

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JITRADE, INC., a California
Corporation;

Plaintiff,

vs.

DESIGN OF DK, INC. d/b/a CUBE
PLUS, a California Corporation; YONG
WOO KIM, an individual;
CICINDELAE, INC. d/b/a ORANGE
SHINE, a California Corporation; DO
GI KIM, an individual; and DOES 1-10,
inclusive,

Defendants.

Case No.: 2:18-cv-03034 -SVW-JEM

~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting or defending this
5 litigation may be warranted. Accordingly, the parties hereby stipulate to and
6 petition the Court to enter the following Stipulated Protective Order. The parties
7 acknowledge that this Order does not confer blanket protections on all disclosures
8 or responses to discovery and that the protection it affords from public disclosure
9 and use extends only to the limited information or items that are entitled to
10 confidential treatment under the applicable legal principles. The parties further
11 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
12 Order does not entitle the parties to file confidential information under seal; Civil
13 Local Rule 79-5 sets forth the procedures that must be followed and the standards
14 that will be applied when a party seeks permission from the court to file material
15 under seal.

16
17 B. GOOD CAUSE STATEMENT

18 This action is likely to involve trade secrets, customer and pricing lists and
19 other valuable research, development, commercial, financial, technical and/or
20 proprietary information for which special protection from public disclosure and from
21 use for any purpose other than prosecution of this action is warranted. Such
22 confidential and proprietary materials and information consist of, among other
23 things, confidential business or financial information, terms of agreements entered
24 into between parties, information regarding purchase and sale prices of fabric or
25 garments by suppliers, manufacturers, importers, distributors or fashion retailers,
26 information regarding business practices, information regarding the creation,
27 purchase or sale of graphics used on textiles and garments, or other confidential
28 commercial information (including information implicating privacy rights of third

parties), information generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal rules, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: This is a pending federal law suit under Case No. 2:18-cv-03034-SVW-JEM

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and In-House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY"

1 2.6 Disclosure or Discovery Material: all items or information, regardless
2 of the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced
4 or generated in disclosures or responses to discovery in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve
7 as an expert witness or as a consultant in this Action.

8 2.8 In- house Counsel: attorneys who are employees of a party to this
9 Action.

10 In -house Counsel does not include Outside Counsel of Record or any other outside
11 counsel.

12 2.9 Non-Party: any natural person, partnership, corporation, association, or
13 other legal entity not named as a Party to this action.

14 2.10 Outside Counsel of Record: attorneys who are not employees of a
15 party to this Action but are retained to represent or advise a party to this Action
16 and have appeared in this Action on behalf of that party or are affiliated with a law
17 firm which has appeared on behalf of that party, and includes support staff.

18 2.11 Party: any party to this Action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record (and their
20 support staffs).

21 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this Action.

23 2.13 Professional Vendors: persons or entities that provide litigation
24 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or medium)
26 and their employees and subcontractors.

27 2.14 Protected Material: any Disclosure or Discovery Material that is
28 designated as "CONFIDENTIAL" or "ATTORNEYS EYES ONLY"

1 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3
4 3. SCOPE

5 The protections conferred by this Stipulation and Order cover not only
6 Protected Material (as defined above), but also (1) any information copied or
7 extracted from Protected Material; (2) all copies, excerpts, summaries, or
8 compilations of Protected Material; and (3) any testimony, conversations, or
9 presentations by Parties or their Counsel that might reveal Protected Material.

10 Any use of Protected Material at trial shall be governed by the orders of the
11 trial judge. This Order does not govern the use of Protected Material at trial.

12
13 4. DURATION

14 Even after final disposition of this litigation, the confidentiality obligations
15 imposed by this Order shall remain in effect until a Designating Party agrees
16 otherwise in writing or a court order otherwise directs. Final disposition shall be
17 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
18 with or without prejudice; and (2) final judgment herein after the completion and
19 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
20 including the time limits for filing any motions or applications for extension of
21 time pursuant to applicable law.

