

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

BACK IN FIVE, LLC, a California limited liability company, BACKLIFE LTD., an Israeli company,

Plaintiffs,

v.

INFINITE INTERNATIONAL INC., a California corporation; JACK HSU, an individual; YU-LING LINDA HSU, an individual; and DOES 1-10,

Defendants.

Case No.: CV11-0243 GAF (AJWx)

**ORDER GOVERNING USE AND  
DISSEMINATION OF  
CONFIDENTIAL INFORMATION**

**[DISCOVERY MATTER]**

1 INFINITE INTERNATIONAL INC., a  
California corporation,

2 Counterclaimant,

3  
4 v.

5 BACK IN FIVE, LLC, a California limited  
liability company, BACKLIFE LTD., an  
6 Israeli company,

7 Counterclaim Defendants.  
8

1 Pursuant to the Stipulation Governing Use and Dissemination of Confidential  
2 Information filed by plaintiffs and counter-defendants Back in Five, LLC (“Back in  
3 Five”) and BackLife Ltd. (“BackLife”) and defendant and counterclaimant Infinite  
4 International Inc. (“Infinite International”) and defendants Jack Hsu and Yu-Ling  
5 Linda Hsu (collectively, “Infinite” or “Defendants”), the Court hereby enters this  
6 Protective Order (“the Order”) to protect confidential information and material that  
7 may be produced or otherwise disclosed by the parties or third parties during the course  
8 of discovery in this action.

9 **IT IS HEREBY ORDERED THAT:**

10 The following Protective Order shall govern the handling of confidential  
11 proprietary, and trade secret information produced in discovery and/or filed with the  
12 Court in this action.

13 **I. GOOD CAUSE STATEMENT**

14 1. Consistent with Federal Rule of Civil Procedure 26(c), good cause exists  
15 for this Court to enter a Protective Order due to the highly sensitive and proprietary  
16 nature of the information to be exchanged through discovery and trial of this action.  
17 The information expected to be sought and produced will likely include “trade secrets,”  
18 as that term is defined in California Civil Code § 3426.1(d). “Trade secrets” may  
19 include, but are not limited, to customer lists, pricing analysis and information, market  
20 surveys and competitive research, corporate financial information and analysis,  
21 business strategies, and information related to product development, research and  
22 releases. In addition to the parties' trade secrets, additional information commonly  
23 sought and produced in discovery, including draft patent applications, invention  
24 disclosures, other patent related information, draft marketing materials, personal  
25 financial information, and personal identifier information, should also be kept  
26 confidential due to the sensitive nature of such information.

1           2.     The parties agree that the disclosure to the public of such highly sensitive  
2 information may cause competitive injury and damages to the parties' and/or would  
3 unnecessarily invade the privacy of a party or person. Therefore, the parties have  
4 agreed to this Stipulation for Entry of Protective Order on the terms set forth below.

5 **II.    INTRODUCTION**

6           3.     This Protective Order shall govern any document, information or other  
7 thing, which is designated as containing "CONFIDENTIAL" or "HIGHLY  
8 CONFIDENTIAL" information, as defined herein<sup>1</sup> and is furnished by any party or  
9 non-party in connection with the above-captioned action ("ACTION"). Documents  
10 and other information produced in this ACTION and designated "CONFIDENTIAL"  
11 or "HIGHLY CONFIDENTIAL" shall be used only for purposes of this ACTION.  
12 The forms of information which may be subject to this Protective Order include, but is  
13 not limited to, documents and things, responses to requests to produce documents or  
14 other things, responses to interrogatories, responses to requests for admissions,  
15 documents subpoenaed in connection with depositions, deposition testimony and  
16 exhibits, deposition transcripts, and all copies, extracts, summaries, compilations,  
17 designations and portions thereof (hereinafter referred to collectively as "DISCOVERY  
18 MATERIALS").

