

NOTE: CHANGES MADE BY THE COURT

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

SPIN MASTER LTD., a Canadian corporation,

Plaintiff,

v.

BRIX 'N CLIX CO., LTD., a Hong Kong company, CYI, INC., a California corporation, and REHCO, LLC, an Illinois corporation.

Defendants.

Case No. 2:14-cv-02808-PSG-PLA

STIPULATED PROTECTIVE ORDER

1 **GOOD CAUSE STATEMENT**

2 This action is likely to involve trade secrets, customer and pricing lists and
3 other valuable marketing, product development, commercial, financial, and/or
4 proprietary information for which special protection from public disclosure and
5 from use for any other purpose other than prosecution of this action is warranted.
6 Such confidential and proprietary materials and information consist of, among
7 other things, confidential business or financial information, information regarding
8 confidential business practices, or other confidential research, development, or
9 commercial information, information otherwise generally unavailable to the public,
10 or which may be privileged or otherwise protected from disclosure under state or
11 federal statutes, court rules, case decisions, or common law. Accordingly, to
12 expedite the flow of information, to facilitate the prompt resolution of disputes
13 over confidentiality of discovery materials, to adequately protect information the
14 parties are entitled to keep confidential, to ensure that the parties are permitted
15 reasonable necessary uses of such material in preparation for and in the conduct of
16 trial, to address their handling at the end of the litigation, and serve the ends of
17 justice, a protective order for such information is justified in this matter. It is the
18 intent of the parties that information will not be designated as confidential for
19 tactical reasons and that nothing be so designated without a good faith belief that it
20 has been maintained in a confidential, non-public manner, and there is good cause
21 why it should not be part of the public record of this case.

22 **STIPULATED PROTECTIVE ORDER**

23 To protect confidential business and trade secret information consistent with
24 the public's right of access to the Court's records and processes, the parties
25 stipulate and the Court hereby enters the following Protective Order pursuant to
26 Fed. R. Civ. P. 26(c):
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1 1. The following shall apply to any documents, answers to
2 interrogatories, responses to requests for admission, deposition testimony,
3 deposition transcripts and exhibits, other responses to requests for information
4 and/or other written information, produced in response to discovery requests in this
5 litigation by any party or third-party pursuant to Federal and Local Rules of Civil
6 Procedure governing disclosure and discovery.

7 2. Information, documents, and other materials may be designated by the
8 producing party in the manner permitted. All such information, documents,
9 excerpts from documents, and other materials will constitute “Designated
10 Material” under this Order. The designation shall be either (a) “CONFIDENTIAL”
11 or (b) “CONFIDENTIAL-ATTORNEYS’ EYES ONLY.” This Order shall apply
12 to Designated Material produced by any party or third-party in this action.

13 3. The parties acknowledge that this Order does not confer blanket
14 protections on all disclosures or responses to discovery and that the protection it
15 affords from public disclosure and use extends only to the limited information or
16 items that are entitled to confidential treatment under the applicable legal
17 principles.

18 4. The parties further acknowledge that this stipulation and any
19 protective order create no entitlement to file confidential information under seal.
20 Instead, Local Rule 79-5.1 sets forth the procedures that must be followed when a
21 party seeks permission from the court to file material under seal.

22 5. “CONFIDENTIAL” information means information contained or
23 disclosed in any materials, including documents, portions of documents, answers to
24 interrogatories, responses to requests for admissions, trial testimony, deposition
25 testimony, and transcripts of trial testimony and depositions, including data,
26 summaries, and compilations derived therefrom that is deemed to be Confidential
27 information by any party to which it belongs. Any party may designate
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1 information as "CONFIDENTIAL" only if, in the good faith belief of such party
2 and its counsel, the unrestricted disclosure of such information could be potentially
3 prejudicial to the business or operations of such party, or the interests of a third
4 party.

