

1 Pursuant to Federal Rule of Civil Procedure 26(c), the following confidentiality
2 protective order is entered with respect to third-party, Four Star Distribution (incorrectly
3 named as CIRCA Footwear & Apparel) ("Four Star"):
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6 **1. PURPOSE.**

7 K-Swiss Inc. ("K-Swiss") is the defendant in a trademark infringement action pending
8 in the United States District Court for the District of Massachusetts captioned Puma AG
9 Rudolf Dassler Sport and Puma North America, Inc. v. K-Swiss Inc. (Civil Action No. 09-cv-
10 10718) (the "Massachusetts Action"). Puma AG Rudolf Dassler Sport and Puma North
11 America, Inc. are hereafter, collectively, referred to as "Puma." K-Swiss is currently
12 conducting discovery in the Massachusetts Action and has issued, from this District, a
13 subpoena against Four Star Distribution.

14 **2. DEFINITIONS**

15 2.1 Party: "Party" means a party to the Massachusetts Action: K-Swiss Inc., Puma
16 AG Rudolph Rudolf Dassler Sport, or Puma North America, Inc. (collectively, the "Parties").

17 2.2 Discovery Material: "Discovery Material" means any information, document
18 or tangible thing, in hard copy or electronic format subject to subpoena or subpoena duces
19 tecum, deposition testimony or transcript, or exhibit including material that is voluntarily
20 produced, and any other similar material, or portions of such material, furnished, directly or
21 indirectly, by or on behalf of Four Star.
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1 2.3 "Confidential" Information: Four Star may designate as "Confidential,"
2 pursuant to the procedures set forth in paragraph 3.1, those materials which Four Star in good
3 faith believes constitute or contain confidential, proprietary, commercially sensitive, and/or
4 trade secret information, which information is not generally known and which Four Star
5 would normally not reveal to third parties or, if disclosed, would require such third parties to
6 maintain in confidence.

7 2.4 "Highly Confidential - Counsel Only" Information: Four Star may designate as
8 "Highly Confidential - Counsel Only," pursuant to the procedures set forth in paragraph 3.2,
9 any confidential, proprietary, commercially sensitive, and/or trade secret information which
10 that Four Star in good faith believes is so highly sensitive that the protections afforded by a
11 "Confidential" designation are not sufficient. This designation shall be reserved for
12 information that constitutes, reflects, or concerns particularly sensitive proprietary, technical,
13 financial, marketing, or other business information, trade secrets, or know-how.

14 2.5 Receiving Party: "Receiving Party" means a Party who receives Discovery
15 Material from a Producing Party.

16 2.6 Producing Party: "Producing Party" means Four Star.

17 2.7 Protected Material: "Protected Material" means any Discovery Material that is
18 designated as "Confidential" or "Highly Confidential - Counsel Only" in accordance with
19 paragraph 3.1 or 3.2 below, and any copies, abstracts, summaries, or information derived
20 from such Discovery Material, and any notes or other records regarding the contents of such
21 Discovery Material.

22 2.8 Counsel: "Counsel" means counsel of record for the Parties (excluding any
23 in-house counsel for either) and includes lawyers who are partners and "of counsel" with a
24 counsel of record, full and part-time attorneys employed by or contracting with (i) counsel of
25 record; (ii) counsel of record's law firms and all employees and contractors of such firms,
26 including, without limitation, paralegals, assistants, and stenographic and clerical employees
27 to whom it is necessary to disclose Protected Material for the purpose of this action.
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1 2.9 Expert: "Expert" means an expert and/or consultant retained or employed by or
2 for either of the Parties to advise or to assist Counsel in the preparation and/or trial of the
3 Action. For purposes of this Protective Order, the term "Expert" shall include the partners,
4 associates, and employees employed by or of the firm which employs such expert or
5 consultant.

6 **3. DESIGNATION OF PROTECTED MATERIAL.**

7 3.1 Designation of Confidential Information: Each page of any document or
8 transcript of oral testimony produced or given that is asserted by the Producing Party to
9 contain or constitute Confidential information shall be so designated in writing by such
10 Producing Party. Each such document or transcript of testimony shall be clearly and
11 prominently marked on its face with the legend "CONFIDENTIAL" preceded by a letter or
12 letters identifying the Producing Party or other comparable notice. If the Receiving Party
13 wishes to show non-confidential portions of a document or transcript containing Confidential
14 information to a person or party not described below in paragraph 4.2, it shall first redact all
15 pages (or portions of pages) marked as containing Confidential information.

