

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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WILLAGIRL LLC,

Plaintiff and Counterclaim-Defendant,

- v -

THE WELLA CORPORATION,

Defendant and Counterclaim-Plaintiff.

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JED S. RAKOFF, U.S.D.J.

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11-CV-01017 (JSR)

**PROTECTIVE ORDER**

WHEREAS, the parties having agreed to the following terms of confidentiality, and the Court having found that good cause exists for issuance of an appropriately-tailored confidentiality order governing the pre-trial phase of this action (the "Action"), it is therefore hereby

ORDERED that any person subject to this Order – including without limitation the parties to this action, their representatives, agents, experts and consultants, all third parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Order – shall adhere to the following terms governing the handling of documents, testimony, depositions, deposition exhibits, interrogatory responses, admissions, and any other information produced, given or exchanged by and among the parties to this Action or by any third party in connection with discovery in the Action (such information hereinafter referred to as "Discovery Material"):

1. Any party or third party providing Discovery Material (the "Producing Party") may designate any Discovery Material as "Confidential" under the terms of this Order if the Producing Party in good faith believes that such Discovery Material contains non-public, confidential, proprietary or commercially sensitive information that requires the protections

provided in this Order ("Confidential Discovery Material"). Any Producing Party may designate any Confidential Discovery Material as "Highly Confidential: Attorneys' Eyes Only" under the terms of this Order if such party in good faith reasonably believes that disclosure of the Confidential Discovery Material other than as permitted pursuant to Paragraph 6 of this Order is substantially likely to cause injury to the Producing Party. ("Highly Confidential Discovery Material"). For purposes of this Order:

- (a) Discovery Material considered to be Confidential Discovery Material includes all non-public information relating to trade secrets, proprietary information, tax data, personnel, business information, personal financial information, or other personally sensitive or proprietary information.
- (b) Discovery Material considered to be Highly Confidential Discovery Material includes all non-public information relating to customer lists and information, financial results or data, financial or business plans and strategies, projections or analyses, proposed strategic transactions or other business combinations, acquisition offers or expressions of interest, studies or analyses by internal or outside experts, competitive analyses, business and marketing plans and strategies, or other highly sensitive or proprietary information, including, but not limited to, personal financial information.

2. Discovery Material, or information derived therefrom, shall be used solely for purposes of the Action and shall not be used for any other purpose, including, without limitation, any business or commercial purpose, or any communications with, between or among stockholders or any third-party not involved in the Action.

3. Any party who objects to any designation of confidentiality may at any time prior to the trial of this action serve upon counsel for the designating person a written notice stating

with particularity the grounds of the objection or request. If agreement cannot be reached promptly, counsel for all affected persons will convene a joint telephone call with the Court to obtain a ruling.

4. The designation of Discovery Material as "Confidential" or "Highly Confidential" for purposes of this Stipulation and Order shall be made in the following manner by any Producing Party:

(a) in the case of documents or other materials (apart from depositions or other pretrial testimony): by affixing the legend "Confidential" or "Highly Confidential" to each page containing any Confidential or Highly Confidential Discovery Material, except that in the case of multi-page documents bound together by staple or other permanent binding, the word (s) "Confidential" or "Highly Confidential" need only be stamped on the first page of the document in order for the entire document to be treated as Confidential or Highly Confidential Discovery Material; provided that the failure to designate a document as "Confidential" or "Highly Confidential" does not constitute a waiver of such claim, and a Producing Party may so designate a document after such document has been produced, with the effect that such document is subject to the protections of this Stipulation and Order on and after the date of its designation; and

(b) with respect to deposition transcripts and exhibits, a producing person or that person's counsel may indicate on the record that a question calls for Confidential information, in which case the transcript of the designated testimony shall be bound in a separate volume and marked "Confidential Information Governed by Protective Order" by the reporter.

5. Discovery Material designated "Confidential" may be disclosed, summarized, described, characterized or otherwise communicated or made available in whole or in part only to the following persons:

- (a) The parties and counsel who represent parties that have appeared in the Action (and members of their firms), and regular and temporary employees and service vendors of such counsel (including outside copying services and outside litigation support services) necessary to assist in the conduct of the Action for use in accordance with this Stipulation and Order;
- (b) experts or consultants necessary to assist counsel for parties that have appeared in the Action, provided, however, that Confidential Discovery Material shall not be disclosed to any expert or consultant who is assisting or advising, or who within the preceding 12 months assisted or advised, any person or entity that is a competitor with any party to this Action or the attorney for any such person or entity;
- (c) witnesses or deponents (other than witnesses and deponents covered by (d) below), and their counsel, during the course of or, to the extent necessary, in preparation for depositions or testimony in the Action;
- (d) the directors, officers, employees (including, but not limited to, in-house counsel) and general or limited partners of the parties, or any subsidiary or affiliate thereof, who are assisting the parties in this Action, or who appear as witnesses or deponents, and any professional employee of any person providing professional advice to any of the corporate defendants;
- (e) the Court and its employees, pursuant to this Stipulation and Order;
- (f) court reporters employed in connection with the Action; and

(g) any other person only upon order of the Court or upon stipulation of the Producing Party.