5 6. "CONFIDENTIAL-ATTORNEY'S EYES ONLY" means
6 confidential information that the disclosing party reasonably and in good faith
7 believes is among that considered to be most sensitive by the party, including but
8 not limited to trade secret or other confidential research, development, financial or
9 other commercial information.

10 7. The term "Counsel of Record" will mean (i) outside counsel who
11 appear in the action in any capacity, whether on the pleadings, on the record in a
12 deposition or in a hearing, or in any other circumstance associated with the action,
13 as counsel for a party so long as such counsel is identified to the other party,
14 (ii) partners, principals, counsel, associates, employees, and contract attorneys of
15 such outside counsel to whom it is reasonably necessary to disclose the
16 Confidential Information for this action, including supporting personnel employed
17 by the attorneys, such as paralegals, legal secretaries, and legal clerks, or
18 (iii) independent shorthand reporters retained to record and transcribe testimony in
19 this case and videographers retained to film testimony in this action.

20 8. The terms "Designating Person" or "Designating Party" shall mean a
21 Party or Non-Party that designates information or items that it produces in
22 disclosures or in responses to discovery as "Confidential Information," as defined
23 herein.

24 9. The term "Non-Party" shall mean any natural person, partnership,
25 corporation, association, or other legal entity not named as a Party to this action.

26 10. The term "Party" shall mean any party to this action, including all of
27 its officers, directors, employees, and in-house counsel.

1 11. The term “Professional Vendors” shall mean persons or entities that
2 provide litigation support services (e.g. photocopying, videotaping, translating,
3 preparing exhibits or demonstrations, and organizing, storing, or retrieving data in
4 any form or medium) and their employees and subcontractors.

5 12. The term “Receiving Party” shall mean a Party that receives
6 Disclosure or Discovery Material from a Producing Party.

7 13. The term “Independent Expert” means a person with specialized
8 knowledge or experience in a matter pertinent to the case who has been retained by
9 a Counsel of Record to serve as an expert witness or as a litigation consultant in
10 this case, and who is not a current employee of a Party or of a competitor of a Party
11 and who, at the time of retention, is not anticipated to become an employee of, or a
12 non-litigation consultant of a Party or competitor of a Party.

13 14. All Designated Material designated as “CONFIDENTIAL” or
14 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” must not be disclosed by the
15 Receiving Party to anyone other than those persons permitted access within this
16 Order and must be handled in the manner set forth below and, in any event, must
17 not be used for any purpose other than in connection with this litigation, unless and
18 until such designation is removed either by agreement of the Parties, or by order of
19 the Court.

20 15. All Designated Material designated “CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY” may be viewed only by Counsel of Record of the
22 Receiving Party, and by Independent Experts who sign a copy of the form attached
23 as Exhibit A, in advance of providing any Designated Material of the Designating
24 Person to the Independent Expert. Such signed form shall be retained by the
25 Counsel of Record retaining the Independent Expert and shall be made available to
26 the opposing Party upon the disclosure of said Independent Expert pursuant to Fed.
27 R. Civ. P. 26(a)(2)(D).

1 16. All Designated Material designated “CONFIDENTIAL” may be
2 viewed only by Counsel of Record of the Receiving Party, by Independent Experts,
3 and by the additional individuals listed below, provided each such individual has
4 read this Order in advance of disclosure and has agreed in writing to be bound by
5 its terms:

6 a. Executives of the Parties who have a legitimate need to see the
7 information in connection with their responsibilities for overseeing the
8 litigation or assisting Counsel of Record in preparing the action for trial or
9 settlement;

10 b. A Party’s officers, directors, employees, and in-house counsel
11 with whom Counsel of Record for the Parties find it necessary to consult, in
12 the discretion of such Counsel of Record, in preparation for trial of this
13 action; and

14 c. Stenographic and clerical employees associated with the
15 individuals identified above.