16 3.2 Designation of Highly Confidential - Counsel Only Information: Each page of
17 any document or transcript of oral testimony produced or given in this action that is asserted
18 by the Producing Party to contain or constitute Highly Confidential - Counsel Only
19 information shall be so designated by such Producing Party. Each such document or
20 transcript of testimony shall be clearly and prominently marked on its face with the legend
21 "HIGHLY CONFIDENTIAL - COUNSEL ONLY", or with substantially similar language
22 such as "CONFIDENTIAL - AEO", or "ATTORNEYS' EYES ONLY", preceded by a letter
23 or letters identifying the Producing Party or other comparable notice. If the Receiving Party
24 wishes to show non-highly confidential portions of a document or transcript containing
25 Highly Confidential - Counsel Only information to a person or party not described below in
26 paragraph 4.3, it shall first redact all pages (or portions of pages) marked as containing
27 Highly Confidential - Counsel Only information.
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1 3.3 Designation of Non-Paper Media: Any Protected Material produced in a non-
2 paper media (e.g., videotape, audiotape) may be designated as Confidential or Highly
3 Confidential - Counsel Only by labeling the outside of such non-paper media in accordance
4 with paragraph 3.1 or 3.2, as appropriate. In the event a Receiving Party generates any "hard
5 copy," transcription, or printout from any such designated non-paper media, the Receiving
6 Party must immediately stamp each page with the designation, if any, found on the outside of
7 the non-paper media and the hard copy, transcription or printout shall be treated accordingly.
8 However, if any Producing Party produces in electronic format electronic documents that
9 contain Protected Material, the Producing Party shall electronically mark each page with the
10 designation Confidential or Highly Confidential - Counsel Only in accordance with paragraph
11 3.1 or 3.2 as if the Protected Material were in paper format.

12 3.4 Designations of Protected Material: Any person who creates Protected
13 Material based upon or derived from Discovery Material shall label such Protected Material
14 with the most restrictive labeling of any Discovery Material upon which such Protected
15 Material is based or from which it is derived. In other words, if Protected Material is derived
16 from or based on Highly Confidential - Counsel Only Discovery Material, in whole or in part,
17 it shall be labeled as "Highly Confidential - Counsel Only" in accordance with paragraph 3.2.
18 If Protected Material is derived from or based upon Confidential Discovery Material in its
19 entirety (and is not derived from or based upon any "Highly Confidential - Counsel Only"
20 Discovery Material) such Protected Material shall be labeled as "Confidential" in accordance
21 with paragraph 3.1. Any Protected Material so labeled will be subject to this Protective Order
22 as though it was Discovery Material, and the Producing Party of the Discovery Material upon
23 or from which such Protected Material was based or derived shall be deemed to be the
24 Producing Party with respect to such Protected Material.

25 3.5 Timing of and Challenges to Designations: Any designation of confidentiality
26 with respect to depositions must be on the record of a deposition or served in writing within
27 fifteen (15) calendar days after receipt of the "final" transcript (subject only to witness review
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1 and not in draft, rough ASCII, or real-time copy). Unless otherwise agreed, all deposition
2 transcripts and exhibits shall be treated as "Highly Confidential - Counsel Only"- until the
3 expiration of such fifteen (15) calendar day period. Any late designation shall be treated in
4 accordance with paragraph 5.8. Except as otherwise provided in this Protective Order, all
5 designations of confidentiality of written or documentary materials must be made at the time
6 of the production or disclosure of such Discovery Material. In the event of any disagreement
7 between a Producing Party and a Receiving Party with respect to a designation made by a
8 Producing Party or any assertions made by a Receiving Party that confidentiality has been
9 waived, the Receiving Party must nevertheless abide by the original designation made by the
10 Producing Party until the matter is resolved by agreement of the Producing and Receiving
11 Parties or by order of this Court. The Producing Party claiming that material or deposition
12 testimony is Protected Material shall have the burden of proof to establish such rights, except
13 that any Receiving Party claiming an "exclusion" pursuant to paragraph 3.6 shall bear the
14 burden of proof for such exclusion.

