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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HP HOOD LLC,)	Civil No.09cv1663 LAB (AJB)
)	
Plaintiff,)	
v.)	ORDER GRANTING JOINT MOTION
)	FOR PROTECTIVE ORDER
STREMICKS HERITAGE FOODS LLC,)	
)	(Doc No. 33)
Defendants.)	
_____)	

The Court recognizes that at least some of the documents and information ("materials") being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. For purposes of this Order, "parties" shall also include any non-party who produced materials in this action. The parties have agreed to be bound by the terms of this Stipulated Protective Order ("Order") in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(7). The purpose of this Order is to protect the confidentiality of such materials as much as practical during the litigation. THEREFORE:

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1 DEFINITIONS

2 1. The term "Confidential Information" will mean and include information contained or disclosed
3 in any materials, including documents, portions of documents, answers to interrogatories, responses to
4 requests for admissions, trial testimony, deposition testimony, and transcripts of trial testimony and
5 depositions, including data, summaries, and compilations derived therefrom that is deemed to be
6 Confidential Information by any party to which it belongs.

7 2. The term "materials" will include, but is not limited to: documents; correspondence; memoranda;
8 bulletins; blueprints; specifications; customer lists or other material that identify customers or potential
9 customers; price lists or schedules or other matter identifying pricing; minutes; telegrams; letters;
10 statements; cancelled checks; contracts; invoices; drafts; books of account; worksheets; notes of
11 conversations; desk diaries; appointment books; expense accounts; recordings; photographs; motion
12 pictures; compilations from which information can be obtained and translated into reasonably usable
13 form through detection devices; sketches; drawings; notes (including laboratory notebooks and records);
14 reports; instructions; disclosures; other writings; models and prototypes and other physical objects.

15 3. The term "counsel" will mean outside counsel of record, and other attorneys, paralegals,
16 secretaries, and other support staff employed in the law firms identified below: Sunstein Kann Murphy
17 & Timbers, LLC; Sheppard, Mullin, Richter & Hampton LLP; Rutan & Tucker , LLP.

18 GENERAL RULES

19 4. Each party to this litigation that produces or discloses any materials, answers to interrogatories,
20 responses to requests for admission, trial testimony, deposition testimony, and transcripts of trial
21 testimony and depositions, or information that the producing party believes should be subject to this
22 Protective Order may designate the same as "CONFIDENTIAL" or "CONFIDENTIAL - FOR
23 COUNSEL ONLY."

24 a. Designation as "CONFIDENTIAL": Any party may designate information as "CONFIDEN-
25 TIAL" only if, in the good faith belief of such party and its counsel, the unrestricted disclosure of such
26 information could be potentially prejudicial to the business or operations of such Party.

27 b. Designation as "CONFIDENTIAL - FOR COUNSEL ONLY": Any party may designate
28 information as "CONFIDENTIAL - FOR COUNSEL ONLY" only if, in the good faith belief of such

1 party and its counsel, the information is among that considered to be most sensitive by the party,
2 including but not limited to trade secret or other confidential research, development, financial or other
3 commercial information. Notwithstanding any other provision of this Order, Hood's in-house counsel
4 shall not be precluded from seeing information relating to the design, development or decision to make,
5 use, sell or offer to sell the accused bottles, even if any such documents are designated "CONFIDEN-
6 TIAL - FOR COUNSEL ONLY."

7 5. In the event the producing party elects to produce materials for inspection, no marking need be
8 made by the producing party in advance of the initial inspection. For purposes of the initial inspection,
9 all materials produced will be considered as "CONFIDENTIAL - FOR COUNSEL ONLY," and must be
10 treated as such pursuant to the terms of this Order. Thereafter, upon selection of specified materials for
11 copying by the inspecting party, the producing party must, within a reasonable time prior to producing
12 those materials to the inspecting party, mark the copies of those materials that contain Confidential
13 Information with the appropriate confidentiality marking.

14 6. Whenever a deposition taken on behalf of any party involves a disclosure of Confidential
15 Information of any party:

16 a. Confidential Information may be disclosed to a deponent, where the deponent does not otherwise
17 qualify above to have access to such Confidential Information, only if the Producing Party has had an
18 opportunity to review the Confidential Information sought to be disclosed and has not interposed an
19 objection. If the Producing Party interposes an objection, then the Confidential Information shall not be
20 disclosed until the parties have resolved the issue themselves or upon entry of a relevant court order.
21 Any documents designated as Confidential which are disclosed to a deponent at his/her deposition shall
22 not be retained by the deponent.

23 b. the deposition or portions of the deposition must be designated as containing Confidential
24 Information subject to the provisions of this Order; such designation must be made on the record
25 whenever possible, but a party may designate portions of depositions as containing Confidential
26 Information after transcription of the proceedings; [A] party will have until fourteen (14) days after
27 receipt of the deposition transcript to inform the other party or parties to the action of the portions - by
28

1 page and line number - of the transcript to be designated "CONFIDENTIAL" or "CONFIDENTIAL -
2 FOR COUNSEL ONLY."