6. Discovery materials designated "Highly Confidential" may be disclosed, summarized, described, characterized or otherwise communicated or made available in whole or in part only to the following persons:

(a) The counsel who represent parties that have appeared in the Action, and members of their firms, and regular and temporary employees and service vendors of such counsel (including outside copying services and outside litigation support services) necessary to assist in the conduct of the Action for use in accordance with this Stipulation and Order;

(b) Katherine Ruwe and Lynne Miller, in-house counsel for The Procter & Gamble Company ("P&G") representing The Wella Corporation in connection with this Action, and, in the event that Ms. Ruwe or Ms. Miller leave the employment of P&G or otherwise cease to be involved in representing The Wella Corporation in connection with this Action, The Wella Corporation may designate substitute in-house counsel upon written notice to Willagirl LLC giving Willagirl LLC a reasonable opportunity to object;

(c) experts or consultants necessary to assist counsel for parties that have appeared in the Action, provided, however, that Highly Confidential Discovery Material shall not be disclosed to any expert or consultant who is assisting or advising, or who within the preceding 12 months assisted or advised, any person or entity that is a competitor with any party to this Action or the attorney for any such person or entity;

(d) the Court and its employees, pursuant to this Stipulation and Order;

(e) any person indicated on the face of a document to be the author, addressee, or a copy recipient of the document;

(f) court reporters employed in connection with the Action; and  
(g) any other person only upon order of the Court or upon stipulation of the Producing Party. Such stipulation shall not be unreasonably withheld by the Producing Party.

7. Notwithstanding anything contained in the foregoing paragraphs 5 and 6, Confidential or Highly Confidential Discovery Material may be provided to persons listed in Paragraphs 5(b) and 6(c) above to the extent necessary for such expert or consultant to prepare a written opinion, to prepare to testify, or to assist counsel in the prosecution or defense of this Action, provided that such expert or consultant are using said Confidential or Highly Confidential Discovery Material solely in connection with this Action and further provided that such expert first signs an undertaking in the form attached as Exhibit A hereto, agreeing in writing to be bound by the terms and conditions of this Order. Such undertakings shall be retained in the files of the counsel for the parties who have engaged such consultant or expert.

8. Every person given access to Confidential or Highly Confidential Discovery Material or information contained therein shall be advised that the information is being disclosed pursuant and subject to the terms of this Order and may not be disclosed other than pursuant to the terms thereof. All persons listed in Paragraph 5(c) may be given access to Confidential Discovery Material or information contained therein, only after (i) they confirm their understanding and agreement to abide by the terms of this Order by signing a copy of Exhibit A hereto or (ii) a court of competent jurisdiction orders them to abide by the terms of the Order.

9. If at any time prior to the trial of this action, a producing person realizes that some portion[s] of Discovery Material that that person previously produced without limitation should be designated as Confidential or Highly Confidential, he may so designate by so apprising all

parties in writing, and such designated portion[s] of the Discovery Material will thereafter be treated as Confidential and/or Highly Confidential under the terms of this Order.

10. Entering into, agreeing to and/or producing or receiving Confidential or Highly Confidential Discovery Material or otherwise complying with the terms of this Order shall not:

- (a) operate as an admission by any party that any particular Confidential or Highly Confidential Discovery Material contains or reflects trade secrets or any other type of confidential information;
- (b) prejudice in any way the rights of the parties to object to the production of documents they consider not subject to discovery, or operate as an admission by any party that the restrictions and procedures set forth herein constitute adequate protection for any particular information deemed by any party to be Confidential or Highly Confidential Discovery Material;
- (c) prejudice in any way the rights of any party to object to the authenticity or admissibility into evidence of any document, testimony or other evidence subject to this Stipulation and Order;
- (d) prejudice in any way the rights of a party to seek a determination by the Court whether any Discovery Material or Confidential or Highly Confidential Discovery Material should be subject to the terms of this Stipulation and Order;
- (e) prejudice in any way the rights of a party to petition the Court for a further protective order relating to any purportedly confidential information; or
- (f) prevent the parties to this Stipulation and Order from agreeing to alter or waive the provisions or protections provided for herein with respect to any particular Discovery Material.

