

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

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 THE HERSHEY COMPANY, :
 : No. 10-CV-1178
 Plaintiff, :
 : (Judge Jones)
 v. :
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 HOTTRIX LLC, :
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 Defendant. :
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STIPULATED PROTECTIVE ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between the parties, through their respective counsel and by any non-party that, by itself or through its counsel, agrees to the terms of this Protective Order, that the production and disclosure of confidential information in this action be governed by the following terms and conditions:

1. Definitions

(a) The term “Confidential Information” means any information, whether oral or in documentary or other tangible form, so designated by any producing person that reasonably and in good faith believes is of the type,

were it produced in response to a discovery request, that is protectable under Rule 26(c)(1)(G), Fed. R. Civ. P. “Confidential Information” collectively refers to information designated “Confidential” pursuant to Paragraph 4 herein.

(b) The term “disclose” means to show, give, make available or communicate, in any fashion, to any person, any information, document, information concerning the content of any document, or any portion of the information contained in any document, furnished by any party or non-party in this action.

(c) The term “document” is synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the Fed. R. Civ. P. A draft or non-identical copy is a separate document within the meaning of the term.

(d) The term “person” means any natural person, corporation, partnership, sole proprietorship, group, association, organization, business entity, governmental body, or agency.

(e) The term “producing person” means any person, whether a party or non-party, who produces any information, whether oral or in documentary or other tangible form, in response to any discovery method permitted by the Federal Rules of Civil Procedure, or who in this action otherwise discloses or furnishes information, whether oral or in documentary or other

tangible form, to a party or non-party, including by disclosure in pleadings, motions or other papers filed with the Court and/or served on a party or non-party.

(f) The term “qualified person” means (i) outside counsel engaged to represent one of the parties to this action, including necessary legal assistants and stenographic and clerical employees actually assisting such counsel; (ii) inside counsel of the parties, including necessary legal assistants and stenographic and clerical employees actually assisting such counsel; (iii) outside experts and consultants of the parties who are assisting counsel identified in this action and any necessary assistants and stenographic and clerical employees under their direct supervision and employed by them or their employer or organization; and (iv) the Court and Court personnel, including stenographic reporters; and (v) members of the jury.

(g) The term “receiving party” means any person to whom information is disclosed in this action (i) in response to any discovery method permitted by the Federal Rules of Civil Procedure or (ii) in a pleading, motion or other paper filed with the Court and/or served on a party or non-party.

2. This Order applies to all documents, electronically stored information and other information produced, filed or served in this action regardless of whether such documents or information were produced, filed or served prior to or after the entry of this Order.

3. Any non-party to this action who desires the protection of this Order with respect to any information obtained from it in this action may obtain such protection by having its counsel execute and deliver to each party a copy of this Order, and by executing an Acknowledgment of the Protective Order attached hereto as Exhibit A, thereby agreeing to be bound by its provisions. The non-party or the party requesting information from the non-party seeking the protection of this Order shall file the executed copy with the Court.

4. Any information supplied in documentary or other tangible form may be designated by the producing person as Confidential Information by placing or affixing on each page of such document, or on the face of such thing, the legend "Confidential" as appropriate. Moreover, the parties and non-parties may designate documents that are produced by non-parties and that contain Confidential Information as "Confidential" as appropriate.

5. Any information designated as Confidential Information shall be maintained in confidence by the receiving party, and shall be stored under the direct control of counsel of record who shall be responsible for preventing any disclosure not in accordance with this Order. Information designated as Confidential Information may be disclosed only to qualified persons. All qualified persons shall first read this Order and (i) agree to be bound by the terms thereof, (ii) agree to maintain said information in confidence, and (iii) agree not to disclose

Confidential Information to anyone other than a qualified person. Nothing in this paragraph shall prevent disclosure of Confidential Information to stenographic, clerical employees and assistants described in Paragraph 1(f) of this Order provided that such persons are informed that such information is subject to court order, must be held in confidence, and cannot be disclosed to anyone, and that such persons agree to abide by these terms. Under no circumstances shall Confidential Information produced by one party hereto be disclosed to any adverse party in this matter or any officer or other employees thereof, except as expressly permitted by this Order.

6. In the event any producing party discovers, after it has produced information, that it has inadvertently produced information that has not been correctly designated as Confidential Information, the producing party may, within ten (10) business days of the discovery of such inadvertent production, correct that error by a subsequent designation made in writing specifically identifying the designated information. Upon receipt of such notice, the parties shall treat such information in accord with this Protective Order. When an attorney receives notice that information was mistakenly produced without the proper designation, the attorney will immediately notify any person who received the information, but who was not entitled to receive it, and inform that person that they must immediately return the information and any copies thereof to the attorney.

The attorney will also instruct the person that they must not disclose any of the newly designated Confidential Information.

7. Any party that inadvertently produces information that is privileged because it is an attorney-client communication or is privileged under the work-product doctrine may, within ten (10) business days of the discovery of production of the privileged information, request in writing that the attorney for the party receiving the information immediately return the document or other material containing the information, and any copies, or certify that all copies have been destroyed. In addition, the privileged material, unless it is later deemed not to contain privileged information or is produced in redacted form, may not be introduced into evidence, either directly or by reference to the material or its contents.

8. All information or documents disclosed in this litigation, whether or not containing Confidential Information, shall be used solely for purposes of preparation for trial, pretrial proceedings and trial of this action and not for any business, commercial, competitive, personal or other purpose.