19           4.     All DISCOVERY MATERIALS produced in discovery in this case and  
20 designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be used solely  
21 for the purpose of pre-trial proceedings (including, but not limited to, motions and  
22 briefing), trial preparation and trial, and any appeals in the ACTION. DISCOVERY  
23 MATERIALS shall not be used for any business or non-litigation related purpose  
24 whatsoever.

25  
26 \_\_\_\_\_  
27 <sup>1</sup> For the purpose of this order, "HIGHLY CONFIDENTIAL" and "CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
28 have the same meaning and effect and can be used interchangeably.

1 **III. DEFINITIONS**

2 5. The following definitions apply in this Protective Order:

3 (A) The designation “CONFIDENTIAL” may be applied by any party  
4 or third party for any DISCOVERY MATERIALS pursuant to this ACTION that  
5 contain material including, but not limited to: (a) past or current financial  
6 information of a party; (b) information pertaining to a third party which the party  
7 has an express or implied obligation to keep confidential; (c) marketing and  
8 promotional materials; (d) personnel information; and (e) all communications  
9 pertaining to the above named information including both manual and electronic  
10 correspondence.

11 (B) Designation of DISCOVERY MATERIALS made by a party to this  
12 ACTION shall be a certification to the Court and to the other parties that such  
13 information is believed to be Confidential within the meaning of this Protective  
14 Order. Information designated as “CONFIDENTIAL” in accordance with this  
15 provision shall be treated as Confidential Information pursuant to the terms  
16 hereof until it ceases to be covered by this Protective Order.

17 (C) The designation “HIGHLY CONFIDENTIAL” or  
18 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” may be applied by a party  
19 to highly sensitive forms of information, including, but not limited to: (a) trade  
20 secrets as defined in Cal. Civ. Code § 3426.1(d)(which provides that the term  
21 “trade secret” “means information, including a formula, pattern, compilation,  
22 program, device, method, technique, or process, that: (1) Derives independent  
23 economic value, actual or potential, from not being generally known to the  
24 public or to other persons who can obtain economic value from its disclosure or  
25 use; and (2) Is the subject of efforts that are reasonable under the circumstances  
26 to maintain its secrecy”), including those categories of documents outlined in the  
27 parties’ Statement of Good Cause above; and (b) draft patent applications,  
28

1 invention disclosures, and other information relating to the filing and preparation  
2 of patent applications; and/or (c) Extremely sensitive “CONFIDENTIAL”  
3 information or items whose disclosure to another Party or non-party would create  
4 a substantial risk of serious injury that could not be avoided by less restrictive  
5 means. This designation shall be made as sparingly as possible and shall be a  
6 certification to the Court and the other parties that such information is believed  
7 subject to this more restrictive classification within the meaning of this  
8 Protective Order.

9 (D) “CONFIDENTIAL INFORMATION” refers to all information  
10 which is subject to the designations “CONFIDENTIAL” or “HIGHLY  
11 CONFIDENTIAL” as described above.

12 (E) “PARTY” means every party to this ACTION and every director,  
13 officer, employee, and managing agent of every party to this ACTION.

14 (F) “ORDER” means this Protective Order.

15 (G) The scope of this Protective Order shall be understood and  
16 interpreted to encompass not only those items or things which encompass  
17 CONFIDENTIAL INFORMATION, but also any information derived therefrom,  
18 and all copies, excerpts, and summaries thereof, as well as testimony and oral  
19 conversation derived therefrom or related thereto.

20 (H) “PRODUCING PARTY” means a PARTY or non-party that  
21 produces Disclosure or DISCOVERY MATERIAL in this action.

22 (I) “RECEIVING PARTY” means a PARTY that receives Disclosure  
23 or DISCOVERY MATERIAL from a PRODUCING PARTY.

24 (J) “DESIGNATING PARTY” means a PARTY or non-party that  
25 designates information or items produced in disclosures or in responses to  
26 discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”.