11. All Confidential and/or Highly Confidential Discovery Material filed with the Court, and all portions of pleadings, motions or other papers filed with the Court that disclose such Confidential and/or Highly Confidential Discovery Material, shall be filed under seal with the Clerk of the Court and kept under seal until further order of the Court. The parties will use their best efforts to minimize such sealing.

12. All persons are hereby placed on notice that the Court is unlikely to seal or otherwise afford confidential treatment to any Discovery Material introduced in evidence at trial, even if such material has previously been sealed or designated as Confidential or Highly Confidential. The Court also retains discretion whether to afford confidential treatment to any Confidential and/or Highly Confidential Document or information contained in any Confidential and/or Highly Confidential Document submitted to the Court in connection with any motion, application, or proceeding that may result in an order and/or decision by the Court.

13. Each person who has access to Discovery Material that has been designated as Confidential or Highly Confidential shall take all due precautions to prevent the unauthorized or inadvertent disclosure of such material.

14. If, in connection with this litigation, a party inadvertently discloses information subject to a claim of attorney-client privilege or attorney work product protection ("Inadvertently Disclosed Information"), such disclosure shall not constitute or be deemed a waiver or forfeiture of any claim of privilege or work product protection with respect to the Inadvertently Disclosed Information and its subject matter.

15. If a disclosing party makes a claim of inadvertent disclosure, the receiving party shall, within five business days, return or destroy all copies of the Inadvertently Disclosed

Information, and provide a certification of counsel that all such information has been returned or destroyed.

16. Within five business days of the notification that such Inadvertently Disclosed Information has been returned or destroyed, the disclosing party shall produce a privilege log with respect to the Inadvertently Disclosed Information.

17. The receiving party may move the Court for an Order compelling production of the Inadvertently Disclosed Information. The motion shall be filed under seal, and shall not assert as a ground for entering such an Order the fact or circumstances of the inadvertent production.

19. The disclosing party retains the burden of establishing the privileged or protected nature of any Inadvertently Disclosed Information. Nothing in this Order shall limit the right of any party to request an in camera review of the Inadvertently Disclosed Information.

20. The provisions of this Stipulation and Order shall, absent written permission of the Producing Party or further order of the Court, continue to be binding throughout and after the conclusion of the Action, including without limitation any appeals therefrom. Within thirty days after receiving notice of the entry of an order, judgment or decree finally disposing of all litigation in which Confidential or Highly Confidential Discovery Material is permitted to be used, including the exhaustion of all permissible appeals, all persons having received Confidential or Highly Confidential Discovery Material shall, upon written request of the Producing Party, either make a good faith effort to return such material and all copies thereof (including summaries and excerpts) to counsel for the party that produced it or destroy all such Confidential or Highly Confidential Discovery Material and certify that fact to counsel for the Producing Party. Counsel for the parties shall be entitled to retain their own court papers,

deposition and trial transcripts and attorney work product (including discovery material containing Confidential or Highly Confidential Discovery Material) provided that such counsel, and employees of such counsel, shall not disclose such court papers or attorney work product to any person except pursuant to court order or agreement with the party that produced the Confidential or Highly Confidential Discovery Material. All materials returned to the parties or their counsel by the Court likewise shall be disposed of in accordance with this paragraph.

21. This Court shall retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof.

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22. This Stipulation may be signed in counterparts and exchanged by facsimile or email, which shall have the same force and effect as an original signature.

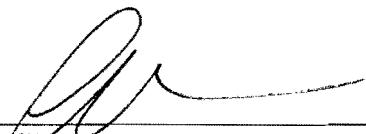
SO STIPULATED AND AGREED.

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*Attorneys for Plaintiff and Counterclaim  
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SO ORDERED.

Dated: New York, New York

  
May 6/16/2011

JED S. RAKOFF, U.S.D.J.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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WILLAGIRL LLC, :  
: :  
Plaintiff and Counterclaim-Defendant, : 11-CV-01017 (JSR)  
: :  
- v - : **NON-DISCLOSURE**  
: **AGREEMENT**  
THE WELLA CORPORATION, :  
: :  
Defendant and Counterclaim-Plaintiff. :  
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I, \_\_\_\_\_, acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of those portions of Discovery Material that have been designated as Confidential. I agree that I will not disclose such Confidential Discovery Material to anyone other than for purposes of this litigation and that at the conclusion of the litigation I will return all discovery information to the party or attorney from whom I received it. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

Dated: \_\_\_\_\_