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 THINKBRONZE, LLC; and Counter-Defendants
 EUROPEAN BRONZE; FELICITY
 9 INTERNATIONAL TRADING, INC.;
 PARVIZ NOGHREY; and
 10 STEVE MARVISI

11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

14 THINKBRONZE, LLC,
 15 Plaintiff,
 16 vs.
 17 WISE UNICORN IND., LTD.; WISE
 UNICORN CRAFTS & GIFTS IND.,
 18 LTD; UNICORN STUDIOS, INC.,
 DOES 1-10, inclusive,
 19 Defendants.
 20

Case No. CV 12-5283 MMM (JEMx)
**[PROPOSED] PROTECTIVE
 ORDER**

21 **AND RELATED CROSS-ACTIONS**
 22

23 **DEFINITIONS**

- 24
 25 1. As used in this Protective Order,
 26 a. “Designating Party” means any Person who designates Material
 27 as Confidential Material.
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1 b. “Discovering Counsel” means counsel of record for a
2 Discovering Party.

3 c. “Discovering Party” means the Party to whom Material is being
4 Provided by a Producing Party.

5 d. “Confidential Material” refers to those materials designated as
6 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” as defined in Paragraph 2
7 below.

8 e. “Material” means any document, testimony or information in
9 any form or medium whatsoever, including, without limitation, any written or
10 printed matter, Provided in this action by a Party before or after the date of this
11 Protective Order.

12 f. “Party” means the Parties to this action, their attorneys of record
13 and their agents.

14 g. “Person” means any individual, corporation, partnership,
15 unincorporated association, governmental agency, or other business or
16 governmental entity whether a Party or not.

17 h. “Producing Party” means any Person who Provides Material
18 during the course of this action.

19 i. “Provide” means to produce any Material, whether voluntarily
20 or involuntarily, whether pursuant to request or process.

21 **CONFIDENTIAL DESIGNATION**

22 2. A Producing Party may designate as “CONFIDENTIAL” any material
23 provided to a Party which contains or discloses any of the following:

24 a. Non-public insider information, personnel files, financial
25 information, trade secrets, confidential commercial information, proprietary
26 information, or other confidential or sensitive information which the Producing
27 Party determines in good faith should be kept confidential; and
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1 Producing Party the previously Provided Material, or alternatively, will destroy all
2 the previously Provided Material, at the option of the Producing Party. For
3 previously Provided Material which was not designated as Confidential Material at
4 the time of its being Provided, this Protective Order shall apply to such materials
5 beginning on the date that the Producing Party makes such designation.

6 All costs associated with the designations of materials as “Confidential” or
7 “Attorneys’ Eyes Only” involving, for example, the cost of binding confidential
8 portions of deposition transcripts, shall be initially borne by the Party making the
9 designation with no prejudice regarding the Designating Party’s ability to recover
10 its costs upon completion of the litigation.

11 The designation of documents as “Confidential” or “Attorneys’ Eyes Only”
12 does not entitle the parties to have those documents filed under seal. An
13 application, including a stipulated application to filed documents under seal must
14 comply with Local Rule 79-5.

15 **RESTRICTION ON USE OF CONFIDENTIAL MATERIAL**

16 4. Confidential Material designated as CONFIDENTIAL shall not be
17 disclosed, nor shall its contents be disclosed, to any person other than those
18 described in Paragraph 7 of this Protective Order and other than in accordance with
19 the terms, conditions and restrictions of this Protective Order. Confidential Material
20 designated as ATTORNEYS’ EYES ONLY shall not be disclosed, nor shall its
21 contents be disclosed to any person other than those described in Paragraph 8 of
22 this Protective Order.

23 5. Confidential Material Provided by a Producing Party to a Discovering
24 Party shall not be used by the Discovering Party or anyone other than the Producing
25 Party, specifically including the persons identified in Paragraphs 7 or 8 as
26 appropriate, for any purpose, including, without limitation any personal, business,
27 governmental, commercial, publicity, public-relations, or litigation (administrative
28 or judicial) purpose, other than the prosecution or defense of this action.

1 6. All Confidential Material shall be kept secure by Discovering Counsel
2 and access to Confidential Material shall be limited to persons authorized pursuant
3 to Paragraphs 7 or 8 of this Protective Order.

4 7. For purposes of the preparation of this action, and subject to the terms,
5 conditions, and restrictions of this Protective Order, Discovering Counsel may
6 disclose Material designated as CONFIDENTIAL and the contents of Material
7 designated as CONFIDENTIAL only to the following persons:

8 a. Counsel of record working on this action on behalf of any party
9 and counsel's employees who are directly participating in this action, including
10 counsel's partners, associates, paralegals, assistants, secretaries, and clerical staff.