15 3.6 Exclusions from Protective Order: Discovery Material shall not be
16 confidential, nor shall disclosure of such Discovery Material be limited in accordance with
17 this Protective Order, if the content and/or substance thereof was already in the lawful
18 possession of a Receiving Party at the time of disclosure by the Producing Party and was not
19 acquired directly or indirectly from the Producing Party.

20 **4. ACCESS TO USE AND CUSTODY OF PROTECTED MATERIAL.**

21 4.1 General: A record shall be made of the names of the persons to whom
22 disclosure of Protected Material is made (other than to Counsel and outside contractors hired
23 by Counsel to copy, index, sort, or otherwise manage the storage and retrieval of discovery).
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25 4.2 Access to Confidential Information: In the absence of written permission from
26 the Producing Party or an order of this Court, a Receiving Party shall use any Confidential
27 information designated in accordance with the provisions of paragraph 3.1 solely for purposes
28 of the Massachusetts Action and/or U.S. Administrative proceedings in the T.T.A.B.

1 (including appeals) between the Parties involving the FORMSTRIP trademark and
2 registrations thereof, and shall not disclose such information to or discuss such information
3 with any person other than: (a) one named in-house lawyer of each Party (b) Counsel as
4 defined in paragraph 2.8; (c) court reporters, stenographers, or videographers; (d) any person
5 who can be shown from the face of the document to have authored or received it; (e) any
6 former officers or employees being deposed in this action or as a witness at trial if (i) such
7 designated information or document was in existence at the time of the witness' employment
8 with Four Star; and (ii) such person otherwise would have been qualified to receive such
9 designated information or document while employed by Four Star; (f) Experts; (g) U.S.
10 courts and U.S. administrative tribunals and their support personnel; (h) any mediator
11 retained by the parties to mediate this Action; and (i) any other persons or entities agreed to in
12 writing by the Parties and Four Star, or as determined by this Court. Under no circumstances
13 shall Confidential information be made available to the Receiving Party or any other director,
14 officer, manager, employee, agent, or representative of the Receiving Party except as stated in
15 this paragraph. Nothing contained in this Protective Order shall affect the right of the
16 Producing Party to disclose to anyone Confidential information that the Producing Party has
17 designated as Confidential information.

18 4.3 Access to Highly Confidential - Counsel Only Information: In the absence of
19 written permission from the Producing Party or an order of this Court, a Receiving Party shall
20 use any Highly Confidential - Counsel Only information designated in accordance with the
21 provisions of paragraph 3.2 solely for purposes of the Massachusetts Action and/or U.S.
22 Administrative proceedings in the T.T.A.B (including appeals) between the Parties involving
23 the FORMSTRIP trademark and registrations thereof, and shall not disclose such information
24 to or discuss such information with any person other than those set out in subparagraphs 4.2
25 (b) through (i). Under no circumstances shall Highly Confidential - Counsel Only
26 information be made available to the Receiving Party or any other director, officer, in-house
27 counsel, manager, employee, agent, or representative of the Receiving Party except as stated
28 in this paragraph. Nothing contained in this Protective Order shall affect the right of the

1 Producing Party to disclose to anyone Highly Confidential - Counsel Only information that
2 the Producing Party has designated as Confidential information.

3 4.4 Use of Protected Material at a Deposition: Whenever any Protected Material is
4 presented or is the subject of inquiry at a deposition, or if counsel for Four Star in the
5 deposition designates that an answer to a question or line of questioning is "Confidential" or
6 "Highly Confidential - Counsel Only", such portion of the deposition that may reveal the
7 "Confidential" or "Highly Confidential - Counsel Only" information or its contents shall be
8 conducted (unless otherwise agreed by counsel for the parties in writing or upon the record of
9 a deposition) so that only those persons duly authorized to have access to such "Confidential"
10 or "Highly Confidential - Counsel Only" information are present. Any transcript of a
11 deposition in which "Confidential" or "Highly Confidential - Counsel Only" information is
12 presented or is the subject of inquiry shall be marked in accordance with the procedures set
13 forth in paragraphs 3.1 or 3.2, as applicable, and paragraph 5, and shall not be disclosed to
14 persons other than those persons duly authorized hereunder to have access thereto, unless
15 those questions or answers or exhibits designated as "Confidential" or "Highly
16 Confidential - Counsel" have been removed from the copies or the parties otherwise agree in
17 writing.

