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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

OAKLEY, INC., a Washington corporation,

Plaintiff,

vs.

T H SUNGLASS CORP., a California
corporation,

Defendant.

Case No. 09CV1120-L (BLM)

ORDER ON STIPULATION AS TO
PROPOSED PROTECTIVE
ORDER

Stipulated Protective Order

1 not be implicated by the infringement claims asserted in this civil action. Purchase
2 invoices from the parties' suppliers often cover multiple SKUs as well. Thus, the
3 production of documents by either party showing purchase, importation and sale of
4 eyewear products would disclose a wealth of commercially sensitive information
5 to the other party including substantial information about unrelated SKUs. Unless
6 such documents can be limited to "Eyes of Counsel," the party receiving such
7 documents through discovery will obtain access to highly sensitive pricing
8 information, sourcing information, customer names, customer buying trends and
9 the like, accordingly,

10 IT IS HEREBY STIPULATED, subject to the Court's approval, and
11 ORDERED, pursuant to Federal Rules of Civil Procedure, Rule 26(c), that the
12 following provisions shall govern the handling of such confidential information
13 and documents in these proceedings:

14 1. Definitions.

15 (a) "Confidential Information". For purposes of this Order,
16 "confidential information" means information which the designating party deems
17 to constitute trade secrets or other confidential research, development, or
18 commercial information which is not publicly known and cannot be ascertained
19 from an inspection of publicly available documents, materials, or devices. It shall
20 be the duty of the party who seeks to invoke protection under this Order to give
21 notice, in the manner set forth hereinafter, of the information and documents and
22 testimony to be covered hereby, and the duty of any other party or person to
23 maintain the confidentiality thereof under this Order commences with such notice.

24 (b) "Documents". As used herein, the term "document" shall have
25 the most comprehensive and inclusive sense permitted by Rule 34 of the Federal
26 Rules of Civil Procedure and shall include, without limitation, any written or
27 graphic matter in any medium and of any type or description upon which
28 information is recorded.

1 (c) “Pleadings”. As used herein, “pleadings” means, without
2 limitation, the following items: complaint, answers, cross claims, counterclaims, or
3 amendments thereto, orders of the Court, briefs, memoranda, interrogatories and
4 responses thereto, requests for admissions and responses thereto, requests to
5 produce or any other documents and exhibits filed with this Court in connection
6 with this proceeding.

7 2. Levels of Confidentiality. In recognition of the fact there are different
8 degrees of sensitivity for various pieces of information and that it may be
9 necessary for counsel to show some confidential materials to independent experts
10 and to client representatives in order to prepare the case for trial, there will be two
11 levels of confidentiality hereunder:

12 (a) “CONFIDENTIAL-CATEGORY 1-ATTORNEYS EYES ONLY”
13 confidential materials shall be disclosed only to (i) counsel of record for a non-
14 designating party, the members of their firm, and their office personnel assisting in
15 the conduct of the case; (ii) authors of and lawful recipients of the Confidential
16 Category 1—Attorneys Eyes Only confidential materials; (iii) other persons with
17 the prior written approval of counsel for the designating party or non-party and
18 with written approval of opposing counsel; and (iv) experts retained to assist
19 counsel in the preparation of the case and their office personnel, provided that the
20 names and employment affiliations of the experts are provided to the disclosing
21 party’s counsel at least 10 days in advance of such disclosure so that counsel for
22 the disclosing party may have an opportunity to object to the Court prior to such
23 disclosure, in which case such disclosure shall not occur pending resolution by the
24 Court.

25 (b) “CONFIDENTIAL-CATEGORY 2” confidential materials may be
26 shown to persons authorized to review Category 1 documents as well as the parties
27 or their officers, directors, and employees to the extent necessary for the conduct of
28 this action, authors of and lawful recipients of the Confidential Category 2—

1 Attorneys Eyes Only confidential materials and deponents noticed by the parties.

2 (c) Each independent expert and other individual receiving
3 confidential information shall be shown a copy of this Order before receiving any
4 confidential materials and shall sign a copy of the Order agreeing to be bound by
5 its terms. Disclosing counsel shall retain the signed copies of the Order.

