

Grace+Grace LLP
Intellectual Property
790 E. Colorado Blvd., Suite 797
Pasadena, CA 91101

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

MICHAEL K. GRACE (SBN 126737)
mgrace@gracelaw.com
PAMELA D. DEITCHLE (SBN 222649)
pdeitchle@gracelaw.com
GRACE+GRACE LLP
790 E. Colorado Boulevard, Suite 797
Pasadena, CA 91101
Telephone: (626) 696-1555
Facsimile: (626) 696-1559

Attorneys for Defendants and Counterclaimants
JAG Ventures, LLC f/k/a Ultimatecoupons.com, LLC;
Jeffrey A. Grossman; and Andrew E. Kardon

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

INTERNET BRANDS, INC., a) Case No.: CV 11-5358 CAS (CWx)
Delaware corporation,)
) ~~PROPOSED~~
Plaintiff,) **PROTECTIVE ORDER**
)
v.)
)
ULTIMATECOUPONS.COM, LLC, et)
al.;)
)
Defendants.)
)
)
AND RELATED COUNTERCLAIMS.)
)

~~PROPOSED~~ PROTECTIVE ORDER

1 Pursuant to Federal Rule of Civil Procedure 26(c), plaintiff and
2 counterdefendant Internet Brands, Inc. and Defendants and Counterclaimants
3 JAG Ventures, LLC f/k/a Ultimatecoupons.com, LLC; Jeffrey A. Grossman; and
4 Andrew E. Kardon (collectively, the “parties”), through the parties’ respective
5 counsel of record, have stipulated and agreed that discovery in this action (and
6 any further actions among these parties) may involve requests for the production
7 of information and documents that the responding parties consider to be
8 confidential, proprietary or competitively sensitive. The parties believe that a
9 protective order restricting the use and dissemination of confidential, proprietary,
10 and competitively sensitive information and documents is necessary and
11 appropriate to facilitate discovery and litigation in this action. The parties also
12 believe that such an order is necessary and appropriate to enable the parties to
13 conduct relevant discovery of non-parties that may have similar concerns
14 regarding their confidential, proprietary or competitively sensitive information
15 and documents.

16 GOOD CAUSE EXISTS FOR THE ISSUANCE OF THIS ORDER: The
17 parties have propounded discovery and it appears that many of the documents
18 subject to disclosure contain confidential, proprietary or competitively sensitive
19 information such that good cause exists to protect the disclosure of such
20 documents. These voluminous documents include, but are not limited to,
21 confidential commercial information, financial information, employee
22 information, customer information, contractor and vendor information, marketing
23 plans, business plans, license agreements, distribution agreements, development
24 information, budgets, profit and loss information, and corporate asset information
25 the disclosure of which could cause competitive harm to the producing party.

26 In determining the scope of information which a party may designate as its
27 confidential information, each party acknowledges the importance of client access
28 to all information material to client decision making in the prosecution or defense

1 of litigation, and therefore agrees that designations of information as confidential
2 information and responses to requests to permit further disclosure of confidential
3 information shall be made in good faith and (1) not to impose a burden or delay
4 on an opposing party, or (2) not for tactical or other advantage in litigation.
5 Further, each party shall avoid as much as the possible inclusion of confidential
6 information in briefs and other captioned documents filed in court, in order to
7 minimize sealing and designating documents as such.

8 Accordingly, the IT IS ORDERED THAT:

9 1. Any confidential information or documents produced by or on behalf
10 of any party or non-party as part of discovery in this action may be designated by
11 the producing party(ies) as “CONFIDENTIAL” or “CONFIDENTIAL –
12 ATTORNEY’S EYES ONLY.” Any information that is publicly available should
13 not be designated as “CONFIDENTIAL” or “CONFIDENTIAL –
14 ATTORNEY’S EYES ONLY.” A document should be designated
15 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEY’S EYES ONLY”
16 when it contains or reflects confidential business information, including but not
17 limited to information which the disclosing party or non-party believes in good
18 faith contains, constitutes or reveals confidential design, engineering or
19 development information, confidential commercial information, non-public
20 financial information, confidential or private information about current or former
21 employees, contractor or vendors (including employee, contractor and vendor
22 personnel records), or other information of a confidential, proprietary, private or
23 personal nature.