1 **IV. TERMS OF THE PROTECTIVE ORDER**

2 **A. Designation**

3 6. The designation of CONFIDENTIAL INFORMATION shall be made in  
4 the following manner:

5 (A) For documents, by placing a legend on each page of such document;

6 (B) For tangible objects, by placing a label or tag on the object or the  
7 container therefor, or, if not practicable, as otherwise agreed;

8 (C) For written responses to interrogatories or requests for admissions,  
9 in writing, in the relevant responses or on the face of any such responses;

10 (D) For declarations or pleadings, in writing in the declaration or  
11 pleading or on the face of any such declaration or pleading;

12 (E) For depositions, during the deposition or in writing within ten (10)  
13 days after receipt by the DESIGNATING PARTY of the transcript of the  
14 deposition; and

15 7. It shall be the duty of the PARTY seeking protection of CONFIDENTIAL  
16 INFORMATION to indicate to the other PARTY and its attorney of record which of  
17 the materials and testimony are considered HIGHLY CONFIDENTIAL.

18 **B. Inadvertent Production**

19 8. Each PARTY retains the right to subsequently re-designate documents and  
20 to require such documents to be treated in accord with such designations from that time  
21 forward. An inadvertent or unintentional failure to designate qualified information or  
22 items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” will not be construed as  
23 a waiver, in whole or in part, of (i) any PARTY’s claims of confidentiality either as to  
24 the specific information inadvertently or unintentionally disclosed or as to any other  
25 confidential material disclosed prior or subsequent to that date, or (ii) any PARTY’s  
26 right to designate said material as CONFIDENTIAL or HIGHLY CONFIDENTIAL  
27 pursuant to this Protective Order. In the event of an inadvertent or unintentional failure

1 to designate qualified information or items, the PRODUCING PARTY shall promptly  
2 notify the RECEIVING PARTY that the information is CONFIDENTIAL or HIGHLY  
3 CONFIDENTIAL. The DESIGNATING PARTY further shall provide the  
4 RECEIVING PARTY with substitute copies of the affected documents, marked with  
5 the appropriate confidentiality designation, at the expense of the DESIGNATING  
6 PARTY.

7 9. Upon receiving notice of the confidentiality designation of previously-  
8 produced materials, the RECEIVING PARTY shall take reasonable steps to retrieve  
9 and destroy all undesignated copies of the materials, and shall treat the designated  
10 materials according to their confidentiality designation under this ORDER. Prior to a  
11 change in designation by the PRODUCING PARTY, however, the RECEIVING  
12 PARTY shall not be precluded from use of the information according to its then-  
13 existing designation. No PARTY shall be deemed to be in violation of this ORDER  
14 with respect to the disclosure of any DISCOVERY MATERIAL to any other persons  
15 prior to the designation of that material as “CONFIDENTIAL” or “HIGHLY  
16 CONFIDENTIAL” pursuant to this ORDER.

17 10. Inadvertent or unintentional production of privileged or work product  
18 information will not be construed as an intentional waiver, in whole or in part, of the  
19 privilege or the work product status of the information inadvertently or unintentionally  
20 disclosed. In the event of an inadvertent or unintentional production of privileged or  
21 work product information, the PRODUCING PARTY shall promptly notify the  
22 RECEIVING PARTY that the information is privileged or is work product. The  
23 PRODUCING PARTY further shall provide the RECEIVING PARTY with substitute  
24 copies of the affected documents in which the privileged or work product information  
25 has been redacted.

26 11. Upon receiving notice of the PRODUCING PARTY’s claim of privilege  
27 or work product status of previously-produced information, the RECEIVING PARTY  
28



1 shall take reasonable steps to retrieve and destroy all un-redacted copies of the  
2 materials.

3 12. Nothing in this section shall affect the right of a party to challenge a  
4 confidentiality designation or a claim of privilege or work product through motion  
5 practice.