16 17. In addition to the individuals referenced above, all Confidential
17 Information designated “CONFIDENTIAL” or “CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY” may also be viewable by independent legal
19 translators retained to translate in connection with this action; independent
20 copying, scanning, technical support and electronic document processing services
21 retained by Counsel of Record in connection with this action; graphics, translation,
22 or design services retained by Counsel of Record for purposes of preparing
23 demonstrative or other exhibits for deposition, trial, or otherwise in connection
24 with this action; non-technical jury or trial consulting services retained by Counsel
25 of Record in connection with this action, provided, however, that any such
26 individual has read this Order in advance of disclosure, and has executed a copy of
27 the form attached as Exhibit A in advance of access.

1 18. With respect to all Designated Material designated
2 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” any
3 person indicated on the face of the document to be its originator, author or a
4 recipient of a copy of the document, may be shown the same.

5 19. All Designated Material that has been designated as
6 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by
7 the producing or disclosing Party, and any and all reproductions of that information
8 or Material, must be retained in the custody of the Counsel of Record for the
9 Receiving Party, except that Independent Experts authorized to view such
10 information under the terms of this Order may retain custody of copies such as are
11 necessary for their participation in this litigation.

12 20. Prior to disclosing or displaying any Designated Material to any
13 person, counsel shall:

14 a. Inform the person of the confidential nature of the Designated
15 Material, provide them with a copy of this Protective Order; and

16 b. Inform the person that this Court has enjoined the use of the
17 Designated Material by him/her for any purpose other than this litigation and
18 has enjoined the disclosure of that information or documents to any other
19 person.

20 21. The Designated Material may be displayed to and discussed with the
21 persons identified in Paragraph 15 and Paragraph 16(a-b) only on the condition
22 that prior to any such display or discussion, each such person shall be asked to sign
23 an agreement to be bound by this Order in the form attached hereto as Exhibit A.
24 In the event such person refuses to sign an agreement in substantially the form
25 attached as Exhibit A, the party desiring to disclose the confidential information
26 may seek appropriate relief from the Court, **pursuant to Local Rule 37**. This
27 requirement shall not apply to Counsel of Record for the Receiving Party.
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1 22. A person having custody of Designated Material shall maintain it in a
2 manner that limits access to the Designated Material to persons permitted such
3 access under this Order.

4 23. Counsel shall maintain a collection of all signed documents by which
5 persons have agreed to be bound by this Order.

6 24. Documents shall be designated by stamping or otherwise marking the
7 documents with the words “CONFIDENTIAL” or “CONFIDENTIAL-FOR
8 ATTORNEYS’ EYES ONLY,” thus clearly identifying the category of Designated
9 Material for which protection is sought under the terms of this Order. Designated
10 Material not reduced to documentary form shall be designated by the producing
11 party in a reasonably equivalent way.

12 25. The parties will use reasonable care to avoid designating as
13 confidential documents or information that does not need to be designated as such.
14 To the extent possible or reasonably practical, the Designating Person must
15 designate for protection only those parts of material, documents, items, or oral or
16 written communications that qualify so that other portions of the material,
17 documents, items, or communications for which protection is not warranted are not
18 swept unjustifiably with the ambit of this Order. Mass, indiscriminate, or
19 routinized designations are prohibited. Designations that are shown to be clearly
20 unjustified or that have been made for an improper purpose (e.g., to unnecessarily
21 encumber the case development process or to impose unnecessary expenses and
22 burdens on other parties) may expose the Designating Person to sanctions. If it
23 comes to a Designating Person’s attention that information or items that it
24 designated for protection do not qualify for protection, that Designating Person
25 must promptly notice all other Parties that it is withdrawing the inapplicable
26 designation.