11 b. In-house counsel and such in-house counsel's employees who
12 are directly participating in this action, including counsel's paralegals, assistants,
13 secretaries, and clerical staff.

14 c. Court and deposition reporters and their staff.

15 d. The Court and any Person employed by the Court whose duties
16 require access to Material designated as CONFIDENTIAL.

17 e. Witnesses at depositions or pre-trial proceedings, in accordance
18 with procedures set forth in Paragraphs 11-13.

19 f. Non-party experts and consultants assisting counsel with respect
20 to this action and their secretarial, technical and clerical employees who are actively
21 assisting in the preparation of this action, in accordance with the procedures set
22 forth in Paragraphs 11-13.

23 g. Officers, directors and employees of the Parties hereto who have
24 a need to review Material designated as CONFIDENTIAL to assist in connection
25 with this litigation, subject to the limitations set forth herein;

26 h. Photocopy service personnel who photocopied or assisted in the
27 photocopying or delivering of documents in this litigation;

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1 i. Any Person identified on the face of any such Material
2 designated as CONFIDENTIAL as an author or recipient thereof;

3 j. Any Person who is determined to have been an author and/or
4 previous recipient of the Material designated as CONFIDENTIAL, but is not
5 identified on the face thereof, provided there is prior testimony of actual authorship
6 or receipt of the Material designated as CONFIDENTIAL by such Person; and

7 k. Any Person who the Parties agree in writing may receive
8 Material designated as CONFIDENTIAL.

9 The Parties shall make a good faith effort to limit dissemination of Material
10 designated as CONFIDENTIAL within these categories to Persons who have a
11 reasonable need for access thereto.

12 8. For purposes of the preparation of this action, and subject to the terms,
13 conditions, and restrictions of this Protective Order, the Discovering Counsel may
14 disclose confidential financial Material designated as ATTORNEYS' EYES
15 ONLY, and the contents of Material so designated, only to the following persons:

16 a. Counsel of record for the Parties to this action and counsel's
17 employees who are directly participating in this action, including counsel's
18 partners, associates, paralegals, assistants, secretarial, and clerical staff.

19 b. Court and deposition reporters and their staff.

20 c. The Court and any person employed by the Court whose duties
21 require access to Material designated as ATTORNEYS' EYES ONLY.

22 d. Witnesses at depositions or pre-trial proceedings, in accordance
23 with procedures set forth in paragraphs 11-13.

24 e. Experts and consultants assisting counsel with respect to this
25 action and their secretarial, technical and clerical employees who are actively
26 assisting in the preparation of this action, in accordance with the procedures set
27 forth in paragraphs 11-13.
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1 f. Any Person identified on the face of any such Material
2 designated as ATTORNEYS' EYES ONLY as an author or recipient thereof; and

3 g. Any Person who is determined to have been an author and/or
4 previous recipient of the Material designated as ATTORNEYS' EYES ONLY, but
5 is not identified on the face thereof, provided there is prior testimony of actual
6 authorship or receipt of the Material designated as ATTORNEYS' EYES ONLY by
7 such Person; and

8 h. Any Person who the Parties agree in writing may receive
9 Material designated as ATTORNEYS' EYES ONLY.

10 **UNDERTAKING TO BE BOUND BY PROTECTIVE ORDER**

11 9. Before Discovering Counsel may disclose Confidential Material to any
12 Person described in subparagraphs 7(f), 7(g), or 8(f) above, the Person to whom
13 disclosure is to be made shall receive a copy of this Protective Order, shall read
14 Paragraphs 1, 4, 5, 6, 7, 8, 9 and 10 (including the subparagraphs where applicable)
15 of the Protective Order, shall evidence his or her agreement to be bound by the
16 terms, conditions, and restrictions of the Protective Order by signing an undertaking
17 in the form attached hereto as **Exhibit A** (the "Undertaking"), and shall retain the
18 copy of this Protective Order, with a copy of his or her signed Undertaking
19 attached. Discovering Counsel shall keep a copy of the signed Undertaking for each
20 person described in subparagraphs 7(f), 7(g), or 8(f) to whom Discovering Counsel
21 discloses Confidential Material.

22 10. The individuals designated in subparagraph 8(a) above, are specifically
23 prohibited from publishing, releasing, or otherwise disclosing Material designated
24 as ATTORNEYS' EYES ONLY, or the contents thereof, to any directors, officers,
25 or employees of the company for which the individual is employed, or to any other
26 persons not authorized under this Protective Order to receive such information. The
27 designated individuals in subparagraph 8(a) shall retain all ATTORNEYS' EYES
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1 ONLY material in a secure manner under separate and confidential file, so as to
2 avoid inadvertent access by, or disclosure to, unauthorized persons.

