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 7 **Deckers Outdoor Corporation**

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

11 DECKERS OUTDOOR
 12 CORPORATION, a Delaware
 Corporation,

13 Plaintiff,

14 v.

15 J. REFLECTION, INC., a California
 Corporation doing business as
 16 REFLECTION; TOP GUY INT’L
 TRADING, LLC, a California Limited
 Liability company; and DOES 1-10,
 17 inclusive,

18 Defendants.

CASE NO. 2:13-CV-07843 GW (MRWx)

~~PROPOSED~~ **PROTECTIVE ORDER**

[DISCOVERY MATTER]

Hon. Michael R. Wilner

20 **DEFINITIONS**

- 21 1. As used in this Protective Order,
- 22 a. “Designating Party” means any Person who designates Material as
- 23 Confidential Material.
- 24 b. “Discovering Counsel” means counsel of record for a Discovering
- 25 Party.
- 26 c. “Discovering Party” means the Party to whom Material is being
- 27 Provided by a Producing Party.

1 d. "Confidential Material" refers to those materials designated as
2 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" as defined in Paragraph 2
3 below.

4 e. "Material" means any document, testimony or information in any
5 form or medium whatsoever, including, without limitation, any written or printed
6 matter, Provided in this action by a Party before or after the date of this Protective
7 Order.

8 f. "Party" means the Parties to this action, their attorneys of record
9 and their agents.

10 g. "Person" means any individual, corporation, partnership,
11 unincorporated association, governmental agency, or other business or governmental
12 entity whether a Party or not.

13 h. "Producing Party" means any Person who Provides Material during
14 the course of this action.

15 i. "Provide" means to produce any Material, whether voluntarily or
16 involuntarily, whether pursuant to request or process.

17 **CONFIDENTIAL DESIGNATION**

18 2. A Producing Party may designate as "CONFIDENTIAL" any material
19 provided to a Party which contains or discloses any of the following:

20 a. Non-public insider information, personnel files, financial
21 information, trade secrets, confidential commercial information, proprietary
22 information, or other confidential or sensitive information which the Producing Party
23 determines in good faith should be kept confidential; and

24 b. Information that the Party is under a duty to preserve as
25 confidential under an agreement with or other obligation to another Person.

26 c. The Producing Party may designate as "ATTORNEYS' EYES
27 ONLY," documents Parties contend contain or disclose materials which they in good
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1 faith believe to be of an extremely high degree of current commercial sensitivity and/or
2 would provide a competitive advantage to its competitors if disclosed.

3 d. The Producing Party may not use “CONFIDENTIAL” and/or
4 “ATTORNEYS’ EYES ONLY” designations to conceal the identity of potential
5 parties to the litigation, such as manufacturers, distributors, importers, retailers and
6 others in the supply chain of the alleged infringing goods.

7 3. A Producing Party shall stamp as CONFIDENTIAL or ATTORNEYS’
8 EYES ONLY Materials which the Producing Party in good faith believes are entitled
9 to protection pursuant to the standards set forth in Paragraph 2 of this Order. A
10 Producing Party may designate Confidential Material for Protection under this order by
11 either of the following methods:

12 a. By physically marking it with the following inscription prior to
13 Providing it to a Party:

14 CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

15 or

16 ATTORNEYS’ EYES ONLY SUBJECT TO PROTECTIVE ORDER

17 b. By identifying with specificity in writing to the Discovering Party
18 any previously Provided Material which was not designated as Confidential Material
19 prior to its having been Provided. For purposes of this method of designation, it will be
20 a sufficiently specific identification to refer to the bates numbers or deposition page
21 numbers of previously Provided Material. Where a Producing Party designates
22 previously Provided Material as Confidential Material pursuant to this subparagraph,
23 the Producing Party will follow the procedures set forth in the previous subparagraph
24 for designating Confidential Material, and Provide to the Discovering Party additional
25 copies of the previously Provided Material marked with the inscription described in the
26 previous subparagraph. Upon receipt of the additional copies which comply with the
27 procedures set forth in the previous subparagraph, the Discovering Party will
28 immediately return to the Producing Party the previously Provided Material, or

1 alternatively, will destroy all the previously Provided Material, at the option of the
2 Producing Party. For previously Provided Material which was not designated as
3 Confidential Material at the time of its being Provided, this Protective Order shall
4 apply to such materials beginning on the date that the Producing Party makes such
5 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 its
10 costs upon completion of the litigation.