1 26. A party may submit a request in writing to the party who produced
2 Designated Material that the designation be modified or withdrawn. Such a written
3 request shall identify the objected-to materials and the grounds for the objection. If
4 the Designating Person does not agree to the re-designation within fifteen business
5 days, the objecting party may apply to the Court for relief under the provisions of
6 Local Rule 37.1, *et seq.* Before serving a written challenge, the objecting party
7 must attempt in good faith to meet and confer with the Designating Person in an
8 effort to resolve the matter. The materials at issue must be treated as Confidential
9 Information, as designated by the Designating Party, until the Court has ruled on
10 the objection or the matter has been otherwise resolved. The Court may award
11 sanctions if it finds that a party's position was taken without substantial
12 justification.

13 27. Deposition transcripts or portions thereof may be designated either
14 (a) when the testimony is recorded, or (b) by written notice to all Counsel of
15 Record, given within ten business days after the Designating Person's receipt of the
16 transcript in which case all counsel receiving such notice shall be responsible for
17 marking the copies of the designated transcript or portion thereof in their
18 possession or control as directed by the Designating Person. Pending expiration of
19 the ten business days, the deposition transcript shall be treated as designated
20 Confidential – Attorneys' Eyes Only. When testimony is designated at a
21 deposition, the Designating Person may exclude from the deposition all persons
22 other than those to whom the Designated Material may be disclosed under
23 paragraphs 15-18 of this Order. Any party may mark Designated Material as a
24 deposition exhibit, provided the deposition witness is one to whom the exhibit may
25 be disclosed under paragraphs 15-18 of this Order and the exhibit and related
26 transcript pages receive the same confidentiality designation as the original
27 Designated Material.

1 28. Any Designated Material which becomes part of an official judicial
2 proceeding or which is filed with the Court is public. Such Designated Material
3 will be sealed by the Court only upon motion and in accordance with applicable
4 law, **and upon showing good cause**. If it becomes necessary to file Designated
5 Material with the Court, a party must comply with the relevant local rules.

6 29. Filing pleadings or other papers disclosing or containing Designated
7 Material does not waive the designated status of the material. The Court will
8 determine how Designated Material will be treated during trial and other
9 proceedings as it deems appropriate.

10 30. Upon final termination of this action with no rights to appeal or the
11 appeal period has passed, the provisions of this Order shall continue to be binding,
12 except with respect to those documents and information that become a matter of
13 public record. This Court retains and shall have continuing jurisdiction over the
14 parties and recipients of Designated Material for enforcement of the provisions of
15 this Order following termination of this litigation. All Designated Material and
16 copies thereof shall be returned promptly (and in no event later than forty-five (45)
17 days after entry of final judgment or dismissal), returned to the producing party, or
18 certified as destroyed to counsel of record for the party that produced the
19 Designated Material, or, in the case of deposition testimony regarding designated
20 exhibits, counsel of record for the Designating Person. Alternatively, the receiving
21 party shall provide to the Designating Person a certification that all such materials
22 have been destroyed.

23 31. Inadvertent production of confidential material prior to its designation
24 as such in accordance with this Order shall not be deemed a waiver of a claim of
25 confidentiality. Any such error shall be corrected within a reasonable time.

26 32. Nothing in this Order shall require disclosure of information protected
27 by the attorney-client privilege, or other privilege or immunity, and the inadvertent
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1 production of such information shall not operate as a waiver. If a Designating Party
2 becomes aware that it has inadvertently produced information protected by the
3 attorney-client privilege, or other privilege or immunity, the Designating Party will
4 promptly notify each receiving party in writing of the inadvertent production.
5 When a party receives notice of such inadvertent production, it shall return all
6 copies of inadvertently produced material within three business days. Any notes or
7 summaries referring or relating to any such inadvertently produced material subject
8 to claim of privilege or immunity shall be destroyed forthwith. Nothing herein
9 shall prevent the receiving party from challenging the propriety of the attorney-
10 client privilege or work product immunity or other applicable privilege designation
11 by submitting a challenge to the Court, **under Local Rule 37**. The Designating
12 Party bears the burden of establishing the privileged nature of any inadvertently
13 produced information or material. Each receiving party shall refrain from
14 distributing or otherwise using the inadvertently disclosed information or material
15 for any purpose until any issue of privilege is resolved by agreement of the parties
16 or by the Court. Notwithstanding the foregoing, a receiving party may use the
17 inadvertently produced information or materials to respond to a motion by the
18 Designating Party seeking return or destruction of such information or materials. If
19 a receiving party becomes aware that it is in receipt of information or materials
20 which it knows or reasonably should know is privileged, Counsel for the receiving
21 party shall immediately take steps to (i) stop reading such information or materials,
22 (ii) notify Counsel of Record for the Designating Party of such information or
23 materials, (iii) collect all copies of such information or materials, (iv) return such
24 information or materials to the Designating Party, and (v) otherwise comport
25 themselves with the applicable provisions of the Rules of Professional Conduct.