3 **DEPOSITIONS**

4 11. Those portions of depositions taken by any Party at which any
5 Material designated as CONFIDENTIAL is used or inquired into, may not be
6 conducted in the presence of any Person(s) other than (a) the deposition witness, (b)
7 his or her counsel, and (c) Persons authorized under Paragraph 7 of this Protective
8 Order to view such Confidential Material. During those portions of depositions in
9 which Material designated ATTORNEYS' EYES ONLY is used or inquired into,
10 only those persons authorized under Paragraph 8 to view such Materials may be
11 present.

12 12. Counsel for any deponent may designate testimony or exhibits as
13 Confidential Material by indicating on the record at the deposition that the
14 testimony of the deponent or any exhibits to his or her testimony are to be treated as
15 Confidential Material. Counsel for any Party may designate exhibits in which that
16 Party has a cognizable interest as Confidential Material by indicating on the record
17 at the deposition that such exhibit(s) are to be treated as Confidential Material.
18 Failure of counsel to designate testimony or exhibits as confidential at deposition,
19 however, shall not constitute a waiver of the protected status of the testimony or
20 exhibits. Within thirty calendar days of receipt of the transcript of the deposition, or
21 thirty days of the date on which this Protective Order becomes effective, whichever
22 occurs last, counsel shall be entitled to designate specific testimony or exhibits as
23 Confidential Material. If counsel for the deponent or Party fails to designate the
24 transcript or exhibits as Confidential within the above-described thirty day period,
25 any other Party shall be entitled to treat the transcript or exhibits as non-confidential
26 material. For purposes of this Paragraph 12, this Protective Order shall be deemed
27 "effective" on the date on which it has been executed by all counsel for the Parties.
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1 13. When Material disclosed during a deposition is designated
2 Confidential Material at the time testimony is given, the reporter shall separately
3 transcribe those portions of the testimony so designated, shall mark the face of the
4 transcript in accordance with Paragraph 3 above, and shall maintain that portion of
5 the transcript or exhibits in separate files marked to designate the confidentiality of
6 their contents. The reporter shall not file or lodge with the Court any Confidential
7 Material without obtaining written consent from the Party who designated the
8 Material as Confidential Material. For convenience, if a deposition transcript or
9 exhibit contains repeated references to Confidential Material which cannot
10 conveniently be segregated from non-confidential material, any Party may request
11 that the entire transcript or exhibit be maintained by the reporter as Confidential
12 Material.

13 **USE OF CONFIDENTIAL MATERIAL IN PLEADINGS AND OTHER**
14 **COURT PAPERS**

15 14. If any Party or non-party seeks to file or lodge with the Court any
16 Confidential Material, such materials shall be submitted to the Court in accordance
17 with the procedures set forth in Local Rule 79-5.1. No documents may be filed or
18 lodged under seal absent a court order pertinent to the specific document(s). If a
19 Party wishes to file or lodge documents under seal, the other Party shall not
20 unreasonably withhold agreement to such procedure. If an agreement is reached, the
21 Parties shall submit to the Court a Stipulation and Proposed Order for such filing or
22 lodging under seal. If no such agreement is reached, then the proponent of lodging
23 or filing under seal shall submit an Application and Proposed Order pursuant to
24 Local Rule 79-5.1.

25 **OBJECTIONS TO DESIGNATION**

26 15. Any Party may at any time notify the Designating Party in writing of
27 its contention that specified Material designated as Confidential Material is not
28 properly so designated because such Material does not warrant protection under

1 applicable law. The Discovering Party shall within five court days, meet and confer
2 in good faith with the Designating Party in an attempt to resolve such dispute. The
3 Discovering Party shall have ten (10) calendar days from the initial meet and confer
4 to file a motion to uphold the designation of the material in question. Any such
5 motion shall be set for hearing on the first available calendar date. If no motion is
6 filed within 10 days, or any mutually agreed to extension of time, all Parties may
7 treat the Material as non-confidential. To maintain the designation as Confidential
8 Material and to prevail on such a motion, the Discovering Party must show by a
9 preponderance of the evidence that there is good cause for removing or modifying
10 the original designation. Pending resolution of any motion filed pursuant to this
11 Paragraph, all Persons bound by this Protective Order shall continue to treat the
12 Material which is the subject of the motion as Confidential Material.

13 16. Any discovery disputes concerning the designation of materials or
14 disclosure of documents or information under this Protective Order shall be brought
15 in compliance with Local Rule 37 and a proposed stipulated protective order should
16 so provide.