9. In the event that any question is asked at a deposition that calls for the disclosure of Confidential Information, the witness shall nevertheless answer such question unless he or she has an independent basis for not responding, provided that the only persons in attendance at the deposition are persons who are

qualified to receive the Confidential Information. Counsel for the person claiming confidentiality may designate portions of the deposition as Confidential Information, either at the deposition by making a statement for inclusion in the deposition transcript, or within ten (10) business days after receipt of the deposition transcript by notifying opposing counsel in writing. All transcripts of depositions shall be treated as Confidential until ten (10) business days after receipt thereof by counsel for the parties and counsel for the witness.

10. A person not otherwise permitted under this Order to have access to Confidential Information may be interviewed, may be examined as a witness at a deposition, may be shown, and may testify concerning any Confidential Information as follows:

(a) A present employee of a producing person may be examined, may be shown, and may testify concerning any Confidential Information of that producing person.

(b) A former employee or consultant of a producing person may be interviewed, may be examined, may be shown, and may testify concerning any Confidential Information of that producing person if such information (i) relates to the period of the former employee's or consultant's employment or retention with the producing person, and (ii) pertains to the subject matter of his or

her employment or consultation or to the subject matter of his communications with that person.

(c) A non-party individual who has had any contact or relationship with a party may be interviewed, may be examined, may be shown, and may testify concerning:

(1) any document or other material containing Confidential Information that appears on its face to have been previously communicated to or from the non-party individual; and

(2) any Confidential Information of a party that specific documentary or testimonial evidence by that witness or others indicates was communicated between the non-party individual and the party.

11. If material designated “Confidential Information” is to be filed with the Court in connection with any proceeding herein, it shall be filed in a sealed envelope marked with the caption of the case and following or substantially similar legend:

CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER
To Be Opened Only By Or As Directed By The Court
Civil Action No. 1:10-CV-1178

12. This Order is entered solely for the purpose of facilitating the exchange of information between the parties to this action and the presentation of documents and evidence to the Court without involving the Court unnecessarily in

this process. Nothing in this Order, nor the production of any documents or disclosure of any information pursuant to this Order, shall be deemed to have the effect of (i) an admission or waiver, including waiver under the rules of evidence, by any party or other subscriber to this Order; (ii) altering the confidentiality or nonconfidentiality of any such information; or (iii) altering any existing obligation of any party or other subscriber, or the absence of such obligation.

13. Nothing herein shall be taken as indicating that any document or information designated as Confidential Information is entitled to confidential treatment. Nothing herein shall prevent disclosure beyond the terms of this Order prior to trial if the person claiming confidentiality consents in writing to such disclosure. If the receiving party desires to disclose Confidential Information to non-qualified persons, or if it disagrees with the designation by the producing person of any information as Confidential Information, then the receiving party and the producing person shall first try to resolve such dispute. If the dispute cannot be resolved, the party seeking such disclosure, upon no fewer than five (5) business days' written notice to the producing party may, by specifying the basis on which it claims that such designation is improper or that such disclosure is appropriate, seek a ruling from the Court that the information is not properly designated or that such disclosure is appropriate. The producing party shall have the burden to show that such designation is proper. Pending a determination by the

Court, such information shall be treated under this Order as Confidential Information as designated by the producing person.

14. No party shall be obligated to challenge the propriety of a confidential designation, and a failure to do so shall not preclude a subsequent attack on the propriety of such designation. This Order shall be without prejudice to the right of any party or other subscriber to this Order (i) to bring before the Court at any time the question of whether any particular document or information is Confidential Information or whether its use should be restricted or (ii) to present a motion to the Court under Rule 26(c), Fed. R. Civ. P., for a separate protective order as to any such particular document or information, including restrictions differing from those specified herein. This Order shall not be deemed to prejudice any party in any way in any future application for modification of this Order.

15. The parties and any non-party that sign this Order and produce information subject to this Order shall attempt to agree upon procedures to protect at any hearing or trial the confidentiality of Confidential Information, shall, prior to such hearing or trial, submit such proposed procedures to the Court for its approval or modification, and shall submit any disputes relating thereto to the Court for its resolution.

16. Upon final termination of this action, including all appeals, all counsel, parties and experts shall (i) at the option of the producing party, return to

the producing party or destroy all originals of material produced and designated as Confidential Information and all identical copies, whether in whole or in part, of such material, and (ii) destroy all copies thereof, except that, with respect to electronically stored information, they shall destroy or delete such information to the extent practicable. Outside counsel for each party shall be entitled to retain copies of any material that contain or refer to information designated as Confidential Information that have been filed with the Court, admitted into evidence, or constitute a portion of or an exhibit to any deposition, provided that all such material shall remain subject to this Order. Counsel of record for the parties shall certify in writing to each producing person that the foregoing has been complied with.

17. Nothing contained herein shall limit in any way the use of Confidential Information by the producing party or its attorneys and their employees or prevent them from revealing such Confidential Information to whomever they choose.

18. This Order shall survive and remain in full force and effect after termination of this litigation.

SO ORDERED.

Honorable John Jones III
United States District Court

The parties, by their undersigned counsel, hereby consent to the entry of the foregoing Order.

Dated: September 22, 2010

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Attorneys for The Hershey Company

Attorneys for Hottrix, LLC

ACKNOWLEDGMENT OF PROTECTIVE ORDER

_____,
(name of person)

_____,
(address and phone number)

acknowledges that I have read the Protective Order entered in the matter of *The Hershey Company v. Hottrix LLC*, Case No. 10-CV-1178 (JEJ) (M.D. Pa.) and hereby agree to be bound by its terms.

Dated: _____.

(name)

(signature)