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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IMPERIAL TOY LLC,
PLAINTIFF,
v.
LIGHTUPTOYS.COM, LLC,
DEFENDANT.

Case No. CV 13-2316 JAK (FFMx)
The Honorable John A Kronstadt
**STIPULATED PROTECTIVE
ORDER**
Note Changes Made by Court.

AND RELATED COUNTERCLAIMS

Plaintiff Imperial Toy LLC (“Imperial”) and defendant LightUpToys.com LLC (“LightUpToys”) (collectively, the “Parties”), submit this Stipulated Protective Order:

1. This case concerns a patent directed to a particular bubble gun design, and the parties are competitors with respect to those products. Documents and things that may be requested in discovery could reveal highly sensitive and confidential information that is protected from disclosure to the public and whose disclosure would damage the party providing the information. The parties believe that this confidential information includes sensitive sales and other financial information, sensitive market studies and strategy information, sensitive design information and other sensitive proprietary information. The interest of the party producing such

1 information (the “Producing Party”) in restricting the disclosure and use of its
2 confidential information by the party receiving the information (the “Receiving
3 Party”) far outweighs the interest of the public in having access to such
4 information. Good cause accordingly exists for the issuance of this Protective
5 Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure in order to
6 efficiently accomplish such exchange of information, and safeguard confidential
7 and/or proprietary information.

8 2. A party may designate each document, thing, material, testimony
9 **(other than testimony provided in open court) (FFM)** or other information
10 derived therefrom in this action as “CONFIDENTIAL” or “CONFIDENTIAL
11 INFORMATION” (used interchangeably) under the terms of this Protective Order,
12 provided the Party designating has a good faith belief that such document, thing,
13 material, testimony or other information derived therefrom contains proprietary or
14 confidential information. To the extent that only a portion or portions of such
15 documents or information is CONFIDENTIAL, only the portions that are
16 CONFIDENTIAL will be so marked and subject to this order. Material designated
17 as CONFIDENTIAL INFORMATION may be used only for the purpose of
18 prosecution, defense, discovery, mediation and/or settlement of this action and any
19 related arbitration, and not for any other purpose. Each Party that designates items
20 for protection under this Protective Order must take care to limit any such
21 designation to specific items, or only those parts of items that qualify, as
22 CONFIDENTIAL INFORMATION, under standards as recognized by California
23 law, so that items, or portions of items, for which protection is not warranted are
24 not swept unjustifiably within the ambit of this Order. Parties will not designate
25 categories of documents as CONFIDENTIAL, but will limit such designation to
26 individual documents or items, or specific portions thereof.

27 3. CONFIDENTIAL INFORMATION shall be so designated by marking
28 or stamping copies of the document produced or testimony (or portions thereof)

1 with the legend “CONFIDENTIAL” or “CONFIDENTIAL INFORMATION,”
2 marking or stamping such legends on the cover of any multi-page document shall
3 designate all pages of the document as CONFIDENTIAL INFORMATION, and
4 marking or stamping on a label on any electronic storage medium shall designate
5 the contents of such electronic storage medium as CONFIDENTIAL
6 INFORMATION; however, if specific portions are not to be deemed
7 CONFIDENTIAL INFORMATION, then each page or portion of the
8 CONFIDENTIAL INFORMATION will be so designated. Whether or not any
9 evidence or testimony is, in fact, designated as “CONFIDENTIAL” or
10 “CONFIDENTIAL INFORMATION” shall not be conclusive of whether it is
11 lawfully entitled to protection as such; resolution of disputes regarding such
12 designations shall be resolved as described in Paragraph 7(A), below. In addition,
13 the failure to make such a designation shall not constitute a waiver to do so; in such
14 an instance, the Party requesting to retroactively designate material as
15 CONFIDENTIAL shall first seek an agreement of the receiving Party, and if no
16 such agreement is reached, the producing Party may file an appropriate motion with
17 the Court to seek such relief, also as described in Paragraph 7(A), below.

18 4. CONFIDENTIAL INFORMATION produced shall be disclosed,
19 revealed, or disseminated only to the Court, its personnel or staff; alternative
20 dispute resolution neutrals (i.e., mediators, arbitrators, etc.), their personnel or staff;
21 jurors or any other party as required by law; court reporter(s) and/or videographers
22 employed in this action; and counsel of record for the named Parties, their associate
23 attorneys, paralegals, secretaries and clerical staff. CONFIDENTIAL
24 INFORMATION may also be disclosed to the following “QUALIFIED
25 PERSON(S)”:

26 (A) Witnesses and deponents who previously reviewed, generated, or
27 otherwise had access to such CONFIDENTIAL INFORMATION;
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1 (B) Experts and consultants retained by counsel in the prosecution,
2 defense, or settlement of this action;

3 (C) An officer, director, trustee, managing agent, in-house counsel, or
4 employee of a named Party;

5 (D) Any non-party support services, including, but not limited to,
6 outside copying services, court reporting services, and litigation support
7 services as may be reasonably necessary in connection with the conduct of
8 this action; and

9 (E) Any other person, with 5 court days' notice to the non-disclosing
10 party by facsimile or email, and such person shall execute and agree to be
11 bound by this Non-disclosure Agreement. If an objection to the disclosure
12 occurs within the 5 court days, then the parties must meet and confer within
13 the 5 court days.