6 **C. Access to CONFIDENTIAL Information**

7 13. Access to information marked "CONFIDENTIAL" shall be limited to,  
8 and only to, the following persons:

9 (A) Outside attorneys of record to any PARTY in connection with this  
10 ACTION, and, if the attorney of record is a member of a law firm, the employees  
11 and staff of the law firm (collectively "OUTSIDE COUNSEL"), provided that  
12 before any such person is permitted access to any "CONFIDENTIAL"  
13 information, such person shall be informed of the existence and contents of this  
14 ORDER;

15 (B) Organizations retained by OUTSIDE COUNSEL to provide  
16 litigation support services in this ACTION, including but not limited to court  
17 reporters, translators, third party photocopy or imaging services contractors,  
18 third-party contractors producing graphic or visual aids involved solely in  
19 providing litigation support services to OUTSIDE COUNSEL, and jury  
20 consultants, provided that before any such person is permitted access to any of  
21 the CONFIDENTIAL information, such person or a supervising individual in his  
22 or her organization shall have signed the "Non-Disclosure Agreement"  
23 (Exhibit A);

24 (C) Independent outside experts and consultants retained in this  
25 ACTION by OUTSIDE COUNSEL or a PARTY, provided that any such actual  
26 or contemplated expert or consultant is not an employee of the parties hereto,  
27 and subject to the conditions and requirements set forth in this ORDER;

1 (D) The officers, directors, and employees (including In-House  
2 Counsel) of the RECEIVING PARTY to whom disclosure is reasonably  
3 necessary for this litigation and who have signed the “Non-Disclosure  
4 Agreement” (Exhibit A), subject to the conditions and requirements set forth  
5 herein;

6 (E) The Court, its personnel and any court reporters involved in taking  
7 or transcribing testimony in this ACTION;

8 (F) Such other persons as hereafter may be designated by written  
9 agreement of the PARTIES in this ACTION or by order of the Court;

10 (G) Any mediator who is engaged to assist the PARTIES in settlement  
11 negotiations on a confidential basis;

12 (H) During their depositions, witnesses in the action to whom disclosure  
13 is reasonably necessary and who have signed the “Non-Disclosure Agreement”  
14 (Exhibit A); and

15 (I) The author of the document or the original source of the  
16 information, or persons to whom the document or copies thereof were addressed  
17 or delivered.

18 **D. Access to HIGHLY CONFIDENTIAL Information**

19 14. Access to information marked “HIGHLY CONFIDENTIAL” shall be  
20 limited to the persons identified in Paragraphs 13 (A), (B), (C), (E), (F), (G) and (I)  
21 above.

22 **E. Notification of Identities of Outside Experts and Consultants**

23 15. Prior to disclosing the opposing PARTY’S CONFIDENTIAL  
24 INFORMATION to any outside expert or consultant falling under paragraph 13(C)  
25 above, whether contemplated or retained, a PARTY shall provide to the opposing  
26 PARTY with a Non-Disclosure Agreement signed by that expert or consultant and  
27 shall disclose in writing to the opposing PARTY, the identity of said outside expert or  
28

1 consultant (“NOTIFICATION”). Such NOTIFICATION shall include the expert or  
2 consultant’s current or most recent resume or *curriculum vitae*, to the extent they exist,  
3 and also identify all current and former employers and/or consulting engagements of  
4 the independent expert or consultant within ten (10) years prior to the date of such  
5 disclosure.