18 4.5 Custody of Protected Material: All documents containing Protected Material
19 and notes or other records regarding that information shall be maintained in the custody of
20 Counsel for the Parties, and except as otherwise agreed by the Producing Party no partial or
21 complete copies thereof containing Protected Material shall be retained by anyone else at any
22 location, other than at an office or home office of Counsel (or in transit), except that Experts
23 may retain documents on a temporary basis for purposes of study, analysis, and preparation of
24 this action at the offices of such Expert. A person, including any Expert, who removes
25 Protected Material from the office or home office of Counsel shall maintain it in a manner
26 that limits access to persons identified in paragraph 4.2 (for Confidential information) or 4.3
27 (for Highly Confidential - Counsel Only information). No Protected Material shall be used or
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1 retained at an office or location of a Receiving Party, except that one named in-house lawyer
2 of each K-Swiss and Puma may review in his or her office electronic copies of Confidential
3 information, but may not retain any such Confidential information for storage or for display.

4 4.6 Disclosure to Experts. Experts who in the course of the Action may be given
5 access to Protected Material shall be required to read this Protective Order and agree, in
6 writing, to be bound by executing the Acknowledgment attached hereto as Appendix B. The
7 originals of all such Acknowledgments shall be maintained in the files of the Counsel
8 allowing access by such person to such Protected Material.

9 4.7 Acknowledgment of Protective Order: Before obtaining access to any
10 Protected Material covered by this Protective Order, any person (with the exception of
11 persons identified in subparagraphs 4.2 (b), (c), and (g) (for both Confidential information
12 and Highly Confidential Counsel Only information)), who is permitted to have access to
13 Protected Material must signify assent to the terms of this Protective Order by executing the
14 Acknowledgment attached hereto as Appendix A, indicating that they have read and
15 understood this Protective Order and agree to be bound by its terms.

16 4.8 Disclosure of Protected Material to Other Persons: In the event that Counsel
17 for the Receiving Party finds it necessary to make a disclosure of Protected Material to such
18 persons other than the persons identified in paragraph 4.2 (for Confidential information) or
19 4.3 (for Highly Confidential - Counsel Only information), Counsel for the Receiving Party
20 must, no less than ten (10) calendar days in advance of the date of its intended disclosure,
21 serve written notice on Counsel for the Producing Party including: (i) the Protected Material
22 to be disclosed; (ii) the purpose of the disclosure; and (iii) an identification by name, business
23 address, and employer the person(s) to whom such disclosure is to be made. The Producing
24 Party, as applicable, may consent or object to such disclosure in writing during the notice
25 period; provided, however, no disclosure will be made without the Producing Party's written
26 consent or order of this Court. If a Producing Party consents in writing or an order of this
27 Court permits the disclosure, Counsel for the Receiving Party must, prior to such disclosure,
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1 inform the individual to whom the Protected Material is to be disclosed of the terms of this
2 Protective Order, and have the individual acknowledge this Protective Order in writing by
3 executing the Acknowledgment attached as Appendix A, acknowledging that he or she is
4 fully conversant with the terms of this Protective Order and agrees to comply with it and be
5 bound by it.

6 **5. HANDLING OF PROTECTED MATERIAL.**

7 5.1 Filing Protected Material with the Court or the T.T.A.B.: In accordance with
8 public policy, there is no "right" to file documents under seal and nothing herein shall require
9 any court to file specific documents under seal. Any filing under seal shall be subject to
10 obtaining a separate order from the Judge or administrative official before whom the hearing
11 or proceeding is pending. Further, nothing contained in this Protective Order shall be
12 construed to prejudice a Receiving Party from filing or lodging Protected Material with the
13 Court or the T.T.A.B. However, prior to the disclosure of any Protected Material, or the
14 contents of any Protected Material, in any pleading, motion, or other paper filed or lodged
15 with the Clerk of any court or the T.T.A.B., the Receiving Party shall (1) notify the Producing
16 Party in writing of its intent to disclose the Protected Material and (2) apply to the Court or
17 the T.T.A.B. to file the Protected Material under seal. Should the Court or the T.T.A.B.
18 require substantiation to warrant any sealing, the Producing Party shall be notified and may
19 serve and file explanations, reasons, or declarations from competent witnesses setting forth
20 specific facts demonstrating that sealing is warranted under Fed. R. Civ. P. Rule 26(c). If the
21 Receiving Party is unable to file the Protected Material under seal, the Receiving Party may
22 not disclose the Protected Material without prior written permission from Four Star or an
23 order from this Court alleviating the Receiving Party of its obligation to maintain the
24 confidentiality of the Protected Material under this Protective Order.