22
23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection.

25 Each Party or Non-Party that designates information or items for protection under
26 this Order must take care to limit any such designation to specific material that
27 qualifies under the appropriate standards. The Designating Party must designate for
28 protection only those parts of material, documents, items, oral or written

1 communications that qualify so that other portions of the material, documents,
2 items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations
5 that are shown to be clearly unjustified or that have been made for an improper
6 purpose (e.g., to unnecessarily encumber the case development process or to
7 impose unnecessary expenses and burdens on other parties) may expose the
8 Designating Party to sanctions.

9 If it comes to a Designating Party's attention that information or items that it
10 designated for protection do not qualify for protection, that Designating Party must
11 promptly notify all other Parties that it is withdrawing the inapplicable designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in
13 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
14 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
15 under this Order must be clearly so designated before the material is disclosed or
16 produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic
19 documents, but excluding transcripts of depositions or other pretrial or trial
20 proceedings), that the Producing Party affix at a minimum, "CONFIDENTIAL" or
21 "ATTORNEY'S EYES ONLY" (hereinafter "CONFIDENTIAL legend"), to each
22 page that contains protected material. If only a portion or portions of the material
23 on a page qualifies for protection, the Producing Party also must clearly identify
24 the protected portion(s) (e.g., by making appropriate markings in the margins).

25 A Party or Non-Party that makes original documents available for inspection
26 need not designate them for protection until after the inspecting Party has indicated
27 which documents it would like copied and produced. During the inspection and
28 before the designation, all of the material made available for inspection shall be

1 deemed "CONFIDENTIAL." After the inspecting Party has identified the
2 documents it wants copied and produced, the Producing Party must determine
3 which documents, or portions thereof, qualify for protection under this Order.
4 Then, before producing the specified documents, the Producing Party must affix
5 the "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" to each page that
6 contains Protected Material. If only a portion or portions of the material on a page
7 qualifies for protection, the Producing Party also must clearly identify the
8 protected portion(s) (e.g., by making appropriate markings in the margins).

9 (b) for testimony given in depositions that the Designating Party identify
10 the Disclosure or Discovery Material on the record, before the close of the
11 deposition all protected testimony.

12 (c) for information produced in some form other than documentary and
13 for any other tangible items, that the Producing Party affix in a prominent place on
14 the exterior of the container or containers in which the information is stored the
15 term "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY." If only a portion or
16 portions of the information warrants protection, the Producing Party, to the extent
17 practicable, shall identify the protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
19 failure to designate qualified information or items does not, standing alone, waive
20 the Designating Party's right to secure protection under this Order for such
21 material. Upon timely correction of a designation, the Receiving Party must make
22 reasonable efforts to assure that the material is treated in accordance with the
23 provisions of this Order.

24 25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
27 designation of confidentiality at any time that is consistent with the Court's
28 Scheduling Order.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1 et seq.

3 6.3 The burden of persuasion in any such challenge proceeding shall be on
4 the Designating Party. Frivolous challenges, and those made for an improper
5 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
6 parties) may expose the Challenging Party to sanctions. Unless the Designating
7 Party has waived or withdrawn the confidentiality designation, all parties shall
8 continue to afford the material in question the level of protection to which it is
9 entitled under the Producing Party's designation until the Court rules on the
10 challenge.