1 33. Nothing herein shall be construed to prevent disclosure of
2 Confidential Information if such disclosure is required by law or by order of the
3 Court.

4 34. If a Party or Counsel is served a subpoena or a court order issued in
5 other litigation that compels disclosure of any information or items designated in
6 this action as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY, that Party or Counsel of Record must:

8 a. Promptly notify in writing the Designating Party. Such
9 notification shall include a copy of the subpoena or court order;

10 b. Promptly notify in writing the party who caused the subpoena
11 or order to issue in the other litigation that some or all of the material
12 covered by the subpoena or order is subject to this Order. Such notification
13 shall include a copy of this Order; and

14 c. Cooperate with respect to all reasonable procedures sought to
15 be pursued by the Designating Party whose Confidential Information may be
16 affected to protect the Confidential Information from disclosure.

17 35. If the Designating Party timely seeks a protective order, the Party or
18 Counsel served with the subpoena or court order shall not produce any information
19 designated in this action as Confidential Information before a determination by the
20 court from which the subpoena or order issued or the court where compliance is
21 required, unless the Party or Counsel has obtained the Designating Party’s
22 permission or is otherwise directed by Order of a court. The Designating Party
23 shall bear the burden and expense of seeking protection in that court of its
24 Confidential Information – and nothing in these provisions should be construed as
25 authorizing or encouraging a Receiving Party in this action to disobey a lawful
26 directive from another court.

1 36. No Party or Counsel of Record who has received Confidential
2 Information subject to this Order shall aid or encourage a party to other litigation
3 to subpoena or otherwise seek to obtain Confidential Information subject to this
4 Order.

5 37. If a Receiving Party learns that, by inadvertence or otherwise, it has
6 disclosed Designated Material to any person or in any circumstance not authorized
7 under this Stipulated Protective Order, the Receiving Party must immediately
8 (a) notify in writing the Designating Person of the unauthorized disclosures, (b) use
9 its best efforts to retrieve all unauthorized copies of the Designated Material,
10 (c) inform the person or persons to whom unauthorized disclosures were made of
11 all the terms of this Order, and (d) request such person or persons to execute the
12 agreement shown in Exhibit A.

13 38. In order to provide the parties an adequate opportunity to designate
14 any documents or testimony as Designated Materials, all such documents or
15 testimony produced in this case by third parties shall be deemed
16 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” whether or not stamped with
17 that legend, for a period of fifteen (15) days following production to each Party.

18 39. The foregoing is entirely without prejudice to the right of any party to
19 apply to the Court for any further Protective Order relating to Designated Material;
20 or to object to the production of Designated Material; or to apply to the Court for
21 an order compelling production of Designated Material; or for modification of this
22 Order; or to seek any other relief from the Court. **Local Rule 37 applies.**

23 40. In the event the producing party elects to produce materials for
24 inspection, for purposes of the initial inspection, all materials produced will be
25 considered as either a) in the manner designated (verbally or in writing) by the
26 party allowing inspection, at the time of inspection or b) consistent with any
27 confidentiality designation asserted in response to the request for inspection.
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1 Thereafter, upon selection of specified materials for copying by the inspecting
2 party, and unless already designated pursuant to 40(a) herein, the producing party
3 must, within a reasonable time prior to producing those materials to the inspecting
4 party, mark the copies of those materials that contain Confidential Information
5 with the appropriate confidentiality marking.

