IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

KRYPTONITE CORPORATION (Massachusetts Corporation), Opposer,	
v.	Opposition No. 120,885
O.L. Products, Inc. (Florida Corporation), Applicant.	

PROTECTIVE ORDER CONCERNING DISCLOSURE OF
CONFIDENTIAL INFORMATION AND DOCUMENTS

WHEREAS, the parties to this action seek to exchange confidential documents and information, as defined below, and protect the confidentiality of those items; and

WHEREAS, the parties agree that access to and use of such documents and information shall be governed and limited by the provisions of a Protective Order as set forth herein:

IT IS HEREBY STIPULATED AND AGREED by and between Opposer Kryptonite Corporaiton ("Opposer"), and the Applicant O.L. Products, Inc.("Applicant") by their undersigned counsel, that:

1. Any document or information not known to the general public that is produced in this proceeding and that producing party reasonably deems in good faith to incorporate confidential business information, including, without limitation, confidential customer information, financial information, marketing information, product development, trade secrets, know-how, proprietary data, non-public sales figures, costs, pricing, technical information or

names of suppliers or distributors, and/or agreements therewith, whether oral or written, including the terms thereof, may be designated by the producing party as "CONFIDENTIAL."

2. The designation of information as "CONFIDENTIAL" shall not be taken as a determination or admission by the receiving party that such information is in fact protectible as confidential information, trade secret subject matter or otherwise subject to privacy concerns. The designation of information as being "CONFIDENTIAL" does not alter or enhance the nature of that information or its confidentiality or create any presumption of any confidentiality. No party shall be obligated to challenge the propriety of a "CONFIDENTIAL" designation at the time of receipt of such information, and a failure to do so shall not preclude a subsequent challenge to the propriety of the designation.

3. Persons who, by virtue of the conduct of this litigation, have knowledge of the documents or information designated "CONFIDENTIAL" shall not suffer or permit its disclosure or that of any information obtained, derived, compelled, or ascertained therefrom, to any person or persons not entitled under the Protective Order to receive such information, nor use such information for any purpose except for this litigation and any appeals thereof, unless and until such designation is removed either by stipulation by counsel for the parties or by order of the Board.

4. Nothing in this Protective Order shall prevent disclosure of protected material if:

a. The producing party waives, in writing or on the record of this action, the claim of confidentiality of such information pursuant to this order; or

b. The receiving party can prove to the Board upon fifteen (15) days written notice to the producing party that such information was already rightfully in its possession or

was otherwise rightfully acquired by or on behalf of the receiving party and need not be maintained confidential under this Protective Order; or

c. The receiving party can prove to the Board upon fifteen (15) days written notice to the producing party that such information was or has become public knowledge without violation of the Protective Order or other than by any act or omission of a receiving party, its counsel, or any independent expert retained on behalf of the receiving party; or

d. A board order or the order of a court competent jurisdiction releases such information from the restrictions of this Protective Order.

5. Any documents or information designated as "CONFIDENTIAL" shall not be made available or disclosed to any person(s) other than those Qualified Persons included in Paragraphs 6(a), 6(b), 6(c) and 6(d) below.

6. "Qualified Persons," as used herein, means:

(a) In-house and outside attorneys for the parties in this proceeding, and paralegals, secretaries or necessary clerical assistants working under the supervision of such attorneys to whom it is necessary that the material be disclosed for purposes of this proceeding;

(b) Consultants or independent experts not employed by or affiliated with a party and retained to assist the attorneys in this action who have executed an agreement in the form of Exhibit A attached hereto to be bound by this Order; and

(c) The Board and Board personnel and stenographic reporters and/or video operators at depositions taken in this action.

7. The procedures by which documents or information shall be designated confidential pursuant to the terms of this Stipulation and Protective Order are as follows:

(a) The identification of documents or information as "CONFIDENTIAL" shall be made at a time when a response to an interrogatory or a response to a request for admission is served, when a copy of a document is provided to the other party, and when an inspection of premises or tangible thinks is made.

(b) Documents, including discovery requests, shall be so designated by affixation of the legend "CONFIDENTIAL," or words to substantially similar effect, upon each page as appropriate. In lieu of marking the original of documents, the party may orally advise opposing counsel of the confidential status of the documents and mark the copies that are produced or exchanged with the appropriate legend. Stamping such legend on the cover of any multipage document shall so designate all pages of such document, unless otherwise indicated by the producing party.

(c) Information disclosed at a deposition may be designated as "CONFIDENTIAL" by either 1) indicating on the record at the deposition that the testimony is "CONFIDENTIAL" and subject to the provisions of this Order or ii) by notifying the opposing party in writing within fourteen (14) business days of the receipt of the transcript of those pages and lines that are "CONFIDENTIAL." No deposition may be read by anyone other than the attorneys or those working under the supervision and the deponent during said fourteen-day period. Upon being informed that certain portions of a deposition disclose confidential information, each party must cause each copy in their custody or control to be so marked immediately. Information disclosed at a deposition that is not designated as confidential under the procedures set forth above shall not thereafter be designated as confidential, except as provided in Paragraph 14.

(d) In addition to the foregoing, to the extend that any document contains confidential financial or cost data or describes competitive activities or future plans the details of which are not relevant to this proceeding, the party may redact such details from documents to be produced, provided that the remainder of the document is produced and an explanation is provided that describes the nature of the redacted material.