11

12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is
14 disclosed or produced by another Party or by a Non-Party in connection with this
15 Action only for prosecuting, defending, or attempting to settle this Action. Such
16 Protected Material may be disclosed only to the categories of persons and under
17 the conditions described in this Order. When the Action has been terminated, a
18 Receiving Party must comply with the provisions of section 13 below (FINAL
19 DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a
21 location and in a secure manner that ensures that access is limited to the persons
22 authorized under this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
24 otherwise ordered by the court or permitted in writing by the Designating Party, a
25 Receiving Party may disclose any information or item designated
26 "CONFIDENTIAL" only to:

27 (a) the Receiving Party's Outside Counsel of Record in this Action, as
28 well as employees of said Outside Counsel of Record to whom it is reasonably

1 necessary to disclose the information for this Action;

2 (b) the officers, directors, and employees (including House Counsel) of
3 the Receiving Party to whom disclosure is reasonably necessary for this Action;

4 (c) Experts (as defined in this Order) of the Receiving Party to whom
5 disclosure is reasonably necessary for this Action and who have signed the
6 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7 (d) the court and its personnel;

8 (e) court reporters and their staff;

9 (f) professional jury or trial consultants, mock jurors, and Professional
10 Vendors to whom disclosure is reasonably necessary for this Action and who have
11 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

12 (g) the author or recipient of a document containing the information or a
13 custodian or other person who otherwise possessed or knew the information;

14 (h) during their depositions, witnesses, and attorneys for witnesses, in the
15 Action to whom disclosure is reasonably necessary provided: (1) the deposing
16 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
17 they will not be permitted to keep any confidential information unless they sign the
18 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
19 agreed by the Designating Party or ordered by the court. Pages of transcribed
20 deposition testimony or exhibits to depositions that reveal Protected Material may
21 be separately bound by the court reporter and may not be disclosed to anyone
22 except as permitted under this Stipulated Protective Order; and

23 (i) any mediator or settlement officer, and their supporting personnel,
24 mutually agreed upon by any of the parties engaged in settlement discussions.

25 For all information designated as "ATTORNEY'S EYES ONLY," the Receiving
26 Party may only disclose this information to the Outside Counsel of Record in this
27 Action.

28 ///

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification
7 shall include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order
9 to issue in the other litigation that some or all of the material covered by the
10 subpoena or order is subject to this Protective Order. Such notification shall
11 include a copy of this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with
15 the subpoena or court order shall not produce any information designated in this
16 action as “CONFIDENTIAL” before a determination by the court from which the
17 subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission. The Designating Party shall bear the burden and expense of seeking
19 protection in that court of its confidential material and nothing in these provisions
20 should be construed as authorizing or encouraging a Receiving Party in this Action
21 to disobey a lawful directive from another court.

22
23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
24 PRODUCED IN THIS LITIGATION

25 (a) The terms of this Order are applicable to information produced by a
26 Non-Party in this Action and designated as “CONFIDENTIAL” or “ATTORNEY’S
27 EYES ONLY.” Such information produced by Non-Parties in connection with this
28 litigation is protected by the remedies and relief provided by this Order. Nothing in

1 these provisions should be construed as prohibiting a Non-Party from seeking
2 additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to
4 produce a Non-Party's confidential information in its possession, and the Party is
5 subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the Non-Party
8 that some or all of the information requested is subject to a confidentiality
9 agreement with a Non-Party;

10 (2) promptly provide the Non-Party with a copy of the Stipulated
11 Protective Order in this Action, the relevant discovery request(s), and a reasonably
12 specific description of the information requested; and

13 (3) make the information requested available for inspection by the
14 Non-Party, if requested.

15 (c) If the Non-Party fails to seek a protective order from this court within
16 14 days of receiving the notice and accompanying information, the Receiving
17 Party may produce the Non-Party's confidential information responsive to the
18 discovery request. If the Non-Party timely seeks a protective order, the Receiving
19 Party shall not produce any information in its possession or control that is subject
20 to the confidentiality agreement with the Non-Party before a determination by the
21 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
22 expense of seeking protection in this court of its Protected Material.

23
24 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has
26 disclosed Protected Material to any person or in any circumstance not authorized
27 under this Stipulated Protective Order, the Receiving Party must immediately (a)
28 notify in writing the Designating Party of the unauthorized disclosures, (b) use its

1 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
2 the person or persons to whom unauthorized disclosures were made of all the terms
3 of this Order, and (d) request such person or persons to execute the
4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
5 A.