6 16. If a PARTY objects, in good faith on the basis of any potential or actual  
7 conflict of interest, to an expert or consultant identified in a NOTIFICATION, the  
8 PARTY shall make its objection and the basis for the same, known in writing within  
9 five (5) business days of receiving the NOTIFICATION (“OBJECTION”). This  
10 OBJECTION shall serve as the request for conference under Central District of  
11 California Local Rule (“L.R.”). 37-1. Upon receipt of the OBJECTION, the PARTY  
12 proposing the expert shall confer with the objecting PARTY within ten (10) days  
13 pursuant to L.R. 37-1. If, after meeting and conferring in good faith, agreement on  
14 disclosure of the opposing PARTY’S CONFIDENTIAL INFORMATION to the  
15 independent expert or consultant cannot be reached, the objecting PARTY shall have  
16 ten (10) business days after the conference referred to above to initiate a motion  
17 objecting to such disclosure, by serving the moving portion of the joint stipulation  
18 described in L.R. 37-2.2. The parties shall thereafter comply with the provisions of  
19 L.R. 37-2.2 in completing a joint stipulation regarding the disputed expert or  
20 consultant. In undertaking the process set forth in this paragraph the parties shall be  
21 governed by and comply with L.R. 37.2-3, 37-2.4, 37-3 and 37-4. If a PARTY asserts  
22 a timely OBJECTION to an outside expert or consultant then no disclosure of  
23 CONFIDENTIAL INFORMATION of the objecting party shall be made to the expert  
24 or consultant until the Court has ruled on the objecting party’s motion for relief, and  
25 then only in accordance with the Court’s ruling. The PARTY wishing to disclose  
26 objecting PARTY’S CONFIDENTIAL INFORMATION to the outside expert or  
27 consultant shall have the burden of showing the disclosure would be proper and  
28

1 consistent with the Order. If a PARTY fails to either make its OBJECTION known or  
2 fails to seek relief from the Court in a timely manner as described in this section, its  
3 OBJECTION to an outside expert or consultant shall be deemed waived, and the  
4 PARTY'S CONFIDENTIAL INFORMATION may be disclosed to the outside expert  
5 or consultant subject to the provisions of this Protective Order. However, in no event  
6 shall a disclosure of potential experts or consultants be deemed a waiver of any  
7 privilege or immunity.

8 **F. Disclosure of CONFIDENTIAL INFORMATION**  
9 **to Outside Experts and Consultants**

10 17. Subject to paragraph 16 herein above, CONFIDENTIAL  
11 INFORMATION may be shown to outside experts or consultants, together with their  
12 clerical personnel, who are retained by a PARTY in connection with this ACTION.  
13 The written agreement of the expert or consultant to be bound by the Non-Disclosure  
14 Agreement shall be considered to apply to his or her clerical personnel, and those  
15 personnel need not separately execute the Non-Disclosure Agreement.

16 18. The PARTIES agree that expert discovery relating to draft reports,  
17 disclosures, or communications shall be governed by Federal Rule of Civil Procedure  
18 26(b)(4).

19 19. The foregoing notwithstanding, any such expert or consultant who is a  
20 competitor of any of the PARTIES shall not be shown or otherwise given access to  
21 documents or information designated as "HIGHLY CONFIDENTIAL."

22 **G. Request for Additional Disclosure**

23 20. If any counsel of record desires to communicate to any person apart from  
24 those permitted under Paragraphs 13 to 17 any information designated as  
25 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "CONFIDENTIAL," that  
26 counsel of record shall first obtain the written consent of the DESIGNATING PARTY  
27 through such PARTY's counsel of record or obtain leave of Court to do so. Each  
28

1 person to whom the CONFIDENTIAL INFORMATION is to be given, shown, made  
2 available or communicated must execute a written confidentiality agreement, in the  
3 form attached hereto as Exhibit A. Only after all of the foregoing conditions have been  
4 fully satisfied may the CONFIDENTIAL INFORMATION be communicated to any  
5 person other than those permitted under Paragraphs 13 to 17.

6 **H. Manner of Designating Documents**

7 21. A PARTY shall designate documents containing Confidential Information  
8 by placing a legend in plain view on each page of any document that party wishes to  
9 protect against disclosure or use. This legend shall state “CONFIDENTIAL,”  
10 “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’ EYES  
11 ONLY,” as appropriate. All documents and things shall be marked prior to the  
12 provision of a physical copy thereof to the other PARTY.