8. Any document, response to an interrogatory, or request for admission, and deposition transcript filed with the Board for any purpose and identified as containing confidential information, or any pleading, motion or brief filed with the Board containing or disclosing confidential information shall be filed with the Board in a sealed, opaque envelope or container including on the outside thereof the Board, case caption, case number and a notification that the contents are subject to a protective order and the container is not the opened except upon further order of the Board. Such notification shall be substantially in the following forum:

"CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER
This envelope (or container) contains documents that are subject to a Protective Order entered by the Board in this action governing use of confidential material and are filed under seal."

9. Disclosure of any confidential material information by the party to whom it is disclosed shall be solely for the purposes of this litigation, and the information thus disclosed shall not be used for any other purpose.

10. Neither the taking of any action in accordance with the provisions of this Order, nor the failure to object thereto, shall be construed as a waiver of any claim or defense in this action. The entry of this Order shall not be construed as a waiver of any right to make any other type of objection, claim or other response.

11. For purposes of expediting discovery, the parties agree that should any document which arguably contains work product or communications subject to the attorney-client privilege be inadvertently inspected and/or produced, such inspection or production shall not constitute a waiver of the parties' respective work product or attorney-client privilege or any other objection.

12. The parties further agree that should either party discover that a confidential document or confidential information was inadvertently produced without having been properly designated as confidential as provided herein, the producing party shall give written notice to the other party within ten (10) days of discovering such improper designation. The other party, upon receipt of such notice, will take all steps, as provided herein to maintain the confidentiality of the document or information. If such document or information has already been disclosed to person(s) not listed in Paragraph 4 above, the party responsible for disclosing such document or information to such other person(s); (1) will obtain from such other person(s) a signed document in the form of Exhibit A attached hereto, and provide the signed original to the producing party, and (2) will take all reasonable steps to collect all originals and copies of such inadvertently improperly designated documents or information from such other persons and return such documents or information to the production party, or ensure the destruction such documents at the election of the production party. In the event any party discovers it has received any document that, on its face, is clearly protected by the attorney-client and/or work product privileges, the receiving party shall immediately return such privileged materials to the producing party without keeping a copy, regardless of whether or not the production party has requested the return of such documents.

13. Within ninety (90) days of final termination of this proceeding, any party that was furnished with documents and/or materials designated by the producing party as

"CONFIDENTIAL," shall, at the election of the production party, either return to the producing party or cause the permanent destruction of all such confidential documents and/or materials (and copies thereof) as well as any attorney notes comprising any confidential information derived from those documents and/or materials. The receiving party shall also, at the election of the producing party, either return to the production party or cause the permanent destruction of all confidential documents and/or materials (and copies thereof) that the receiving party was furnished by the production party and in turn provided to any person(s) authorized to receive them.

14. This Stipulation and Protective Order shall be without prejudice to the right of the parties to request additional protection under Rule 26(c), Fed. R. Civ. P., pertaining to discovery requests made hereafter by any party.

15 In the event that any entity or person subject to this Order receives a subpoena, civil investigative demand or other legal process or request seeking disclosure or production of any document or information received by that person or entity in this action and designated as "CONFIDENTIAL," such entity or person shall give immediate written notice of such request to all parties and provide a copy of such request, subpoena or process to all parties and shall inform the entity issuing or seeking a court to issue such subpoena, civil investigate demand or other request that the information and/or documents sought are confidential and subject to this protective order.

16. With respect to any confidential materials produced by the parties prior to the entry of this Protective Order, the treatment of such materials will hereafter be governed by the terms of this Protective Order.

17. If the producing party has cause to believe that a violation of this Stipulation and Protective Order has occurred or is about to occur, producing party has the right to apply to this Board for appropriate relief.

18. The parties hereto agree that this Stipulation and Protective Order shall be binding on the parties when signed by their respective counsel.

19. In the event that counsel for either party withdraws or is dismissed from representation in this action, said counsel shall continue to be bound by this Stipulation and Protective Order and shall not turn over any confidential materials to successor counsel, or any other person except as permitted herein, until successor counsel has entered into a confidentially stipulation and protective order.

20. The entry into this Stipulation and protective order and the Board's order entered thereon shall be without prejudice to any party's right to question before the Board, by appropriate motion on notice to the opposing party, the basis for any Confidentiality designation or claim and on any such motion the entry into this Stipulation shall not be considered to weigh in favor of or against the granting of such a motion.

21. This Protective Order shall not be construed as waiving any right to assert a claim of privilege, relevance, or other grounds for not producing discovery material called for, an access to such discovery material shall be only as provided for by separate agreement of the parties or by the Board.

Dated: ~~May~~ August 10, 2001

MOUSER & WELLS P.A.

By: _____

Jennifer E. Mouser
P.O. Box 20768
St. Petersberg, FL 33742
Attorneys for Applicant

#338466

Dated: ~~May~~ August 22, 2001

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SO ORDERED:

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United States Patent and Trademark Office

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TTAB

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150 Independent Firms

July 16, 2002

07-19-2002
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #74

Attn: Amy King, Paralegal Specialist
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Box TTAB, No Fee
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

TRADEMARK TRIAL AND APPEAL BOARD
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Re: Trademark Opposition No. 120,885
Our File No. 56227/9009

Dear Ms. King:

The enclosed Protective Order concerning disclosure of confidential information and documents is submitted in connection with Opposition No. 120,885. Applicant and Opposer have signed the proposed Order. The parties hereby request that the Trademark Office approve the proposed Protective Order. If the Order meets with the Board's approval, please sign and return a copy of the Order to Opposer and Applicant.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP

Lori S. Meddings

LSM/tao
Enclosure

cc: Dyann L. Kostello

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