14 5. CONFIDENTIAL INFORMATION disclosed to these categories of
15 QUALIFIED PERSON(S) shall be accomplished as follows: before reviewing any
16 CONFIDENTIAL INFORMATION or being exposed to anything treated as
17 CONFIDENTIAL, each QUALIFIED PERSON shall execute a "Non-Disclosure
18 Agreement" in the form of Attachment A; CONFIDENTIAL INFORMATION may
19 then be duplicated and transmitted to such persons identified as QUALIFIED
20 PERSON(S). Each such executed Non-Disclosure Agreement shall be retained by
21 counsel for the Party disclosing CONFIDENTIAL INFORMATION. Such retained
22 Non-Disclosure Agreements shall not be discoverable, except upon order of the
23 Court after a showing that disclosure of the Non-Disclosure Agreement is necessary
24 for good cause. Privileges are not intended to be waived by this provision, and are
25 subject to consideration by the Court in any dispute regarding discoverability of an
26 executed Non-Disclosure Agreement.

27 6. Unless the parties agree otherwise, deposition transcripts will be
28 deemed to contain CONFIDENTIAL INFORMATION until 30 days after

1 completion of the deposition transcript by the deposition reporter. Such status will
2 expire after the 30-day period except to the extent a Party designates such testimony
3 as CONFIDENTIAL INFORMATION by making a statement to that effect on the
4 record at the deposition, or by sending a letter to all parties specifying the pages
5 and/or items that are claimed to be CONFIDENTIAL. Deposition testimony where
6 any such information has been affirmatively designated as CONFIDENTIAL shall
7 be conducted only before those persons identified in Paragraph 4, above. Except as
8 required by law, no person other than those persons identified in Paragraph 4 above
9 (a) may attend that portion of a deposition, or (b) read the transcript of or the
10 exhibits marked in any deposition taken in this case, where any such information
11 has been deemed or designated as CONFIDENTIAL.

12 7. Challenges and Changes to CONFIDENTIAL Designations.

13 (A) The Parties do not waive any right to claim or challenge whether
14 material designated or not designated as CONFIDENTIAL INFORMATION
15 is properly designated or not designated as such, and do not waive any right
16 to make such claim or challenge at any hearing, trial or other proceeding,
17 whether such CONFIDENTIAL INFORMATION is, in fact, confidential.
18 Any Party may object to the designation of material as CONFIDENTIAL, in
19 which case the Party challenging such designation shall so notify the
20 producing Party in writing, and the Parties shall meet and confer as to the
21 status of the designation. If, following notification by the challenging Party
22 concerning its disagreement with the producing Party's designation of
23 information, the Parties are unable to reach agreement, the challenging Party
24 may move the Court for a determination of the propriety of the designation;
25 and, should a motion be filed under this paragraph, the party asserting the
26 designation shall bear the burden of establishing the need to maintain the
27 material as Confidential Information. **Any such motion must comply with**
28 **Local Rule 37. (FFM)** Designated material will remain CONFIDENTIAL

1 until the Court reaches a final determination. Nothing contained in this
2 Stipulated Protective Order shall be construed to diminish the Court's ability
3 to award sanctions, including attorney's fees, for improper designation of
4 material pursuant to this Protective Order.

5 (B) The Court may also raise the issue of the designation of any
6 information as CONFIDENTIAL *sua sponte*.

7 (C) A designating Party may withdraw its designation by written
8 notification at any time.

9 (D) CONFIDENTIAL INFORMATION derived, obtained or compiled
10 from a non-Party or independent, non-privileged source may not be
11 designated as CONFIDENTIAL, nor does this Protective Order restrict any
12 Party's ability to use or disclose information derived, obtained or compiled
13 from a non-Party or independent non-privileged source; however, a Party
14 may seek relief from the Court for CONFIDENTIAL designation of such
15 material, bearing the burden of establishing such protection.

16 8. When seeking to admit or introduce any CONFIDENTIAL
17 INFORMATION into the public record in this case, whether in writing or orally
18 (including the filing of papers which constitute or contain CONFIDENTIAL
19 INFORMATION, and including at the trial of this action), the Parties and their
20 attorneys will cooperate in good faith to seek appropriate rulings from the Court to
21 safeguard the confidentiality of CONFIDENTIAL INFORMATION to the extent
22 possible, whether by sealing orders or otherwise. The Parties agree that no Party is
23 required to file pleadings and other papers submitted to the Court under seal, except
24 that the Parties agree that if CONFIDENTIAL INFORMATION is submitted to the
25 Court, the CONFIDENTIAL INFORMATION shall be submitted under seal as
26 follows (and that this Protective Order constitutes a "sealing order" for such
27 purposes):

