

1 The Court recognizes that at least some of the documents and information ("materials")
2 being sought through discovery in the above-captioned action are, for competitive reasons,
3 normally kept confidential by the parties. The parties have agreed to be bound by the terms of this
4 Protective Order ("Order") in this action.

5 The materials to be exchanged throughout the course of the litigation between the parties
6 may contain trade secret or other confidential research, technical, business plans, cost, price,
7 marketing or other commercial information, as is contemplated by Federal Rule of Civil Procedure
8 26(c)(7). The purpose of this Order is to protect the confidentiality of such materials during the
9 litigation. THEREFORE:

10
11 DEFINITIONS

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

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18 2. The term "materials" will include, but is not be limited to: documents; correspondence;
19 memoranda; emails; bulletins; blueprints; specifications; customer lists or other material that
20 identify customers or potential customers; price lists or schedules or other matter identifying
21 pricing; minutes; telegrams; letters; statements; cancelled checks; contracts; invoices; drafts;
22 books of account; worksheets; notes of conversations; desk diaries; appointment books; expense
23 accounts; recordings; photographs; motion pictures; compilations from which information can be
24 obtained and translated into reasonably usable form through detection devices; sketches; drawings;
25 notes (including laboratory notebooks and records); reports; studies, research (including without
26 limitation, notes, reports, raw data, questionnaires and protocols); presentations; business plans;

1 business records; instructions; disclosures; other writings; models and prototypes and other
2 physical objects.

3 3. The term "counsel" will mean outside counsel of record, and the attorneys, paralegals,
4 secretaries, and other support staff employed by those law firms as well as in-house attorneys and
5 paralegals for Ferrero U.S.A., Inc.

6 GENERAL RULES

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

12 a. Designation as "CONFIDENTIAL": Any party may designate information as
13 "CONFIDENTIAL" only if, in the good faith belief of such party and its counsel, the unrestricted
14 disclosure of such information could be potentially prejudicial to the business or operations of
15 such party.
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17 b. Designation as "CONFIDENTIAL - FOR COUNSEL ONLY": Any party may designate
18 information as "CONFIDENTIAL - FOR COUNSEL ONLY" only if, in the good faith belief of
19 such party and its counsel, the information is among that considered to be most sensitive by the
20 party, including but not limited to trade secret or other confidential research, development,
21 financial or other commercial information.
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23 5. In the event the producing party elects to produce materials for inspection, no marking
24 need be made by the producing party in advance of the initial inspection. For purposes of the
25 initial inspection, all materials produced will be considered as "CONFIDENTIAL - FOR
26 COUNSEL ONLY," and must be treated as such pursuant to the terms of this Order. Thereafter,
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1 upon selection of specified materials for copying by the inspecting party, the producing party
2 must, within a reasonable time prior to producing those materials to the inspecting party, mark the
3 copies of those materials that contain Confidential Information with the appropriate confidentiality
4 marking.

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

- 7 a. the deposition or portions of the deposition must be designated as containing Confidential
8 Information subject to the provisions of this Order; such designation must be made on the
9 record whenever possible, but a party may designate portions of depositions as containing
10 Confidential Information after transcription of the proceedings; [A] party will have until
11 fourteen (14) days after receipt of the deposition transcript to inform the other party or
12 parties to the action of the portions of the transcript to be designated "CONFIDENTIAL"
13 or "CONFIDENTIAL – FOR COUNSEL ONLY."
14
15 b. the disclosing party will have the right to exclude from attendance at the deposition, during
16 such time as the Confidential Information is to be disclosed, any person other than the
17 deponent, counsel (including their staff and associates), the court reporter, and the
18 person(s) agreed upon pursuant to paragraph 8 below; and
19
20 c. the originals of the deposition transcripts and all copies of the deposition must bear the
21 legend "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY," as
22 appropriate, and the original or any copy ultimately presented to a court for filing must not
23 be filed unless it can be accomplished under seal, identified as being subject to this Order,
24 and protected from being opened except by order of this Court.
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26 7. All Confidential Information designated as "CONFIDENTIAL" or "CONFIDENTIAL -
27 FOR COUNSEL ONLY" must not be disclosed by the receiving party to anyone other than those

1 persons designated within this order and must be handled in the manner set forth below and, in
2 any event, must not be used for any purpose other than in connection with this litigation, unless
3 and until such designation is removed either by agreement of the parties, or by order of the Court.

4 8. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY" must be viewed
5 only by counsel (as defined in paragraph 3) of the receiving party, and by independent experts
6 under the conditions set forth in this Paragraph. The right of any independent expert to receive
7 any Confidential Information will be subject to the advance approval of such expert by the
8 producing party or by permission of the Court. The party seeking approval of an independent
9 expert must provide the producing party with the name and curriculum vitae of the proposed
10 independent expert, and an executed copy of the form attached hereto as Exhibit A, in advance of
11 providing any Confidential Information of the producing party to the expert. Any objection by
12 the producing party to an independent expert receiving Confidential Information must be made
13 in writing within fourteen (14) days following receipt of the identification of the proposed
14 expert. Confidential Information may be disclosed to an independent expert if the fourteen (14)
15 day period has passed and no objection has been made. The approval of independent experts
16 must not be unreasonably withheld.

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

- 23 a. Executives who are required to participate in policy decisions with reference to
24 this action;
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1 b. Personnel of the parties with whom Counsel for the parties find it necessary to
2 consult, in the discretion of such counsel, in preparation for trial of this action;

3 and

4 c. Stenographic and clerical employees associated with the individuals identified
5 above.