3 c. the disclosing party will have the right to exclude from attendance at the deposition, during such
4 time as the Confidential Information is to be disclosed, any person other than the deponent, counsel
5 (including their staff and associates), the court reporter, the videographer (if the deposing party chooses
6 to use one), and the person(s) agreed upon pursuant to paragraph 8 below; and

7 d. the originals of the deposition transcripts and all copies of the deposition must bear the legend
8 "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY," as appropriate, and the original
9 or any copy ultimately presented to a court for filing must not be filed unless it can be accomplished
10 under seal, identified as being subject to this Order, and protected from being opened except by order of
11 this Court.

12 7. All Confidential Information designated as "CONFIDENTIAL" or "CONFIDENTIAL - FOR
13 COUNSEL ONLY" must not be disclosed by the receiving party to anyone other than those persons
14 designated within this order and must be handled in the manner set forth below and, in any event, must
15 not be used for any purpose other than in connection with this litigation, unless and until such designa-
16 tion is removed either by agreement of the parties, or by order of the Court.

17 8. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY" must be viewed only by
18 counsel (as defined in paragraph 3) of the receiving party, and by independent experts under the
19 conditions set forth in this Paragraph. The right of any independent expert to receive any Confidential
20 Information will be subject to the advance approval of such expert by the producing party or by
21 permission of the Court. The party seeking approval of an independent expert must provide the
22 producing party with the name and curriculum vitae of the proposed independent expert - showing
23 employment/consulting history, including any prior employment or affiliation with any of the Parties,
24 any known competitor of the Parties, any Person or entity involved in the dairy, beverage or bottling
25 industries - and an executed copy of the form attached hereto as Exhibit A, in advance of providing any
26 Confidential Information of the producing party to the expert. Any objection by the producing party to
27 an independent expert receiving Confidential Information must be made in writing within five (5)
28 business days following receipt of the identification of the proposed expert. Confidential Information

1 may be disclosed to an independent expert if the five (5) business day period has passed and no
2 objection has been made. The approval of independent experts must not be unreasonably withheld.

3 9. Information designated "CONFIDENTIAL" must be viewed only by counsel (as defined in
4 paragraph 3) of the receiving party, by independent experts (pursuant to the terms of paragraph 8), and
5 by the additional individuals listed below, provided each such individual has read this Order in advance
6 of disclosure and has agreed in writing to be bound by its terms:

- 7 a. Employees who are required to participate in policy decisions with reference to this action;
- 8 b. Technical personnel of the parties with whom Counsel for the parties find it necessary to consult,
9 in the discretion of such counsel, in preparation for trial of this action; and
- 10 c. Stenographic and clerical employees associated with the individuals identified above.

11 10. With respect to material designated "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUN-
12 SEL ONLY," any person indicated on the face of the document to be its originator, author or a recipient
13 of a copy of the document, may be shown the same.

14 11. All information which has been designated as "CONFIDENTIAL" or "CONFIDENTIAL -FOR
15 COUNSEL ONLY" by the producing or disclosing party, and any and all reproductions of that
16 information, must be retained in the custody of the counsel for the receiving party identified in
17 paragraph 3, except that independent experts authorized to view such information under the terms of this
18 Order may retain custody of copies such as are necessary for their participation in this litigation.

19 12. Before any materials produced in discovery, answers to interrogatories, responses to requests for
20 admissions, deposition transcripts, or other documents which are designated as Confidential Information
21 are filed with the Court for any purpose, the party seeking to file such material must seek permission of
22 the Court to file the material under seal. Nothing will be accepted for filing under seal with the Court
23 without separate prior order by the judge before whom the hearing or proceeding will take place. Such
24 order must be sought by ex parte application by the affected party with appropriate notice to opposing
25 counsel.

26 13. At any stage of these proceedings, any party may object to a designation of the materials as
27 Confidential Information. The party objecting to confidentiality must notify, in writing, counsel for the
28 designating party of the objected-to materials and the grounds for the objection. If the dispute is not

1 resolved consensually between the parties within seven (7) calendar days of receipt of such a notice of
2 objections, the objecting party may move the Court for a ruling on the objection. The materials at issue
3 must be treated as Confidential Information, as designated by the designating party, until the Court has
4 ruled on the objection or the matter has been otherwise resolved.

5 14. All Confidential Information must be held in confidence by those inspecting or receiving it, and
6 must be used only for purposes of this action. Counsel for each party, and each person receiving
7 Confidential Information must take reasonable precautions to prevent the unauthorized or inadvertent
8 disclosure of such information. If Confidential Information is disclosed to any person other than a
9 person authorized by this Order, the party responsible for the unauthorized disclosure must immediately
10 bring all pertinent facts relating to the unauthorized disclosure to the attention of the other parties and,
11 without prejudice to any rights and remedies of the other parties, make every effort to prevent further
12 disclosure by the party and by the person(s) receiving the unauthorized disclosure.