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1 (A) All deposition transcripts and exhibits, written discovery requests
2 and responses thereto, legal memoranda, motion papers' or other written
3 materials or things submitted to the Court which contain or quote or refer to
4 CONFIDENTIAL INFORMATION shall be lodged with the Court in a
5 sealed envelope or other appropriate sealed container which shall be
6 endorsed with the title of this action, an indication of the nature of the
7 contents of such sealed envelope or other container, and a statement
8 substantially in the following format:

9 **CONFIDENTIAL INFORMATION,**
10 **SUBJECT TO PROTECTIVE ORDER FILED UNDER SEAL**

11 **This envelope (or container) which is filed in this action by (name of**
12 **party and, if applicable, the name of deponent) is not to be opened nor**
13 **its contents displayed, copied or revealed except by Court Order.**

14 (B) Such CONFIDENTIAL INFORMATION shall be lodged
15 separately, and will be returned to the Party's counsel who lodged it upon
16 completion of the hearing for which the CONFIDENTIAL INFORMATION
17 is submitted. CONFIDENTIAL INFORMATION shall not be filed with the
18 Court Clerk to be placed in the Court file unless, and in accordance with the
19 court's Local Rules, either (i) an appropriate sealing order is entered in
20 accordance with **Local Rule 79-5** ~~California Rules of Court, Rules 2.550 et~~
21 ~~seq.~~, **(FFM)** or (ii) the Court finds that no sealing order is justified for the
22 particular CONFIDENTIAL INFORMATION.

23 9. In the event that any CONFIDENTIAL INFORMATION is used in
24 any Court proceeding in this action pursuant to section 8(B)(i) **(FFM)** above, such
25 CONFIDENTIAL INFORMATION shall not lose its confidential status through
26 such use, and the Party using such shall take all reasonable steps to maintain its
27 confidentiality during and after such use.

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1 10. The terms of this Protective Order shall survive the final termination of
2 this action, and shall be binding on the Parties and their counsel. CONFIDENTIAL
3 INFORMATION retained after the conclusion of this action shall be in accordance
4 with the terms and conditions of this agreement; in this regard, each party or other
5 person subject to the terms of this Protective Order shall be under an obligation to
6 destroy or return to the producing party all materials and documents containing
7 Confidential Information, and to certify in writing to the producing party such
8 destruction or return. However, outside counsel for any party shall be entitled to
9 retain all court papers, trial transcripts, exhibits and attorney work provided that any
10 such materials are maintained and protected in accordance with the terms of this
11 Protective Order.

12 11. To the extent that any Party believes that all or portions of any
13 document, thing, material, testimony or other information should be subject to a
14 higher level of confidentiality than set forth above, the Party may file an
15 appropriate motion or application with the Court after meeting and conferring with
16 the other party(ies), in order to limit the disclosure of said document, material,
17 testimony or other information to other limited individuals.

18 12. By agreeing to this Protective Order, no Party waives any rights it
19 otherwise would have to object to disclosing or producing any information or item
20 on any ground not addressed. Similarly, no Party waives any right to object on any
21 ground to use in evidence any of the material covered by this Protective Order.
22 This Protective Order shall also be without prejudice to the right of any Party to
23 challenge the propriety of discovery on other grounds or privilege, relevance,
24 materiality, etc. This agreement shall not be construed as a waiver of any objection
25 that might be raised as to the admissibility of any evidentiary material at trial or any
26 evidentiary proceeding.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IMPERIAL TOY LLC,
PLAINTIFF,
v.
LIGHTUPTOYS.COM, LLC,
DEFENDANT.

Case No. 13-02316 JAK (FFMx)

The Honorable John A Kronstadt

**ATTACHMENT A TO STIPULATED
PROTECTIVE ORDER**

AND RELATED COUNTERCLAIMS

NONDISCLOSURE AGREEMENT

I, _____, do solemnly swear and agree that I am fully familiar with the terms of the Protective Order entered in Imperial Toy LLC v. TightUpToys.com, LLC, United States District Court for the Central District of California, Case No. 13-02316 JAK (FFMx), a copy of which has been provided to me, and hereby agree to comply with and be bound by the terms and conditions of the Order unless and until modified by further Order of this Court. Further, to the extent I receive Confidential information in connection with this litigation, I agree that I will hold that information in confidence in accordance with the terms of the Order. I understand that I am to retain all copies of the information that I receive that have been designated as Confidential in a container, cabinet, drawer, room, or other safe place in a matter consistent with the Order, and

1 that all copies are to remain in my custody until I have completed my assigned or
2 legal duties. I will return all documents and things marked Confidential that come
3 into my possession, or that I have prepared relating to such documents and things,
4 to counsel for the party by whom I am retained. I acknowledge that such return or
5 the subsequent destruction of such materials shall not relieve me from any of the
6 continuing obligations imposed on me by the Order. I hereby consent to the
7 jurisdiction of said Court for purposes of enforcing this Order.

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Signed: _____

Dated: _____