24 2. Information or documents designated “CONFIDENTIAL –
25 ATTORNEY’S EYES ONLY” shall be limited to trade secrets (as defined in
26 California Civil Code § 3426.1) or other confidential commercial information,
27 including information that the disclosing party or non-party believes in good faith
28 will result in competitive disadvantage or harm if disclosed to another party or

1 third party to this action and shall include marketing plans or strategies, business
2 plans, strategic plans, license agreements or negotiations, distribution agreements,
3 manufacturing agreements, engineering and manufacturing drawings, employee
4 files, customers' identities and personal information, merchandising, research and
5 development of products not yet released or sold, correspondence and agreements
6 with actual or prospective customers or vendors, financial information or
7 projections, including, without limitation, budgets, revenue, profits, costs,
8 liabilities, or other documents relating to revenue earned and asset information
9 that is not public knowledge, and actual or prospective customer lists.

10 3. Information designated "CONFIDENTIAL" or "CONFIDENTIAL –
11 ATTORNEY'S EYES ONLY" may be used only in connection with this
12 proceeding and not for any other purpose. Such information may not be disclosed
13 to anyone except as provided in this Protective Order.

14 4. Any party or non-party wishing to come within the provisions of this
15 Protective Order may designate in writing the documents (as defined in Fed. R.
16 Civ. P. 34 and Fed. R. Evid. 1001) or portions thereof that it considers
17 confidential at the time the documents are produced. Each page of the document
18 must be marked "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEY'S
19 EYES ONLY" by the producing party, and any confidential documents
20 exchanged prior to this Protective Order being entered by the Court shall, within a
21 reasonable time hereafter, be so marked on each such page, if such markings do
22 not include every such page. It is the intent of the parties that each document
23 previously designated as "CONFIDENTIAL" or "CONFIDENTIAL –
24 ATTORNEY'S EYES ONLY" and transmitted to the respective other party,
25 including any such documents and information exchanged for settlement
26 purposes, are to be covered by this Protective Order. "CONFIDENTIAL" or
27 "CONFIDENTIAL – ATTORNEY'S EYES ONLY" documents or things that
28

1 cannot be reasonably labeled pursuant to this paragraph shall be so designated by
2 the producing party by informing the receiving party in writing.

3 5. In the instance of deposition testimony, the witness under deposition
4 or his counsel shall invoke the provisions of this Protective Order in a timely
5 manner and designate the level of restriction. During the deposition, parties shall
6 be excluded from testimony designated “CONFIDENTIAL – ATTORNEY’S
7 EYES ONLY.” The witness under deposition or his counsel shall have the right,
8 within thirty days of receiving a transcript of the deposition, to designate, or
9 change, the confidentiality designation of the transcript or portions thereof. For
10 depositions with some confidential and some non-confidential documents or
11 testimony, a separate confidential transcript, apart from the usual transcript, shall
12 be prepared by the court reporter and counsel for the party asserting that certain
13 documents or testimony is confidential.

14 6. Any documents, discovery responses or deposition transcripts
15 stamped “CONFIDENTIAL – ATTORNEY’S EYES ONLY,” as well as any
16 copies or excerpts thereof, or analyses or reports that pertain thereto, and any
17 deposition testimony or portion thereof marked as “CONFIDENTIAL” or
18 “CONFIDENTIAL – ATTORNEY’S EYES ONLY” may be made available only
19 to:

- 20 a. Attorneys of record for the receiving party and employees of
21 such attorneys on a need to know basis;
- 22 b. Judges, law clerks and other personnel of the Court before
23 which this proceeding is pending;
- 24 c. Independent experts and consultants retained by the attorneys
25 for purposes of the litigation that are not directly associated with a party
- 26 d. Court reporters and their staff that are required to transcribe
27 testimony; and
28

1 e. Outside litigation support vendors, including commercial
2 photocopying vendors, scanning services vendors, coders and keyboard operators.