25 5.2 Use of Protected Material in Court Hearings and Other Proceedings: Nothing
26 contained in this Protective Order shall be construed to prejudice a Receiving Party's right to
27 use before the Court or the T.T.A.B. at a hearing any Protected Material. However, prior to
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1 any such use by a Receiving Party (to the extent not otherwise authorized under this
2 Protective Order), the Receiving Party shall (1) notify the Producing Party in writing of its
3 intent to disclose the Protected Material and (2) apply to the Court or the T.T.A.B. for
4 appropriate protection including clearing the hearing room or courtroom of persons not
5 entitled to receive the Protected Material at issue. If unable to obtain appropriate protection,
6 including clearing the hearing room or courtroom of persons not entitled to receive the
7 Protected Material at issue, the Receiving Party may not disclose the Protected Material
8 without prior written permission from Four Star or an order from this Court alleviating the
9 Receiving Party of its obligation to maintain the confidentiality of the Protected Material
10 under this Protective Order.

11 5.3 Working Copies: Nothing herein shall restrict persons identified in paragraph
12 4.2 (for Confidential information) or 4.3 (for Highly Confidential - Counsel Only
13 information) from: (a) making working copies, abstracts, digests and analyses of such
14 information for use in connection with this action; or (b) converting or translating such
15 information into machine readable form for incorporation in a data retrieval system used in
16 connection with this action, provided that access to such information, in whatever form stored
17 or reproduced, shall be limited to qualified recipients. The one named in-house lawyer of
18 each Party shall be restricted in his or her access to Confidential information as set forth in
19 paragraph 4.5.

20 5.4 Examination and Testimony Regarding Protected Material:

21 Subject to the provisions of paragraphs 3, 4, and 5 of this Protective Order:

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23 (a) Four Star or present employee of Four Star may be examined and may
24 testify concerning Protected Material produced by Four Star to the extent permitted under
25 paragraphs 4.2(d), and (e);

26 (b) A former employee of Four Star may be examined and may testify
27 concerning all Protected Material produced by Four Star to the extent permitted under
28 paragraphs 4.2(e);

1 (c) An independent contractor of Four Star (other than a non-testifying
2 litigation consultant) may be examined and may testify concerning all Protected Material
3 produced by Four Star to the extent permitted under paragraphs 4.2(d), and (e);

4 (d) An Expert (other than a non-testifying litigation consultant) of either
5 Party may be examined and may testify concerning all Protected Material produced by any
6 third party, to the extent permitted under paragraphs 4.2(f), 4.3, and 4.6;

7 (e) For any person who is not permitted to access Protected Material under
8 paragraph 4.2 (for Confidential information) or 4.3 (for Highly Confidential - Counsel Only
9 information), a Receiving Party wishing to question or depose that person about Protected
10 Material of any Producing Party must follow the procedure set forth in paragraph 4.8.

11 5.5 Request for Production in Unrelated Legal Proceedings: In the event any
12 Receiving Party having possession, custody or control of any Protected Material receives
13 from or on behalf of a non-party a subpoena or other process or order to produce such
14 information in another unrelated legal proceeding, such Receiving Party shall: (a) promptly
15 notify Counsel for the Producing Party; (b) promptly furnish Counsel for the Producing Party
16 with a copy of said subpoena or other process or order; (c) object to production and refuse to
17 produce any such Protected Materials unless and until there is a Court Order requiring
18 production (provided, however, that the Receiving Party shall have no obligation to oppose
19 any motion or request seeking such proposed or actual Court Order); and (d) reasonably
20 cooperate with respect to all reasonable procedures sought to be pursued by the Producing
21 Party whose interests may be affected. The Producing Party asserting the Confidential or
22 Highly Confidential - Counsel Only designation with respect to Protected Material sought by
23 a non-party shall have the burden of defending against such subpoena, process, or order.
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25 5.6 Production of Four Star's Protected Material: If Four Star is in possession of a
26 third party's material that is responsive to a Receiving Party's discovery request, which
27 material Four Star reasonably believes may constitute confidential, proprietary, commercially
28 sensitive and/or trade secret information of the third party shall notify the third party in

1 writing prior to the date on which the discovery responses are due, thereby permitting the
2 third party a reasonable opportunity to move for a protective order or to stipulate to protection
3 under this Protective Order.