13 **I. Manner of Designating Depositions**

14 22. In the case of a deposition, counsel for such PARTY may, at the  
15 commencement of such deposition, temporarily designate the entire deposition as  
16 “CONFIDENTIAL,” provided, however, that where such an initial designation has  
17 been made, the designating party, within fifteen (15) days after receipt of the transcript,  
18 shall mark as provided in this ORDER those pages of the transcript as such PARTY  
19 shall then deem confidential, (the confidential designation of all remaining pages being  
20 rescinded after such period), and shall notify the other PARTY in writing which pages  
21 are deemed CONFIDENTIAL INFORMATION. In the event that such notice is not  
22 sent within said fifteen (15) days of the receipt of the transcript, no portion of the  
23 deposition shall thereafter be confidential unless the designating party thereafter  
24 notifies the other PARTY that the failure to timely designate occurred by oversight.

25 **J. Filing Documents With The Court**

26 23. All information designated as CONFIDENTIAL INFORMATION which  
27 is filed or lodged with the court, or any pleading or memorandum purporting to  
28

1 reproduce or paraphrase such information shall be accompanied by an application to  
2 file the information, pleading or memorandum or the portion thereof constituting or  
3 containing the CONFIDENTIAL INFORMATION material under seal in accordance  
4 with Local Rule 79-5.1 and directed to the Judge or to whom the papers are directed.  
5 The CONFIDENTIAL INFORMATION shall be filed or lodged in sealed containers  
6 on which shall be recorded the title to this action, the general nature of the contents, the  
7 words "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL –  
8 ATTORNEYS' EYES ONLY" and a statement substantially in the following form:

9       CONFIDENTIAL. This sealed container filed in this case contains confidential  
10 materials generally identified as ["CONFIDENTIAL," "HIGHLY  
11 CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY"]  
12 filed under seal pursuant to the order of the Court. Pursuant to this Protective  
13 Order, this container shall not be opened nor shall the contents thereof be  
14 revealed except to the Court, including court personnel as necessary for handling  
15 of the matter.

16 Material found by the Court to meet the requirements for CONFIDENTIAL  
17 INFORMATION (as defined in this ORDER) shall be maintained under seal and shall  
18 not be made available for public review pursuant to Local Rule 79-5.

19       **K. No Effect On Party's Own Use**

20       24. Nothing contained in this Order shall affect the right of a PARTY to  
21 disclose or to use any of its own CONFIDENTIAL INFORMATION as it desires.

22       **L. No Effect On Disclosure to Author or Addressees**

23       25. Nothing contained in this Order shall affect the right of a PARTY to  
24 disclose any CONFIDENTIAL INFORMATION to the author or addressees of any  
25 document containing such information.

26       **M. No Applicability to Public Information**

27       26. The restrictions on dissemination of CONFIDENTIAL INFORMATION  
28 shall not apply to (i) persons in possession or knowledge of such information prior to

1 disclosure hereunder who, absent this order, is under no restriction regarding its  
2 dissemination, but only with respect to the CONFIDENTIAL INFORMATION already  
3 in his or her possession or knowledge, or (ii) information which is public knowledge or  
4 which after disclosure, becomes public knowledge other than through an act or  
5 omission of a party receiving the CONFIDENTIAL INFORMATION.

6 **N. Legal Effect of Designations**

7 27. The designation by a party of any document, material or information as  
8 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL –  
9 ATTORNEYS’ EYES ONLY” is intended solely to facilitate discovery in this  
10 ACTION. This Order shall not prejudice the right of any PARTY to bring before the  
11 Court a motion in compliance with Local Rules 37-1 and 37-2 seeking a declaration  
12 that information produced by the other PARTY has been wrongfully designated as  
13 CONFIDENTIAL INFORMATION and should not be subject to the terms of this  
14 ORDER. A PARTY bringing such motion shall have the burden of proving that the  
15 information designated as CONFIDENTIAL INFORMATION is in the public domain  
16 or was in possession of the receiving PARTY prior to its disclosure through discovery  
17 in this action, or is otherwise not appropriately designated as CONFIDENTIAL  
18 INFORMATION.

