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16 Attorneys for Defendant  
 17 ASHFORD TEXTILES, LLC

18 UNITED STATES DISTRICT COURT  
 19 CENTRAL DISTRICT OF CALIFORNIA  
 20 WESTERN DIVISION

21 ROBERT KAUFMAN CO., INC.,

22 Plaintiffs,

23 v.

24 ASHFORD TEXTILES, LLC, et al.

25 Defendants,

Case No. CV 13-00156-BRO(CWx)

**PROTECTIVE ORDER**

**Trial Date: None set**

**Place: Courtroom 640**

**Magistrate Judge Carla Woehrle**

26 Pursuant to the Parties' Stipulation re Entry of Protective Order, and good  
 27 cause appearing therefore, it is hereby ORDERED that all parties to this action and  
 28 their counsel comply with the following protective order:

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**A. STATEMENT OF GOOD CAUSE**

Plaintiff Robert Kaufman, Co., Inc. is in the business of creating and manufacturing fabric. Defendant is an importer and distributor of fabric goods. Plaintiff claims infringement of its copyright in a chili pepper pattern by kitchen goods distributed by defendant Ashford Textiles, LLC.

The Parties submit that there is good cause to preserve the confidentiality of this information at the pretrial discovery phase, since, at this pretrial discovery phase of the proceedings, their interest in preserving confidentiality substantially outweighs the public’s interest in access to the information. The Court reserves judgment as to whether there is good cause or compelling reason to preserve the confidentiality of this information at the summary judgment and trial phases of these proceedings.

**B. DEFINITIONS AND GENERAL PROVISIONS**

1. Designated Materials: Any information or documents disclosed by a Party during discovery, which are designated “Confidential” or “Highly Confidential” by the producing Party.

2. Highly Confidential Materials: Any information or documents disclosed by a Party during discovery, which are designated “Highly Confidential” by the producing Party. The following materials may be designated as “Highly Confidential”:

- a. Documents that identify customers and retailers of the parties’ products, invoices that identify a customer, purchase orders that identify a customer, shipping documents that identify a customer, and other materials that disclose the identity of customers or their contact information.

- 1           b.     Materials that disclose non-public financial information of the  
2                     producing Parties or of third parties, such as sales figures, advertising  
3                     expenditures, profits and losses.  
4           c.     Materials that disclose the producing Party’s written business plans or  
5                     written marketing plans.  
6           d.     Any other information or documents which, if disclosed, would reveal  
7                     significant technical or business advantages of the producing or  
8                     designating Party.

9           3. Confidential Materials: Any information or documents disclosed by a  
10     Party during discovery, which are designated “Confidential” by the producing  
11     Party. The following materials may be designated as “Confidential”:

- 12           a.     Any materials that may be designated “Highly Confidential” under  
13                     Section B(2) may also be designated “Confidential” at the option of  
14                     the producing or disclosing Party.  
15           b.     Distribution agreements, confidentiality agreements, and other  
16                     contracts or agreements to which the producing Party is a party.  
17           c.     Correspondence between Parties and their actual or potential  
18                     distributors or customers.  
19           d.     Any materials not included in Sections B(3)(a) through B(3)(d) which  
20                     constitute trade secrets as defined in California Civil Code § 3426.1.

21           4. Non- Confidential Materials: Information and documents may not be  
22     designated “Confidential” or “Highly Confidential” if they:

- 23           a.     Are in the public domain at the time of disclosure, as evidenced by  
24                     written documents;  
25           b.     Enter the public domain through no fault of the Party to whom the  
26                     information or documents are disclosed, as evidenced by written  
27                     documents;  
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- 1 c. Are, at the time of disclosure, already within the rightful and lawful  
2 possession of the Party to whom the information or documents are  
3 disclosed, as evidenced by written documents; or  
4 d. Are later lawfully received from a third party who has the legal right  
5 to make the disclosure.

6 5. Parties: ROBERT KAUFMAN CO., INC., ASHFORD TEXTILES, LLC,  
7 any additional persons joined as counter-plaintiffs or counter-defendants, and their  
8 management employees, business partners or agents (excluding Attorneys).

9 6. Attorneys: The attorneys of record for the Parties and their firms and staff  
10 and any paralegals or support staff working under their direction.

11 7. Consultants: Any experts or consultants who are not Parties, who are  
12 retained by a Party for the purpose of this proceeding, and who are not employees  
13 of the Parties or their Attorneys, and any insurance adjusters of the parties.

#### 14 **C. TREATMENT OF DESIGNATED MATERIALS**

15 1. Absent further Order of the Court, Confidential Materials may be  
16 disclosed only to Parties, designated Party representatives, Attorneys, Consultants  
17 and the Court/Court personnel. The disclosure of such information or documents  
18 to Consultants is governed by Section C(6).