4 5.7 Treatment of Confidential Discovery Material During Inspection: Should a
5 Producing Party elect to make available certain of its voluminous files kept in the usual
6 course of business for inspection by the Receiving Party, which voluminous files may contain
7 confidential and non-confidential material, all such documents made available for inspection
8 by the Receiving Party (including any summaries thereof containing information from such
9 documents made by the Receiving Party) shall all be treated as required under this Protective
10 Order by the Receiving Party as Highly Confidential - Counsel Only information. In the
11 event that a Receiving Party desires to have "Highly Confidential - Counsel Only"
12 designation removed or changed to "Confidential" for any documents or summaries thereof,
13 the Receiving Party shall comply with the procedures set forth in paragraphs 3.5 and 3.6
14 above. Making documents and things available for inspection shall not, by itself, constitute a
15 waiver by the Producing Party of any claim of confidentiality, or any other right. Nothing in
16 this paragraph shall prevent any Receiving Party from asserting in court that the documents
17 so designated by the Producing Party should not be subject to such designation under this
18 Protective Order.

19 5.8 Inadvertent Production and/or Failure to Designate: In the event that a
20 Producing Party inadvertently produces a document that otherwise is not discoverable for
21 reasons of the attorney-client privilege or work product immunity, or both, such inadvertent
22 production shall not constitute any waiver of attorney-client privilege or work product
23 immunity, and the Receiving Party shall, on demand by the Producing Party, promptly return
24 all copies of such inadvertently produced documents. In no event shall delivery of
25 confidential undesignated documents constitute waiver where such delivery resulted from
26 inadvertence on the part of the Producing Party and such inadvertent delivery is thereafter
27 promptly brought to the attention of the Receiving Party after discovery by the Producing
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1 Party. Upon such notice and in return for copies of said documents containing the
2 appropriate confidentiality designation, the Receiving Party shall return the undesignated
3 documents and things and not retain copies thereof, and shall thereafter treat information
4 contained in said documents and any summaries or notes thereof as confidential to the level
5 designated by the Producing Party. Any disclosure by the Receiving Party to persons not
6 authorized to receive such Protected Material prior to Receiving Party's receipt of notice of a
7 failure to designate shall not be deemed a violation of this Protective Order; provided,
8 however, that upon notice of its protected status, the Receiving Party shall immediately mark
9 such Protected Material in its possession with the appropriate legend and, shall immediately
10 undertake the requirements set out in subparagraph 5.9 (a) through (e) which relate to
11 retrieval of Protected Material from unauthorized persons. Nothing in this paragraph shall
12 prevent any Receiving Party from asserting in court that the production was not inadvertent,
13 that confidentiality has been waived, or that the Producing Party otherwise waived the
14 attorney-client privilege or work product immunity allegedly protecting the disclosed
15 information from discovery.

16 5.9 Disclosure to Unauthorized Persons: If information subject to this Protective
17 Order is disclosed to any unauthorized person either through inadvertence, mistake, or
18 otherwise without authorization by the Producing Party, or other than in the manner
19 authorized by this Protective Order, the person responsible for the disclosure shall
20 immediately (a) inform the Producing Party of all pertinent facts relating to such disclosure,
21 including without limitation, the name, address, and telephone number of the recipient and his
22 or her employer; (b) use his or her best efforts to retrieve the disclosed information and all
23 copies thereof; (c) advise the recipient of the improperly disclosed information, in writing, of
24 the terms of this Protective Order; (d) make his or her best efforts to require the recipient to
25 execute an agreement to be bound by the terms of this Protective Order in the form of the
26 declaration attached hereto as Appendix A; and (e) take all other reasonable steps to prevent
27 further disclosure by or to the unauthorized person who received the protected information.
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1 Sanctions for inadvertent disclosure of Protected Material to unauthorized persons shall be
2 decided by this Court after opportunity for briefing and argument by the affected parties.