6 3. Designation of Documents, Pleadings or Things. Documents,
7 pleadings (or portions thereof) or things produced in the course of discovery herein
8 (either formally or informally) which the producing party deems to contain
9 confidential information, within the meaning of this Order, shall be designated as
10 confidential by the producing party at the time of production, and copies of
11 documents, pleadings, things or portions thereof deemed to be confidential shall be
12 specifically identified and marked "CONFIDENTIAL - Category (1 or 2)" by the
13 producing party at the time of production.

14 4. Designation of Deposition Testimony.

15 (a) At the Deposition. At any deposition session, upon any inquiry
16 with regard to the content of a confidential document, or when counsel for a party
17 deems that the answer to a question will result in the disclosure of confidential
18 information of his client within the meaning of this Order, counsel, at his option, in
19 lieu of taking other steps available under the Federal Rules of Civil Procedure in
20 such situation, may direct that the question and answer be transcribed separately
21 from the remainder of the deposition and be filed in a sealed envelope marked in
22 accordance with paragraph 3 herein. When such a direction has been given, the
23 testimony shall be disclosed only to those individuals specified in Paragraph 2
24 hereof, and the information contained therein shall not be used for any purpose
25 other than for purposes of this suit. Counsel for the party whose confidential
26 information is involved may also request that all persons other than the reporter,
27 counsel and individuals specified in Paragraph 2 hereof leave the deposition room
28 during the confidential portion of the deposition. The failure of such other persons

1 to comply with a request of this type shall constitute substantial justification for
2 counsel to advise the witness that he need not answer the question. Each party
3 shall have only one representative attend depositions of another party or third party
4 witnesses.

5 (b) Subsequent to the Deposition. Alternatively, parties may, within
6 thirty (30) days after receipt of a deposition or hearing transcript, designate in
7 writing to all parties any pages containing confidential information under
8 paragraph 2(a) or 2(b) of this Order. Access to the portion of any transcript so
9 designated shall thereafter be limited in accordance with the terms of this Order.

10 5. Good Faith Requirement. A party shall only classify materials under
11 paragraph 2 of this Order upon a good faith belief that the material contains
12 confidential proprietary information and that classification under paragraph 2 will,
13 in that party's opinion, prevent commercial damage to that party.

14 6. Filing with the Court. Without the written permission from the
15 Designating Party or a court order secured after appropriate notice to all interested
16 persons, a Party may not file in the public record in this action any documents or
17 things containing designated Confidential Information. A Party that seeks to file
18 under seal any documents containing designated Confidential Information shall file
19 an application with the court for leave to file papers under seal and said Party must
20 comply with Local Rule 79.2 and Local Patent Rule 2.2 with respect to said
21 application. Pending the ruling on any such application, the documents or portions
22 thereof subject to the sealing application shall be lodged with the court under seal.

23 7. Restriction on Disclosure. No person or party receiving any document
24 or information designated as confidential under this Stipulated Protective Order
25 shall disclose such to anyone not specified in Section 2 hereof, nor use such for
26 any purpose other than for the purposes of this action (i.e. preparation for trial, trial
27 and any pretrial or post-trial proceeding), without the prior written consent of the
28 designating party or further order of this Court.

1 8. Information in Public Domain. Counsel for a non-designating party
2 shall have the right to assert that any information designated confidential is, in fact,
3 in the public domain. Any information which, prior to disclosure hereunder, is
4 either in the possession or knowledge of a non-designating party or person who,
5 absent this Order, is under no restriction with respect to the dissemination of such
6 confidential information, or is public knowledge or which, after disclosure,
7 becomes public knowledge other than through an act or omission of a party
8 receiving the information designated as confidential, shall be deemed to be in the
9 public domain. A non-designating party or person asserting that designated
10 information is in the public domain shall, prior to any disclosure (outside of the
11 parameters of this Order) of such information previously designated confidential,
12 either obtain the approval, in writing, of the designating party, or the approval of
13 the Court to make such disclosure.