11 The designation of documents as “Confidential” or “Attorneys’ Eyes Only” does
12 not entitle the parties to have those documents filed under seal. An application,
13 including a stipulated application to filed documents under seal must comply with
14 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 described
18 in Paragraph 7 of this Protective Order and other than in accordance with the terms,
19 conditions and restrictions of this Protective Order. Confidential Material designated as
20 ATTORNEYS’ EYES ONLY shall not be disclosed, nor shall its contents be disclosed
21 to any person other than those described in Paragraph 8 of this Protective Order.

22 5. Confidential Material Provided by a Producing Party to a Discovering
23 Party shall not be used by the Discovering Party or anyone other than the Producing
24 Party, specifically including the persons identified in Paragraphs 7 or 8 as appropriate,
25 for any purpose, including, without limitation any personal, business, governmental,
26 commercial, publicity, public-relations, or litigation (administrative or judicial)
27 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 to
3 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 disclose
6 Material designated as CONFIDENTIAL and the contents of Material designated as
7 CONFIDENTIAL only to the following persons:

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

11 b. In-house counsel and such in-house counsel's employees who are
12 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 to
20 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 forth in
22 Paragraphs 11-13.

23 g. Officers, directors and employees of the Parties hereto who have a
24 need to review Material designated as CONFIDENTIAL to assist in connection with
25 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 designated
2 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 identified
5 on the face thereof, provided there is prior testimony of actual authorship or receipt of
6 the Material designated as CONFIDENTIAL by such Person; and

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

9 The Parties shall make a good faith effort to limit dissemination of Material designated
10 as CONFIDENTIAL within these categories to Persons who have a reasonable need
11 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 ONLY,
15 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 partners,
18 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 action
25 and their secretarial, technical and clerical employees who are actively assisting in the
26 preparation of this action, in accordance with the procedures set forth in paragraphs
27 11-13.

1 f. Any Person identified on the face of any such Material designated
2 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 is
5 not identified on the face thereof, provided there is prior testimony of actual authorship
6 or receipt of the Material designated as ATTORNEYS' EYES ONLY by such Person;
7 and

8 h. Any Person who the Parties agree in writing may receive Material
9 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) of
15 the Protective Order, shall evidence his or her agreement to be bound by the terms,
16 conditions, and restrictions of the Protective Order by signing an undertaking in the
17 form attached hereto as **Exhibit A** (the "Undertaking"), and shall retain the copy of
18 this Protective Order, with a copy of his or her signed Undertaking attached.

19 Discovering Counsel shall keep a copy of the signed Undertaking for each person
20 described in subparagraphs 7(f), 7(g), or 8(f) to whom Discovering Counsel discloses
21 Confidential Material.

22 10. The individuals designated in subparagraph 8(a) above, are specifically
23 prohibited from publishing, releasing, or otherwise disclosing Material designated as
24 ATTORNEYS' EYES ONLY, or the contents thereof, to any directors, officers, or
25 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 avoid
2 inadvertent access by, or disclosure to, unauthorized persons.

3 DEPOSITIONS

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

11 12. Counsel for any deponent may designate testimony or exhibits as
12 Confidential Material by indicating on the record at the deposition that the testimony
13 of the deponent or any exhibits to his or her testimony are to be treated as Confidential
14 Material. Counsel for any Party may designate exhibits in which that Party has a
15 cognizable interest as Confidential Material by indicating on the record at the
16 deposition that such exhibit(s) are to be treated as Confidential Material. Failure of
17 counsel to designate testimony or exhibits as confidential at deposition, however, shall
18 not constitute a waiver of the protected status of the testimony or exhibits. Within
19 thirty calendar days of receipt of the transcript of the deposition, or thirty days of the
20 date on which this Protective Order becomes effective, whichever occurs last, counsel
21 shall be entitled to designate specific testimony or exhibits as Confidential Material. If
22 counsel for the deponent or Party fails to designate the transcript or exhibits as
23 Confidential within the above-described thirty day period, any other Party shall be
24 entitled to treat the transcript or exhibits as non-confidential material. For purposes of
25 this Paragraph 12, this Protective Order shall be deemed "effective" on the date on
26 which it has been executed by all counsel for the Parties.