3 7. Any documents, discovery responses or deposition transcripts
4 stamped “CONFIDENTIAL,” as well as any copies or excerpts thereof, or
5 analyses or reports that pertain thereto, and any deposition testimony or portion
6 thereof marked as “CONFIDENTIAL,” may be made available only to:

7 a. A party, or any officer, director, or employee of a party
8 deemed necessary by counsel to aid in the prosecution, defense, or settlement of
9 this action;

10 b. Attorneys of record for the receiving party and employees of
11 such attorneys on a need to know basis;

12 c. Judges, law clerks and other personnel of the Court before
13 which this proceeding is pending;

14 d. Independent experts and consultants retained by the attorneys
15 for purposes of the litigation that are not directly associated with a party;

16 e. Court reporters and their staff that are required to transcribe
17 testimony; and

18 f. Outside litigation support vendors, including commercial
19 photocopying vendors, scanning services vendors, coders and keyboard operators.

20 8. For purposes of this Protective Order, an expert witness shall not be
21 deemed to be “independent” if he or she is (a) a party to this litigation, or an
22 officer, shareholder, owner, manager, partner, agent distributor, seller,
23 representative, advertiser, promoter, independent contractor, affiliate, director,
24 employee, former employee or contractor, or relative of a party to this litigation,
25 or a party’s parent, subsidiary, predecessor-in-interest, successor-in-interest,
26 related entity or affiliate; (b) an officer, shareholder, owner, manager, partner,
27 agent distributor, seller, representative, advertiser, promoter, independent
28 contractor, affiliate, director, employee, former employee or contractor, or

1 relative of a direct competitor to a party to this litigation, or the competitor's
2 parent, subsidiary, predecessor-in-interest, successor-in-interest, related entity or
3 affiliate.

4 9. Each person permitted by the parties or their counsel to have access
5 to designated information or documents under the terms of this Protective Order
6 (other than the persons identified in Paragraphs 6(a), 6(b), and 6(d) and 7(b), 7(c),
7 and 7(e)) shall, prior to being given such access, be provided with a copy of this
8 Protective Order for review. Upon receiving this Protective Order, each person
9 shall sign a statement in the form of Exhibit A hereto indicating that he or she has
10 read the Protective Order and agrees to comply with its terms.

11 10. The restrictions set forth in this Protective Order shall not apply to
12 information that is known to the receiving party or the public before the date of its
13 transmission to the receiving party, or which becomes known to the public after
14 the date of its transmission to the receiving party, provided that such information
15 does not become publicly known by any act or omission of the receiving party, its
16 employees, or its agents that would be in violation of this Protective Order.

17 11. Any document or evidence that is designated as containing
18 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEY'S EYES ONLY"
19 information and that a party wishes to file with the Court shall be presented to the
20 Court along with a written application and proposed order for filing under seal
21 according to the procedures set forth in Local Civil Rule 79-5. Furthermore, any
22 such document or evidence so presented to the Court shall be placed in a sealed
23 envelope or other appropriate sealed container marked on the outside with the
24 title of the instant action, and a statement substantially in following form:

25
26 CONFIDENTIAL

27 This document is subject to a Protective Order issued by
28 the Court and may not be examined or copied except in
compliance with that Order.