17 **RETURN OF MATERIAL**

18 17. Within ninety (90) calendar days after the final settlement or
19 termination of this action, Discovering Counsel shall return or destroy (at the option
20 and expense of Discovering Counsel) all Materials provided by a Producing Party
21 and all copies thereof except to the extent that any of the foregoing includes or
22 reflects Discovering Counsel's work product, and except to the extent that such
23 Material has been filed with a court in which proceedings related to this action are
24 being conducted. In addition, with respect to any such retained work product and
25 unless otherwise agreed to, at the conclusion of this action, counsel for each Party
26 shall store in a secure area all work product which embodies Confidential Material
27 together with all of the signed undertakings they are required to preserve pursuant
28 to Paragraph 9 above, and shall not make use of such Material except in connection

1 with any action arising directly out of these actions, or pursuant to a court order for
2 good cause shown. The obligation of this Protective Order shall survive the
3 termination of this action. To the extent that Confidential Materials are or become
4 known to the public through no fault of the Discovering Party, such Confidential
5 Materials shall no longer be subject to the terms of this Protective Order. Upon
6 request, counsel for each Party shall verify in writing that they have complied with
7 the provisions of this paragraph.

8 **SCOPE OF THIS ORDER**

9 18. Except for the provisions regarding post-trial or post-settlement return
10 and destruction of Material, or segregation of work product which embodies
11 Confidential Material, this order is strictly a pretrial order; it does not govern the
12 trial in this action.

13 19. Not later than seven days before trial in the action, Counsel agree to
14 meet and confer concerning the use at trial of Confidential Material.

15 20. Nothing in this Protective Order shall be deemed to limit, prejudice, or
16 waive any right of any Party or Person (a) to resist or compel discovery with respect
17 to, or to seek to obtain additional or different protection for, Material claimed to be
18 protected work product or privileged under California or federal law, Material as to
19 which the Producing Party claims a legal obligation not to disclose, or Material not
20 required to be provided pursuant to California law; (b) to seek to modify or obtain
21 relief from any aspect of this Protective Order; (c) to object to the use, relevance, or
22 admissibility at trial or otherwise of any Material, whether or not designated in
23 whole or in part as Confidential Material governed by this Protective Order; or (d)
24 otherwise to require that discovery be conducted according to governing laws and
25 rules.

26 21. Designation of Material as Confidential Material on the face of such
27 Material shall have no effect on the authenticity or admissibility of such Material at
28 trial.

1 22. This Protective Order shall not preclude any Person from waiving the
2 applicability of this Protective Order with respect to any Confidential Material
3 Provided by that Person or using any Confidential Material Provided by that Person
4 or using any Confidential Material owned by that Person in any manner that Person
5 deems appropriate.

6 23. This Protective Order shall not affect any contractual, statutory or
7 other legal obligation or the rights of any Party or Person with respect to
8 Confidential Material designated by that Party.

9 24. The restrictions set out in the Protective Order shall not apply to any
10 Material which:

- 11 a. At the time it is Provided is available to the public;
- 12 b. After it is Provided, becomes available to the public through no
13 act, or failure to act, of the Discovering Party; or
- 14 c. The Discovering Party can show
 - 15 i. Was already known to the Discovering Party
 - 16 independently of receipt of the Confidential Material in this or prior litigation; or
 - 17 ii. Was received by the Discovering Party, after the time it
 - 18 was designated as Confidential Material hereunder, from a third party having the
 - 19 right to make such disclosure.

20 25. If at any time any Material protected by this Protective Order is
21 subpoenaed from the Discovering Party by any Court, administrative or legislative
22 body, or is requested by any other Person or entity purporting to have authority to
23 require the production of such material, the Party to whom the subpoena or other
24 request is directed shall immediately give written notice thereof to the Producing
25 Party with respect to Confidential Material sought and shall afford the Producing
26 Party reasonable opportunity to pursue formal objections to such disclosures. If the
27 Producing Party does not prevail on its objections to such disclosure, the
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1 Discovering Party may produce the Confidential Material without violating this
2 Protective Order.

3 **SUBMISSION TO COURT**

4 26. The Parties agree to submit this Protective Order to the Court for
5 adoption as an order of the Court. The Parties reserve the right to seek, upon good
6 cause, modification of this Protective Order by the Court.

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8 **IT IS SO ORDERED.**

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10 Date: January 25, 2013

/s/John E. McDermott
Honorable John E. McDermott
United States Magistrate Judge

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EXHIBIT A

UNDERTAKING TO BE BOUND BY THE PRETRIAL PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF DOCUMENTS

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its
entirety and understand the Protective Order that was issued by the United States
District Court for the Central District of California in the case of *ThinkBronze,
LLC. v. Wise Unicorn Ind., Ltd., et al.*, No. CV12-05283 MMM (JEMx). I agree to
comply with and to be bound by all the terms of this Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions
and punishment in the nature of contempt. I solemnly promise that I will not
disclose in any manner any information or item that is subject to this Protective
Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____
City and State where sworn and signed: _____
Signed: _____ [Print Name] _____ [Signature]