27 13. When Material disclosed during a deposition is designated Confidential
28 Material at the time testimony is given, the reporter shall separately transcribe those

1 portions of the testimony so designated, shall mark the face of the transcript in
2 accordance with Paragraph 3 above, and shall maintain that portion of the transcript or
3 exhibits in separate files marked to designate the confidentiality of their contents. The
4 reporter shall not file or lodge with the Court any Confidential Material without
5 obtaining written consent from the Party who designated the Material as Confidential
6 Material. For convenience, if a deposition transcript or exhibit contains repeated
7 references to Confidential Material which cannot conveniently be segregated from
8 non-confidential material, any Party may request that the entire transcript or exhibit be
9 maintained by the reporter as Confidential Material.

10 **USE OF CONFIDENTIAL MATERIAL IN PLEADINGS AND OTHER COURT**

11 **PAPERS**

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

21 **OBJECTIONS TO DESIGNATION**

22 15. Any Party may at any time notify the Designating Party in writing of its
23 contention that specified Material designated as Confidential Material is not properly
24 so designated because such Material does not warrant protection under applicable law.
25 The Designating Party shall within five court days, meet and confer in good faith with
26 the Party challenging the designation in an attempt to resolve such dispute. The
27 Designating Party shall have ten (10) calendar days from the initial meet and confer to
28 file a motion to uphold the designation of the material in question. Any such motion

1 shall be set for hearing on the first available calendar date. If no motion is filed within
2 10 days, or any mutually agreed to extension of time, all Parties may treat the Material
3 as non-confidential. To maintain the designation as Confidential Material and to
4 prevail on such a motion, the Designating Party must show by a preponderance of the
5 evidence that there is good cause for the designation as Confidential Material. Pending
6 resolution of any motion filed pursuant to this Paragraph, all Persons bound by this
7 Protective Order shall continue to treat the Material which is the subject of the motion
8 as Confidential Material.

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

13 **RETURN OF MATERIAL**

14 17. Within ninety (90) calendar days after the final settlement or termination
15 of this action, Discovering Counsel shall return or destroy (at the option and expense
16 of Discovering Counsel) all Materials provided by a Producing Party and all copies
17 thereof except to the extent that any of the foregoing includes or reflects Discovering
18 Counsel's work product, and except to the extent that such Material has been filed with
19 a court in which proceedings related to this action are being conducted. In addition,
20 with respect to any such retained work product and unless otherwise agreed to, at the
21 conclusion of this action, counsel for each Party shall store in a secure area all work
22 product which embodies Confidential Material together with all of the signed
23 undertakings they are required to preserve pursuant to Paragraph 9 above, and shall not
24 make use of such Material except in connection with any action arising directly out of
25 these actions, or pursuant to a court order for good cause shown. The obligation of this
26 Protective Order shall survive the termination of this action. To the extent that
27 Confidential Materials are or become known to the public through no fault of the
28 Discovering Party, such Confidential Materials shall no longer be subject to the terms

1 of this Protective Order. Upon request, counsel for each Party shall verify in writing
2 that they have complied with the provisions of this paragraph.

3 **SCOPE OF THIS ORDER**

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

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

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

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

22 22. This Protective Order shall not preclude any Person from waiving the
23 applicability of this Protective Order with respect to any Confidential Material
24 Provided by that Person or using any Confidential Material Provided by that Person or
25 using any Confidential Material owned by that Person in any manner that Person
26 deems appropriate.

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

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

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

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

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SUBMISSION TO COURT

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

IT IS SO ORDERED.

Date: March 20, 2014



Honorable Michael R. Wilner
United States Magistrate Judge

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 Deckers Outdoor
Corporation v. J. Reflection, Inc. et al., No. 2:13-CV-07843 GW (MRWx). 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: _____, 2014

City and State where sworn and signed: _____

Signed: _____
[Print Name] [Signature]