to a Designating Party's
10 confidentiality designation must do so in good faith and in full compliance with Local
11 Rule 37. In conferring, the challenging Party must explain the basis for its belief that
12 the confidentiality designation was not proper and must give the Designating Party an
13 opportunity to review the designated material, to reconsider the circumstances, and, if
14 no change in designation is offered, to explain the basis for the chosen designation. A
15 challenging Party may proceed to the next stage of the challenge process only if it has
16 engaged in this meet and confer process first.

17 3. a. A Party that elects to press a challenge to a confidentiality
18 designation after considering the justification offered by the Designating Party may
19 file and serve a motion under Civil Local Rule 37 (and in compliance with Civil Local
20 Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail
21 the basis for the challenge. The challenged material shall not be filed as part of the
22 Local Rule 37 Joint Stipulation. Rather, the challenged material shall be separately
23 lodged with the Court along with a Stipulation and [proposed] Order providing that:
24 (1) one of the parties has requested that the attached material be re-designated with
25 respect to confidentiality; (2) pending resolution of the challenge to the confidentiality
26 designation, the material shall be filed under seal; and (3) if the Motion is denied, or if
27 the material is only lowered in confidentiality from "ATTORNEYS' EYES ONLY" to
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1 “CONFIDENTIAL”, it will remain filed under seal.

2 b. Each such motion must be accompanied by a competent
3 declaration that affirms that the movant has complied with the meet and confer
4 requirements imposed by Local Rule 37 and the preceding paragraph, and that sets
5 forth with specificity the justification for the confidentiality designation that was
6 given by the Designating Party in the meet and confer dialogue.

7 c. The burden of persuasion in any such challenge
8 proceeding shall initially be on the Moving Party to establish a legitimate need for
9 lowering or removing “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”
10 designation. If Moving Party establishes such a legitimate need, Designating Party
11 shall thereafter have the burden of establishing the propriety of the designation. Until
12 the Court rules on the challenge, all parties shall continue to afford the material in
13 question the level of protection to which it is entitled under the Producing Party’s
14 designation.

15 Should any motion be brought under this Paragraph the prevailing party may be
16 entitled to recover reasonable attorneys fees pursuant to Federal Rules of Civil
17 Procedure Rules 26(g)(3) and 37(a)(5).

18 **M. Additional Protection**

19 Nothing contained in this Stipulated Protective Order shall preclude any party
20 from seeking and obtaining, upon a showing of good cause, additional protection with
21 respect to the confidentiality of documents or other information including, but not
22 limited to, additional restrictions on disclosure to the parties herein. Nothing in this
23 Stipulated Protective Order is intended to or has the effect of diminishing any
24 obligations of confidentiality that a Party otherwise may have.

25 **N. Modification**

26 Any party to this action may, at any time, request the modification of this
27 Stipulated Protective Order. Such a request may be granted by the Court only after
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1 due notice and hearing, and upon a showing of good cause. In the event any party
2 seeks a modification of this Stipulated Protective Order, the parties shall follow the
3 procedures set forth in Local Rule 37 to obtain a decision from the Court. If the
4 parties want to file the Joint Stipulation required by Local Rule 37 under seal, the
5 parties may file a stipulation **requesting an order** to that effect **pursuant to Local**
6 **Rule 79** or the moving party may file an ex parte application making the appropriate
7 request. The parties must set forth good cause in the stipulation or ex parte
8 application as to why the Joint Stipulation or portions thereof should be filed under
9 seal. **(FFM)**

10 **O. Prior Orders**

11 This Stipulated Protective Order shall not affect any prior order of the Court

12 **P. Execution and Counterpart**

13 This Stipulated Protective Order may be executed in one or more counterparts,
14 each of which shall be deemed to be an original, but all of which together shall
15 constitute one and the same instrument. Facsimile signatures or any party upon the
16 signature page of this Stipulated Protective Order shall be binding upon the parties
17 hereto and may be submitted as though such signatures were original signatures.

18 **IT IS SO ORDERED.**

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20 Dated: August 24, 2011

21
22 /S/ FREDERICK F. MUMM
23 Hon. Frederick F. Mumm
24 United States District Court
25 Magistrate Judge
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