13 15. No party will be responsible to another party for disclosure of Confidential Information under
14 this Order if the information in question is not labeled or otherwise identified as such in accordance with
15 this Order.

16 16. If a party, through inadvertence, produces any Confidential Information without labeling or
17 marking or otherwise designating it as such in accordance with this Order, the designating party may
18 give written notice to the receiving party that the document or thing produced is deemed Confidential
19 Information, and that the document or thing produced should be treated as such in accordance with that
20 designation under this Order. The receiving party must treat the materials as confidential, once the
21 designating party so notifies the receiving party. If the receiving party has disclosed the materials before
22 receiving the designation, the receiving party must notify the designating party in writing of each such
23 disclosure. Counsel for the parties will agree on a mutually acceptable manner of labeling or marking
24 the inadvertently produced materials as "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL
25 ONLY" - subject to the Protective Order.

26 17. Any Producing Party that inadvertently or unintentionally produces material subject to
27 attorney-client privilege or work-product immunity may so designate the Produced Material by
28 notifying the Receiving Parties promptly upon discovery of the error. The inadvertent or unintentional

1 production of material subject to attorney-client privilege or work-product immunity will not be deemed
2 to constitute a waiver of such privilege, immunity, or rights, or any other privilege, immunity, or rights
3 that would otherwise attach to such material, irrespective of whether such inadvertent production would
4 be deemed a "waiver" under Fed. R. Evid. 502. Upon a request from any Producing Party who has
5 inadvertently produced discovery material that it believes is privileged or protected, each Receiving
6 Party shall immediately return such Produced Material and all copies to the Producing Party. Nothing
7 herein shall prevent any Receiving Party from preparing a record for its own use containing the
8 production numbers (Bates range) of the inadvertently Produced Material, along with its date, author
9 and recipients, so as to identify the inadvertently Produced Material to the Court in any motion to
10 compel the production of such Material.

11 18. Nothing within this order will prejudice the right of any party to object to the production of any
12 discovery material on the grounds that the material is protected as privileged or as attorney work
13 product.

14 19. Nothing in this Order will bar counsel from rendering advice to their clients with respect to this
15 litigation and, in the course thereof, relying upon any information designated as Confidential Informa-
16 tion, provided that the contents of the information must not be disclosed.

17 20. This Order will be without prejudice to the right of any party to oppose production of any
18 information for lack of relevance or any other ground other than the mere presence of Confidential
19 Information. The existence of this Order must not be used by either party as a basis for discovery that is
20 otherwise improper under the Federal Rules of Civil Procedure.

21 21. Nothing within this order will be construed to prevent disclosure of Confidential Information if
22 such disclosure is required by law or by order of the Court.

23 22. Upon final termination of this action, including any and all appeals, counsel for each party must,
24 within sixty (60) days of a request from the producing party, return all Confidential Information to the
25 party that produced the information, including any copies, excerpts, and summaries of that information,
26 or must destroy same at the option of the receiving party, and must purge all such information from all
27 machine-readable media on which it resides. Notwithstanding the foregoing, counsel for each party may
28 retain all pleadings, briefs, memoranda, motions, and other documents filed with the Court that refer to

1 or incorporate Confidential Information, and will continue to be bound by this Order with respect to all
2 such retained information. Further, attorney work product materials that contain Confidential Informa-
3 tion need not be destroyed, but, if they are not destroyed, the person in possession of the attorney work
4 product will continue to be bound by this Order with respect to all such retained information.

5 23. The restrictions and obligations set forth within this order will not apply to any information that:

6 (a) the parties agree should not be designated Confidential Information; (b) the parties agree, or the
7 Court rules, is already public knowledge; (c) the parties agree, or the Court rules, has become public
8 knowledge other than as a result of disclosure by the receiving party, its employees, or its agents in
9 violation of this Order; or (d) has come or will come into the receiving party's legitimate knowledge
10 independently of the production by the designating party. Prior knowledge must be established by
11 pre-production documentation.

12 24. The restrictions and obligations within this order will not be deemed to prohibit discussions of
13 any Confidential Information with anyone if that person already has or obtains legitimate possession of
14 that information.


15 25. Transmission by facsimile or email is acceptable for all notification purposes within this order.

16 26. This Order maybe modified by agreement of the parties, subject to approval by the Court.

17 27. The Court may modify the terms and conditions of this Order for good cause, or in the interest of
18 justice, or on its own order at any time in these proceedings. The parties prefer that the Court provide
19 them with notice of the Court's intent to modify the Order and the content of those modifications, prior
20 to entry of such an order.

21
22 IT IS SO ORDERED

23
24 DATED: April 8, 2010

25 
26 Hon. Anthony J. Battaglia
27 U.S. Magistrate Judge
28 United States District Court