6
7 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
8 PROTECTED MATERIAL

9 When a Producing Party gives notice to Receiving Parties that certain
10 inadvertently produced material is subject to a claim of privilege or other
11 protection, the obligations of the Receiving Parties are those set forth in Federal
12 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
13 whatever procedure may be established in an e-discovery order that provides for
14 production without prior privilege review. Pursuant to Federal Rule of Evidence
15 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
16 of a communication or information covered by the attorney-client privilege or
17 work product protection, the parties may incorporate their agreement in the
18 stipulated protective order submitted to the court.

19
20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
22 person to seek its modification by the Court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this
24 Protective Order no Party waives any right it otherwise would have to object to
25 disclosing or producing any information or item on any ground not addressed in
26 this Stipulated Protective Order. Similarly, no Party waives any right to object on
27 any ground to use in evidence of any of the material covered by this Protective
28 Order.

1 12.3 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local Rule 79-5. Protected Material
3 may only be filed under seal pursuant to a court order authorizing the sealing of the
4 specific Protected Material at issue. If a Party's request to file Protected Material
5 under seal is denied by the court, then the Receiving Party may file the information
6 in the public record unless otherwise instructed by the court.

7
8 13. FINAL DISPOSITION

9 After the final disposition of this Action, as defined in paragraph 4, within
10 60 days of a written request by the Designating Party, each Receiving Party must
11 return all Protected Material to the Producing Party or destroy such material. As
12 used in this subdivision, "all Protected Material" includes all copies, abstracts,
13 compilations, summaries, and any other format reproducing or capturing any of the
14 Protected Material. Whether the Protected Material is returned or destroyed, the
15 Receiving Party must submit a written certification to the Producing Party if
16 requested by the Producing Party in writing (and, if not the same person or entity,
17 to the Designating Party) by the 60 day deadline that (1) identifies (by category,
18 where appropriate) all the Protected Material that was returned or destroyed and
19 (2) affirms that the Receiving Party has not retained any copies, abstracts,
20 compilations, summaries or any other format reproducing or capturing any of the
21 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
22 an archival copy of all pleadings, motion papers, trial documents, discovery
23 questions and responses, and hearing transcripts, legal memoranda,
24 correspondence, deposition and trial exhibits, expert reports, attorney work
25 product, and consultant and expert work product, even if such materials contain
26 Protected Material. Any such archival copies that contain or constitute Protected
27 Material remain subject to this Protective Order as set forth in Section 4
28 (DURATION).

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: July 31, 2018

/s/ C. Yong Jeong
C. Yong Jeong, Esq.
Regina S. Zernay, Esq.
Attorneys for Plaintiff JITRADE, INC.

DATED: August 1, 2018

/s/ Leontyne Fan
Tommy SF Wang, Esq.
Leontyne Fan, Esq.
Attorneys for Defendants
DESIGN OF DK, INC. d/b/a CUBE PLUS;
YONG WOO KIM; CICINDELAE, INC.
d/b/a ORANGE SHINE; and DO GI KIM

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED. DATED.

DATED: 8/3/2018

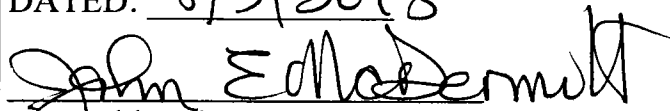

Honorable John E. McDermott
United States District/Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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 Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on [date] in the case of _____ *Jitrade, Inc. v. Design of DK, Inc. et al 2:18-*
cv-03034-SVW-JEM. I agree to comply with and to be bound by all the terms of
this Stipulated 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 Stipulated 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. I hereby appoint _____ [print
or type full name] of _____ [print or
type full address and telephone number] as my California agent for service of
process in connection with this action or any proceedings related to enforcement of
this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____