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

12. If, at any time during the preparation for trial, any party believes that any other party or non-party has improperly designated certain information as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEY’S EYES ONLY” or believes that it is necessary to disclose designated information to persons other than those permitted by this Protective Order, and the producing party does not agree to change the designation or to the further disclosure, the objecting party may make an appropriate motion to the Court requesting that the specifically identified documents, information and/or deposition testimony be excluded from the provisions of this Protective Order or be available to specified other persons. It shall be the burden of the party that makes the designation to demonstrate that the material or information at issue was properly designated. It shall be the burden of the party seeking the disclosure to persons other than those designated in this Protective Order to show that such disclosure is necessary.

13. In the event that a party is served with a subpoena by any person, firm, corporation, or other entity that is not a party to this action, is not a signatory to this Protective Order or otherwise is not bound by this Protective Order, that seeks to compel production of “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEY’S EYES ONLY” information or documents, the party upon whom the subpoena is served shall give written notice of the subpoena to the party that has asserted that the information or documents subject to the subpoena are “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEY’S EYES ONLY.” The written notice required by this paragraph shall be given no later than seven days after receipt of the subpoena, or before the production date set forth in the subpoena, whichever is earlier. The party who designated the subject information or documents as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEY’S EYES ONLY” shall have the responsibility to obtain a court order quashing the subpoena, a protective order, and/or such other relief as will

1 protect the confidential nature of the subject information or documents before the
2 requested production date. If an order quashing the subpoena or motion for
3 protective order is obtained, the party upon whom the subpoena, discovery
4 request, or order is served shall comply with the order. If no motion to quash or
5 motion for protective order is filed before the scheduled production date set forth
6 in the subpoena, discovery request, or order, or if the motion to quash the
7 subpoena or motion for protective order is denied, the party upon whom the
8 subpoena, discovery request, or order is served may comply with the same
9 without being deemed to have violated this Protective Order.

10 14. The Protective Order may be modified only in writing by the parties
11 and approved by an order of the Court.

12 15. Upon termination of this proceeding, unless the attorneys of record
13 otherwise agree in writing, each party shall (a) assemble and return all designated
14 materials, including copies to the person(s) and entity(ies) from whom the
15 material was obtained, or (b) destroy all designated materials and provide the
16 other party with written certification that such destruction was made. The
17 attorney of record may retain one copy of any designated materials, to be kept
18 confidentially, and retain all copies of designated materials containing attorney
19 work product information.

20 16. This Protective Order shall not prejudice the right of any party or
21 nonparty to oppose production of any information on the ground of attorney-
22 client privilege, work product immunity, or any other protection provided under
23 the law.

24 **IT IS SO ORDERED.**

25 DATED: October 11, 2012



26
27 CARLA WOHRLE
28 UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A
2 **ACKNOWLEDGMENT OF RECEIPT OF PROTECTIVE ORDER AND**
3 **AGREEMENT TO BE BOUND**

4 I, _____, state that:

5 I have been asked by _____ or its counsel to
6 receive and review certain materials or testimony that have been designated as
7 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEY’S EYES ONLY”
8 within the terms of the Protective Order entered in the U.S. District Court, Central
9 District of California case entitled *Internet Brands, Inc. v. UltimateCoupons.com,*
10 *LLC, et al.*, CV 11-5358 CAS (CWx).

11 I have received a copy of the Protective Order in this action, a copy of which
12 is attached hereto. I have carefully read and understand the provisions of the
13 Protective Order.

14 I hereby agree to be bound by and will comply with all of the provisions of
15 the Protective Order. I will hold in confidence, will not disclose to anyone not
16 qualified under the Protective Order, and will use only for purposes set forth in the
17 Protective Order any information subject to the Protective Order that is disclosed
18 to me. Upon termination of this action, I will return all confidential information
19 which came into my possession, and all documents or things which I have prepared
20 relating thereto, to counsel for the party by whom I am employed or retained.

21 I hereby submit to the jurisdiction of this Court in this action solely for the
22 purpose of enforcement of this Protective Order.

23 I declare the foregoing is true under penalty of perjury under the laws of the
24 State of California and the United States of America.

25 DATED: _____
26 _____
27 Signature