19 **O. Unauthorized Disclosure of CONFIDENTIAL INFORMATION**

20 28. If a RECEIVING PARTY learns that, by inadvertence or otherwise, it  
21 has disclosed CONFIDENTIAL INFORMATION to any person or in any  
22 circumstance not authorized under this Protective Order, the RECEIVING PARTY  
23 must immediately (a) notify in writing the DESIGNATING PARTY of the  
24 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the  
25 CONFIDENTIAL INFORMATION, (c) inform the person or persons to whom  
26 unauthorized disclosures were made of all the terms of this Order, and (d) request  
27 such person or persons to execute the “Non-Disclosure Agreement” (Exhibit A).

1           **P. Final Disposition of Action**

2           29. Within sixty (60) days after the final disposition of this ACTION,  
3 including appeals, each counsel of record shall: (a) promptly return to counsel of  
4 record for the DESIGNATING PARTY all CONFIDENTIAL INFORMATION and all  
5 copies made thereof which are not in custody of the Court; or (b) promptly destroy or  
6 see to the destruction of all writings related thereto, and certify to the designating party  
7 that such destruction has been done. As an exception to the above, counsel of record  
8 may retain a single file copy of any pleading, any document filed with the Court,  
9 written discovery response, transcript of any deposition or trial testimony, together  
10 with all exhibits thereto. The copy of these retained documents shall be treated as  
11 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and counsel of record shall  
12 immediately notify opposing counsel of record of any attempt by third parties to  
13 inspect and/or copy said documents.

14           **Q. Survival of Terms**

15           30. Absent written modification hereof by the PARTIES hereto or further  
16 order of the Court, the provisions of this Order that restrict the disclosure and use of  
17 CONFIDENTIAL INFORMATION shall survive the final disposition of this ACTION  
18 and continue to be binding on all persons subject to the terms of this ORDER.

19           **R. Violation of Order**

20           31. In the event anyone shall violate or threaten to violate any term of this  
21 ORDER, the PARTIES agree that the aggrieved PARTY may immediately apply to  
22 obtain injunctive relief against any such person violating or threatening to violate any  
23 of the terms of this ORDER and, in the event the aggrieved party shall do so, the  
24 respondent person subject to the provisions of this ORDER shall not employ as a  
25 defense thereto the claim that the aggrieved PARTY possesses an adequate remedy of  
26 law. The PARTIES and any other person subject to the terms of this ORDER agree  
27 that this Court has jurisdiction over such person or party for the purpose of enforcing  
28



1 this ORDER. In the event that any CONFIDENTIAL INFORMATION is disclosed by  
2 a RECEIVING PARTY in violation of this order, the CONFIDENTIAL  
3 INFORMATION shall not lose its status through such disclosure, and the PARTIES  
4 shall take all steps reasonably required to assure its continued confidentiality.

5 **S. Subpoena in Another Action**

6 32. Nothing in this order shall be construed as authorizing a party to disobey a  
7 lawful subpoena issued in another action. Any PARTY, having received  
8 CONFIDENTIAL and/or HIGHLY CONFIDENTIAL Information, that receives a  
9 subpoena or other compulsory process seeking the production of all or some of those  
10 materials, shall promptly, and before producing such materials, notify in writing:

11 (A) the requesting party, court or administrative agency of this ORDER; and

12 (B) Counsel for the DESIGNATING PARTY of the receipt of such  
13 compulsory process and provide counsel for the DESIGNATING PARTY with copies  
14 of that process.