14 9. Relief from Order. This Stipulated Protective Order is intended to
15 provide a mechanism for the handling of confidential information and documents
16 to the disclosure or production of which there is no objection other than
17 confidentiality. This Order shall be without prejudice to the rights of the parties to
18 object to the disclosure of information or production of documents it deems
19 confidential or to bring before this Court at any time the question whether any
20 particular information is or is not confidential, whether such information is
21 properly categorized, or whether disclosure at trial in open court is nevertheless
22 necessary in the interest of justice. Any party may also move for relief from, or
23 general or particular modification of, the mechanism for maintaining
24 confidentiality hereunder or the application of this Order in any particular
25 circumstance.

26 10. Term of Order. This Stipulated Protective Order is intended to
27 regulate the handling of confidential information and documents during the pretrial
28 period of this litigation, but shall remain in force and effect and shall survive the

1 termination of this action, unless or until it is modified, superseded or terminated
2 on the record by agreement of the parties hereto or by order of this Court. This
3 Stipulated Protective Order may only be amended by order of the Court.

4 11. Third Parties. To the extent that any discovery is taken of persons
5 who are not parties to this action (“third parties”) and in the event such third
6 parties or the parties hereto contend the discovery sought involves confidential
7 proprietary information, then such third parties may agree to be bound by this
8 Order. Third parties who have been subpoenaed to testify or produce documents
9 may designate any deposition testimony or, with the approval of the court, hearing
10 or trial testimony, or document or thing produced by them contains information,
11 which is Confidential information and/or Confidential Attorneys Eyes Only
12 information, and such third parties shall have the same rights and obligations with
13 respect to such information as the parties hereto.

14 12. No Waiver. The failure to designate information in accordance with this
15 Order or the failure to object to a designation at a given time shall not preclude the
16 filing of a motion at a later date seeking to impose a designation or challenging a
17 designation.

18 13. Violations of Order. Any party knowing or believing that any other
19 party is in violation of or intends to violate this Order and has raised the question
20 of violation or potential violation with the opposing party and has been unable to
21 resolve the matter by agreement, may move the Court for an injunction or an Order
22 to Show Cause seeking to hold that party in contempt of Court and seeking such
23 other relief as may be appropriate under the circumstances. Any such motion shall
24 be supported by evidence to verify the claims of the dispute. If the Magistrate
25 Judge lacks authority to issue an injunction or contempt order, the parties agree to
26 have the matter heard by the District Court Judge assigned to the case. The parties
27 have stipulated that pending disposition of the motion by the Court, the party
28 alleged to be in violation of or intending to violate this Order shall voluntarily

1 discontinue the performance of and/or shall not undertake the further performance
2 of any action alleged to constitute a violation of this Order. The Court accepts this
3 stipulation as voluntarily binding by and between the parties.

4 14. Jurisdiction of Court. The Court retains jurisdiction to enforce the
5 provisions of this Stipulated Protective Order and to make such amendments,
6 modifications, and additions to this Stipulated Protective Order as the Court may
7 from time to time deem appropriate during the pendency of the case.

8 15. Return of Materials. Within sixty (60) days after final termination of
9 this action, including all appeals, each receiving party shall be under an obligation
10 to assemble and return to the designating party all documentary material or
11 memoranda embodying information still designated confidential, including all
12 copies of such memoranda or documentary material which may have been made.
13 Receipt of such documentary material by the party from whom it emanated shall be
14 acknowledged in writing.

15 16. Unless the parties otherwise stipulate, evidence of the existence or
16 nonexistence of a designation under this Protective Order shall not be admissible
17 for any purpose.

18 17. Stipulation to this Order shall not affect Defendant's right to seek
19 transfer of court for improper venue. However, any right or obligation of either
20 party under this Protective Order shall not be affected by such transfer, if any. To
21 be clear, Plaintiff contends that venue is proper in this case, and by no means
22 consents to transfer or believes that a transfer would be appropriate.

23 IT IS SO ORDERED.

24
25 DATED: September 11,
26 _____, 2009

27 Barbara Majori
28 U.S. MAGISTRATE JUDGE