6 41. In the event new parties join or are joined to this action, they shall not
7 have access to Designated Material until the newly joined party or its counsel has
8 executed and at the request of any party, filed with the Court its agreement to be
9 fully bound by this Order.

10 42. Nothing in this Order shall bar Counsel from rendering advice to their
11 clients with respect to this litigation and, in the course thereof, relying upon any
12 information designated as Designated Material, provided that the contents of the
13 information shall not be disclosed except as is permitted by this Order.

14 43. This Order shall be without prejudice to the right of any party to
15 oppose production of any information for lack of relevance or any other ground
16 other than the mere presence of Designated Material. The existence of this Order
17 shall not be used by either party as a basis for discovery that is otherwise improper
18 under the Federal Rules of Civil Procedure.

19 44. Nothing herein shall be construed to affect in any manner the
20 admissibility at trial of any document, testimony or other evidence or the right of
21 any party to be present throughout the trial.

22 45. This Order shall not be construed to prevent any party from making
23 use of or disclosing Designated Material that:

- 24 a. was lawfully in that party's possession and not under obligation
25 of secrecy with respect to such information prior to receipt of such
26 information from a producing party;

1 b. becomes lawfully known to that party in a manner that does not
2 violate the provisions of this Order; or

3 c. was or is hereafter lawfully obtained from a source or sources
4 other than the producing party, provided that such source(s) is not under an
5 obligation of secrecy with respect to the producing party.

6 Prior knowledge must be established by preproduction documentation.

7 46. The restrictions imposed by this Order may be modified or terminated
8 only by further order of the Court.

9
10 **IT IS HEREBY ORDERED:**

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12 November 24, 2014



Honorable Paul L. Abrams
United States Magistrate Judge

1 **IT IS HEREBY STIPULATED**

2
3 Pillsbury Winthrop Shaw Pittman LLC

Brooks Kushman P.C.

4 /s/ Bobby Ghajar(w/permission)

/s/ Chanille Carswell

5 Bobby Ghajar

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26 *Attorneys for Defendant CYI, Inc.*

1 **EXHIBIT A**

2 I have been informed by counsel that certain documents or information to be
3 disclosed to me in connection with the matter entitled *Spin Master Ltd. v. Brix 'N*
4 *Clix Co., Ltd., et al.*, Case No. 2:14-cv-02808 (C.D. Cal. 2014) have been
5 designated as confidential. I have been informed that any such documents or
6 information labeled "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS'
7 EYES ONLY." are confidential by Order of the Court.

8 I have read the Protective Order entered in *Spin Master v. Brix 'N Clix, et al.*,
9 Case No. 14-cv-02808-PSG-PLA, and have received a copy of the Protective
10 Order.

11 I promise that I will use any and all "CONFIDENTIAL" or
12 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" information, as defined in the
13 Protective Order, given to me only in a manner authorized by the Protective Order,
14 and only to assist counsel in the litigation of this matter.

15 I acknowledge that, by signing this agreement, I am subjecting myself to the
16 jurisdiction of the United States District Court for the Central District of California
17 with respect to enforcement of the Protective Order.

18 I hereby agree that I will not disclose any information contained in such
19 documents to any other person. I further agree not to use any such information for
20 any purpose other than this litigation.

21 I understand that any disclosure or use of "CONFIDENTIAL" or
22 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" information in any manner
23 contrary to the provisions of the Protective Order may subject me to sanctions for
24 contempt of court.

25 Dated: _____

26 Signed in the presence of:
27 _____ (Attorney)