15 **T. Right to Assert Other Objections**

16 33. By stipulating to the entry of this ORDER no PARTY waives any right it  
17 otherwise would have to object to disclosing or producing any information or item on  
18 any ground not addressed in this ORDER. Similarly, no PARTY waives any right to  
19 object on any ground to use in evidence of any of the material covered by this  
20 ORDER. Nothing herein affects, in any way, the admissibility of any document,  
21 testimony, or other evidence at trial or restricts the use of information obtained from  
22 investigations, interviews or other sources other than via the discovery process,  
23 motion practice or voluntary disclosure of information by any PARTY conducted  
24 under the terms of this ORDER.

25 34. The Court will determine, in its sole discretion, how documents designated as  
26 CONFIDENTIAL and/or HIGHLY CONFIDENTIAL will be treated during the trial of this action.  
27 The PARTIES agree to request, prior to trial, that the Court make an appropriate order to maintain  
28

1 the confidentiality of CONFIDENTIAL INFORMATION to the extent practicable.

2 ///

3 ///

4 ///

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

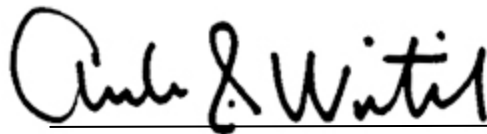
28

1           **U.    Restriction on Prosecution**

2           35.    From the date of the entry of this ORDER, until two years after the  
3 conclusion of this litigation (including appeals), any attorney, patent agent or  
4 consultant subject to this ORDER who obtains, receives or otherwise learns technical  
5 information of a party that is designated as “CONFIDENTIAL,” “HIGHLY  
6 CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” shall not  
7 participate, directly or indirectly, in the prosecution of any patent or trademark  
8 applications related to the inventions claimed in the asserted patents and trademarks in  
9 this ACTION. Nothing in this Order shall prevent or preclude other attorneys or  
10 patent agents in the law firms representing the parties in this ACTION who have not  
11 been exposed to or otherwise seen, reviewed, discussed or accessed any materials,  
12 testimony or information designated hereunder as “CONFIDENTIAL,” “HIGHLY  
13 CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” from  
14 participating, directly or indirectly, in such patent or trademark prosecutions.  
15 Moreover, nothing in this Order shall prevent or preclude an attorney having access to  
16 such information from serving as billing or client attorney on such matters being  
17 prosecuted by other attorneys or patent agents in such attorney’s firm, so long as such  
18 attorney does not otherwise participate substantively in such prosecutions.

19  
20           Good cause having been found, **IT IS SO ORDERED.**

21  
22           DATED:9/25/2011



\_\_\_\_\_  
23           Hon. Andrew J. Wistrich  
24           United States Magistrate Judge

**EXHIBIT A**  
**NON-DISCLOSURE AGREEMENT**

I, \_\_\_\_\_, declare under penalty of perjury that:

1. My address is \_\_\_\_\_.
2. My present employer is \_\_\_\_\_.
3. My present occupation or job description is \_\_\_\_\_.

I HEREBY CERTIFY AND AGREE that I have read and understand the terms of the Protective Order (“ORDER”) in the matter of Back in Five, LLC and BackLife Ltd., Plaintiffs, v. Infinite International Inc., Jack Hsu, and Yu-Ling Linda Hsu, Defendants, in the United States District Court, Central District of California, Civil Action No. CV11-0243 GAF (AJWx) that I will not use or disclose to anyone any of the contents of any CONFIDENTIAL INFORMATION received under the protection of the ORDER, and agree to be bound by the terms and conditions of the ORDER.

I understand that I am to retain all copies of any of the materials that I receive which have been so designated as CONFIDENTIAL INFORMATION in a container, cabinet, drawer, room or other safe place, and that all copies are to remain in my custody until I have completed my assigned or legal duties, whereupon the copies are to be returned or destroyed as specified in the ORDER. I acknowledge that such return or the subsequent destruction of such materials shall not relieve me from any of the continuing obligations imposed upon me by the ORDER.

Dated: \_\_\_\_\_ Signed: \_\_\_\_\_

\_\_\_\_\_  
(print name)