3 **6. DESIGNATION NOT DETERMINATIVE OF STATUS.**

4 There is no obligation to challenge the propriety of a Confidential or Highly
5 Confidential - Counsel Only designation at the time made, and failure to do so shall not
6 preclude a subsequent challenge to the designation. All challenges by a Receiving Party to
7 the propriety of a Confidential or Highly Confidential - Counsel Only designation shall first
8 be made in writing to every Producing Party whose rights are affected, such writing to
9 identify with specificity the material challenged. Within fourteen (14) calendar days of such
10 a challenge, the Producing Party shall substantiate the basis for such designation in writing.
11 Such challenges shall be resolved in good faith on an informal basis pursuant to the "meet and
12 confer" requirements of the local rules. If the challenge cannot be resolved, the Producing
13 Party or Receiving Party may seek appropriate relief from this Court.

14 **7. SCOPE OF PROTECTIVE ORDER; TERMINATION AND SURVIVAL OF**
15 **OBLIGATIONS.**

16 This Protective Order is intended to regulate the handling of Discovery Material for
17 pretrial purposes. This Protective Order shall remain in full force and effect until modified or
18 superseded by Order of this Court. The Parties anticipate that requirements for specific
19 protection and/or access to confidential information used during trial will differ significantly
20 from the requirements during pre-trial discovery. In view of the foregoing, no presumption
21 shall be made that the terms of this Protective Order are applicable after the date of the post-
22 discovery scheduling conference, set on March 3, 2011. The Parties may request
23 modification of this Protective Order or a new protective order for trial governing Discovery
24 Material produced in this action.

25 **8. INJUNCTIVE RELIEF.**

26 In the event anyone violates or threatens to violate any of the terms of this Protective
27 Order, Four Star may apply to this Court to obtain injunctive relief against any such person
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1 violating or threatening to violate any of the terms of this Protective Order. Upon a motion or
2 application for a temporary restraining order, (which TRO, if issued, shall expire in
3 accordance with Fed. R. Civ. P. Rule 65(b)(B)(2)), the responding party shall not (i) employ
4 as a defense in a motion to dissolve the TRO, or (ii) assert in opposition to any motion to
5 grant or extend the TRO, the claim that the aggrieved party possesses an adequate remedy at
6 law. Except as provided in this paragraph with respect to a TRO, the responding party may
7 employ all available defenses under the law. This Court shall retain jurisdiction over the
8 Parties and Four Star for the purpose of enforcing the Protective Order.

9 **9. RIGHT TO FURTHER RELIEF**

10 Nothing in this Protective Order shall abridge the right of any person to seek judicial
11 review or to pursue other appropriate judicial action to seek a modification or amendment of
12 this Protective Order.

13 **10. AMENDMENT.**

14 This Protective Order may be modified or amended only where Counsel for K-Swiss
15 and Four Star agree to a Motion to Amend Protective Order, or by Order of this Court.

16 **11. RIGHT TO ASSERT OTHER OBJECTIONS.**

17 This Protective Order shall not be construed as waiving any right to assert a claim of
18 privilege, relevance, overbreadth, burdensomeness or other grounds for not producing
19 Discovery Material called for, whether during discovery, hearing, or trial, and access to such
20 Discovery Material shall be only as otherwise provided by the discovery rules and other
21 applicable law.
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23 **12. FINAL DISPOSITION.**

24 Within two months after final termination of this action, or within one month after the
25 time for appeal has expired, each Receiving Party shall assemble all Protected Material
26 furnished and designated by any Producing Party including Protected Material provided to
27 Experts, and shall either: (i) return such Protected Material to the Producing Party; or (ii)
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1 destroy the Protected Material and provide a certificate of destruction to the Producing Party.
2 Notwithstanding the foregoing, Counsel for each Party shall be entitled to retain a "litigation
3 file" which shall include, without limitation, all pleadings, motion papers, declarations,
4 exhibits, legal memoranda, correspondence, work product, electronic files, and produced
5 documents.