6 10. With respect to material designated "CONFIDENTIAL" or "CONFIDENTIAL - FOR
7 COUNSEL ONLY," any person indicated on the face of the document to be its originator, author
8 or a recipient of a copy of the document, may be shown the same.

9 11. All information which has been designated as "CONFIDENTIAL" or "CONFIDENTIAL -
10 FOR COUNSEL ONLY" by the producing or disclosing party, and any and all reproductions of
11 that information, must be retained in the custody of the counsel for the receiving party identified in
12 paragraph 3, except that independent experts authorized to view such information under the terms
13 of this Order may retain custody of copies such as are necessary for their participation in this
14 litigation.
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16 12. Before any materials produced in discovery, answers to interrogatories, responses to
17 requests for admissions, deposition transcripts, or other documents which are designated as
18 Confidential Information are filed with the Court for any purpose, the party seeking to file such
19 material must seek permission of the Court to file the material under seal.
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21 13. At any stage of these proceedings, any party may object to a designation of the materials as
22 Confidential Information. The party objecting to confidentiality must notify, in writing, counsel
23 for the designating party of the objected-to materials and the grounds for the objection. If the
24 dispute is not resolved consensually between the parties within seven (7) days of receipt of such a
25 notice of objections, the objecting party may move the Court for a ruling on the objection. The
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1 materials at issue must be treated as Confidential Information, as designated by the designating
2 party, until the Court has ruled on the objection or the matter has been otherwise resolved.

3 14. All Confidential Information must be held in confidence by those inspecting or receiving
4 it, and must be used only for purposes of this action. Counsel for each party, and each person
5 receiving Confidential Information must take reasonable precautions to prevent the unauthorized
6 or inadvertent disclosure of such information. If Confidential Information is disclosed to any
7 person other than a person authorized by this Order, the party responsible for the unauthorized
8 disclosure must immediately bring all pertinent facts relating to the unauthorized disclosure to the
9 attention of the other parties and, without prejudice to any rights and remedies of the other parties,
10 make every effort to prevent further disclosure by the party and by the person(s) receiving the
11 unauthorized disclosure.
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13 15. No party will be responsible to another party for disclosure of Confidential Information
14 under this Order if the information in question is not labeled or otherwise identified as such in
15 accordance with this Order.
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17 16. If a party, through inadvertence, produces any Confidential Information without labeling
18 or marking or otherwise designating it as such in accordance with this Order, the designating
19 party may give written notice to the receiving party that the document or thing produced is
20 deemed Confidential Information, and that the document or thing produced should be treated as
21 such in accordance with that designation under this Order. The receiving party must treat the
22 materials as confidential, once the designating party so notifies the receiving party. If the
23 receiving party has disclosed the materials before receiving the designation, the receiving party
24 must notify the designating party in writing of each such disclosure. Counsel for the parties will
25 agree on a mutually acceptable manner of labeling or marking the inadvertently produced
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1 materials as "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY"- SUBJECT
2 TO PROTECTIVE ORDER.

3 17. Nothing within this order will prejudice the right of any party to object to the production
4 of any discovery material on the grounds that the material is protected as privileged or as
5 attorney work product.

6 18. Nothing in this Order will bar counsel from rendering advice to their clients with respect to
7 this litigation and, in the course thereof, relying upon any information designated as Confidential
8 Information, provided that the contents of the information must not be disclosed.

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

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

15 21. Upon final termination of this action, including any and all appeals, counsel for each party
16 must, upon request of the producing party, return all Confidential Information to the San Diego
17 office for the attorney for the party that produced the information, including any copies, excerpts,
18 and summaries of that information. Notwithstanding the foregoing, counsel for each party may
19 retain all pleadings, briefs, memoranda, motions, and other documents filed with the Court that
20 refer to or incorporate Confidential Information, and will continue to be bound by this Order with
21 respect to all such retained information. Further, attorney work product materials that contain
22 Confidential Information need not be destroyed, but if they are not destroyed, the person in
23 possession of the attorney work product will continue to be bound by this Order with respect to all
24 such retained information.
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28 PROTECTIVE ORDER

11CV0205

1 22. The restrictions and obligations set forth within this Order will not apply to any
2 information that: (a) the parties agree should not be designated Confidential Information; (b) the
3 parties agree, or the Court rules, is already publicly available; (c) the parties agree, or the Court
4 rules, has become publicly available other than as a result of disclosure by the receiving party, its
5 employees, or its agents in violation of this Order; or (d) has come or will come into the receiving
6 party's legitimate knowledge independently of the production by the designating party.

7 23. The restrictions and obligations within this Order will not be deemed to prohibit
8 discussions of any Confidential Information with anyone if that person already has or obtains
9 legitimate possession of that information.
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11 24. Transmission by facsimile is acceptable for all notification purposes within this Order.

12 25. This Order may be modified by agreement of the parties, subject to approval by the Court.

13 26. The Court may modify the terms and conditions of this Order for good cause, or in the
14 interest of justice, or on its own order at any time in these proceedings. The parties prefer that the
15 Court provide them with notice of the Court's intent to modify the Order and the content of those
16 modifications, prior to entry of such an order.
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18 IT IS SO ORDERED this _____ day of _____, _____.

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20 _____
21 THE HONORABLE MARILYN L. HUFF
22 UNITED STATES DISTRICT JUDGE
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