19 2. Absent further Order of the Court, Highly Confidential Materials may  
20 be disclosed only to Attorneys, Consultants and the Court/Court personnel. The  
21 disclosure of such information or documents to Consultants is governed by Section  
22 C(6). Highly Confidential Materials may not be disclosed to Parties without the  
23 prior written approval of the attorney of record for the producing or disclosing  
24 Party.

25 3. To designate a document “Confidential” or “Highly Confidential”, the  
26 Attorney representing the producing or disclosing Party must conspicuously mark  
27 the document with the words “Confidential” or “Highly Confidential”. Any  
28 document prepared by any Party, expert, consultant or other person wherein the

1 prepared document summarizes, discusses or otherwise discloses any information  
2 obtained from a document designated as “Confidential” or “Highly Confidential”  
3 shall itself be marked with the words “Confidential” or “Highly Confidential” at  
4 the time each such document is prepared.

5 4. During a deposition, persons other than Attorneys, court reporters and  
6 the deponent may not be present during any portion of the deposition that involves  
7 the disclosure of Highly Confidential Materials. Persons other than Attorneys,  
8 Parties, designated Party representatives, court reporters and the deponent may not  
9 be present during portions of the deposition that involve the disclosure of  
10 Confidential Materials.

11 5. The transcript of each deposition will be treated as “Highly  
12 Confidential” for 10 days after it is received by the Attorney representing the  
13 deponent. After this period, the Attorney representing the deponent may designate  
14 specific portions of the transcript “Highly Confidential” or “Confidential” by  
15 notifying the Attorneys representing each other Party in writing of the particular  
16 pages and lines of the transcript to which the designation applies.

17 6. Before disclosing Designated Materials to a Consultant, the Attorney  
18 wishing to make the disclosure must provide the Consultant with a copy of this  
19 Protective Order and the acknowledgement form attached as Exhibit A. The  
20 Consultant must sign the acknowledgement form, which must be retained by the  
21 Attorney. The Attorney must make the signed acknowledgement form available to  
22 opposing counsel for inspection and copying upon request.

23 7. Designated Materials may only be used in the prosecution, defense or  
24 settlement of this case. The recipient of any Designated Materials must exercise  
25 reasonable care in handling, storing, using or disseminating the information.  
26 However, nothing in this Protective Order restricts the use by any Party of its own  
27 Designated Materials.

28 8. If discovery is taken from a third party, the third party may request

1 that its Designated Materials be disclosed subject to this Protective Order. To  
2 enjoy the benefits of this Protective Order, the third party or its attorney must  
3 notify the Attorneys for the Parties that it has received a copy of the Protective  
4 Order and agrees in writing to be bound by its terms.

5 9. A Party seeking to file Designated Materials or documents that disclose  
6 Designated Materials with the Court must request that the documents be  
7 filed under seal pursuant to L.R. 79-5.1.

8 10. A Party may file a motion with the Court at any time, challenging the  
9 propriety of the designation of Designated Materials utilizing the procedures set  
10 forth in L.R. 37-1 et seq.

11 11. Each Party that has received Designated Materials will promptly  
12 return the materials and any copies of the materials to the producing Party after the  
13 final termination of this case. Alternately, the producing Party may destroy the  
14 documents.

15 12. Nothing herein shall be construed as preventing plaintiff Robert  
16 Kaufman Company, Inc., from publicly naming any prospective defendant in a  
17 motion to amend the pleadings or in an amended complaint, nor shall the identity  
18 of any prospective defendant who has obtained the chili pepper pattern directly or  
19 indirectly from Ashford Textiles and who has thereafter publicly sold or distributed  
20 the pattern be deemed confidential.

21 13. Nothing herein shall be deemed to preclude or prevent the exhibition,  
22 presentation, or introduction as evidence, of any information to the Court or to a  
23 jury.

24 14. In the event that defendant Ashford has sold the chili pepper pattern to a  
25 customer of plaintiff Robert Kaufman Company, the information concerning the  
26 defendants sale to said customer shall not be deemed confidential as between the

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parties, or their consultants, but may be sealed upon motion of a party in order to protect the confidentiality of the information as to outside parties.

IT IS SO ORDERED.



Dated: June 3, 2013

By: \_\_\_\_\_  
United States Magistrate Judge

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EXHIBIT A

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

ROBERT KAUFMAN CO., INC.,  
  
Plaintiffs,  
  
v.  
  
ASHFORD TEXTILES, LLC, et al.  
  
Defendants,

Case No. CV 13-00156-BRO(CWx)

**Hon. Carla Woerhle**

By signing this document, I certify that I have read and understand the Protective Order in this case and agree to be bound by its terms. I understand that if I violate the terms of the Protective Order, I may be subject to penalties, including penalties for contempt of Court. I consent to personal and subject matter jurisdiction over me by the Court for the purpose of enforcing my agreement here.

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
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