6 **13. COURT'S ENTRY OF THE PROTECTIVE ORDER.**

7 13.1 Upon execution of the Protective Order by the Parties and Four Star, and
8 before this Court enters the Protective Order, the Producing Parties may agree to produce
9 some or all of the information designated as Confidential and/or-Highly Confidential-Counsel
10 Only. Except as provided in this Paragraph, the disclosed information shall be governed by
11 the terms of this Stipulation and the resulting Order. The Parties further agree that should this
12 Court alter the terms of the Protective Order affecting what material may be designated as
13 Confidential and/or Highly Confidential Counsel Only, any Protected Material affected by the
14 altered terms shall be returned to the Producing Party within seven (7) calendar days of such
15 court order and shall not be disclosed to any person not permitted access under paragraphs 4.2
16 (for Confidential information) or paragraph 4.3 (for Highly Confidential - Counsel Only
17 information) absent agreement of the Receiving and Producing Parties or further order of this
18 Court.

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21 IT IS SO ORDERED.

22 DATED: July 14, 2010

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24 _____
Cathy Ann Bencivengo
25 U.S. Magistrate Judge
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APPENDIX A

CONFIDENTIALITY AGREEMENT

I, _____, hereby acknowledge that:

(i) I have read the Protective Order entered in the U.S. District Court for the Southern District of California and relating to the action presently pending in the U.S. District Court for the District of Massachusetts captioned PUMA AG Rudolf Dassler Sport and PUMA North America, Inc. v. K-Swiss Inc. (1:09-cv-10718-DPW);

(ii) I understand the terms of the Protective Order;

(iii) I agree, upon threat of penalty of contempt and other civil remedies, to be bound by the Protective Order's terms; and

(iv) I irrevocably submit my person to the jurisdiction of the U.S. District Court for the Southern District of California for the limited purpose of securing compliance with the terms and conditions of the Protective Order.

DATED: _____

Signature

Name

Present Employer

Title/Occupation

Address

City State Zip

Telephone Number

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APPENDIX B

CONFIDENTIALITY AGREEMENT

(For Experts)

I, _____, hereby acknowledge that:

(i) I have read the Protective Order entered in the U.S. District Court for the Southern District of California and relating to the action presently pending in the U.S. District Court for the District of Massachusetts captioned PUMA AG Rudolf Dassler Sport and PUMA North America, Inc. v. K-Swiss Inc. (1:09-cv-10718-DPW).

(ii) I understand the terms of the Protective Order;

(iii) I agree, upon threat of penalty of contempt and other civil remedies, to be bound by the Protective Order's terms; and

(iv) I certify that I am not a competitor to any Producing Party, or a consultant for, or employed by, such a competitor with respect to the specific subject matter of this case;

(v) I understand that I am to maintain all copies of any Protected Material that I receive in a container, cabinet, drawer, room, password protected computer medium, or other safe place in a manner consistent with this Protective Order, and that all copies are to remain in my custody only until I have completed my assigned duties, whereupon the copies are to be destroyed or returned to the Producing Party or Third Party. Such return or destruction shall not relieve me from any of the continuing obligations imposed upon me by the Protective Order. I further agree to notify any stenographic or clerical personnel who are required to assist me of the terms of the Protective Order; and

1 (vi) I irrevocably submit my person to the jurisdiction of the U.S. District Court for the
2 Southern District of California for the limited purpose of securing compliance with the terms
3 and conditions of the Protective Order.
4

5 DATED: _____

Signature

Name

Present Employer

Title/Occupation

Address

City State Zip

Telephone Number

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APPENDIX C
STIPULATION

I, _____, hereby acknowledge for myself and on behalf of
_____ that:

(i) I have read the Protective Order entered in the U.S. District Court for the Southern District of California and relating to the action presently pending in the U.S. District Court for the District of Massachusetts captioned PUMA AG Rudolf Dassler Sport and PUMA North America, IN. v. K-Swiss Inc. (1:09:cv-10718-DPW);

(ii) I understand the terms of the Protective Order;

(iii) I agree, upon threat of penalty of contempt and other civil remedies, to be bound by the Protective Order's terms, and to bind _____ to those terms; and

(iv) I irrevocably submit my person and _____ to the jurisdiction of the U.S. District Court for the Southern District of California for the limited purpose of securing compliance with the terms and conditions of the Protective Order.

DATED: _____

Signature

Name

Company

Title/Occupation

Address

City State Zip

Telephone Number

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