

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

In the Matter of Application No. 76/372,550 ARDENBEAUTY.

THE WET SEAL, INC.,

Opposer,

v.

FD MANAGEMENT, INC.,

Applicant.

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Opposition No. 91157022



10-27-2003
U.S. Patent & TMO/TM Mail Rpt Dt. #22

STIPULATED PROTECTIVE ORDER

Pursuant to FED. R. CIV. P. 26, and as it appears that discovery in the above-entitled action is likely to involve the disclosure of confidential information, and good cause appearing, IT IS HEREBY ORDERED as follows:

1. (a) As used in this Protective Order, the term "Discovery Material" encompasses, but it is not limited to: any type of document or testimony; any taped, recorded, filmed, written or typed matter, including the originals and all marked copies, whether different from the originals by reason of any notation made on such copies or otherwise; all deposition testimony; all interrogatories, document requests, and requests for admission, including all responses thereto; and any physical objects or other items or any other information gained by inspection of any tangible thing.

(b) As used in this Protective Order, the term "Outside Counsel" shall mean counsel who are not in-house attorneys of a party and who have been retained for any purpose in connection with this litigation.

(c) As used in this Protective Order, "Confidential Information" shall mean Discovery Material which constitutes, mentions, refers to, relates to or and/or concerns any of the following: (i) internal financial information of any party to this action, including, but not limited to, revenues and expenditures of that party; (ii) sales, marketing and business development information of any party to this action; (iii) vendor information of any party to this action; (iv) customer lists of any party to this action; and (v) customer related information, or information leading to the identification of customers, of any party to this action. This term also includes agreements that contain confidentiality requirements, other matters required by law to be held in confidence and materials directly relating to such agreements.

(d) This Protective Order shall govern any Discovery Material that a party or third party in good faith believes contains Confidential Information produced in response to any discovery conducted by the parties to the above-captioned case. Nothing in this Protective Order prevents any party or third party from designating Discovery Material pursuant to this Protective Order.

(e) Any party or third party may designate any Discovery Material that it believes in good faith to contain Confidential Information to be the Confidential Information of that party by applying to it either the legend "Confidential Information of (name of party here) Subject to Court Order" or some equivalent language (hereinafter "the First CONFIDENTIAL legend"), or the legend "Confidential Information (name of party here) Subject to Court Order – Attorneys Eyes Only" or some equivalent language (hereinafter "the Second CONFIDENTIAL legend"). Any Discovery Material so designated shall thereafter be treated pursuant to the provisions of this Protective Order.

(f) Discovery Material may be designated Confidential Information by labeling such documents and material in a visible manner with either of the CONFIDENTIAL legends.

(g) Any party may designate testimony from oral depositions as Confidential Information by so stating on the record prior to the testimony, or thereafter by notifying the other parties in writing of the portions of such testimony to be so designated within ten (10) days of the receipt of the transcript. During such ten (10) day period, the transcript is deemed to contain Confidential Information designated with the Second CONFIDENTIAL legend. Any transcript of testimony or portions thereof so designated shall be labeled in a visible manner with one of the CONFIDENTIAL legends. Notwithstanding the treatment of such transcript during the ten (10) day period as Confidential Information, the witness may also view the transcript during this time to review and correct any errors in the transcript. The term "transcript" specifically includes both the written deposition transcripts and video or audio recordings of the depositions as well.

2. Discovery Materials that are labeled with either of the CONFIDENTIAL legends are not to be communicated and/or disclosed in any manner, directly or indirectly, to anyone other than a person qualified to receive such material under the terms and conditions set forth below.

3. (a) Access to all materials designated with the First CONFIDENTIAL legend and disclosure of the information contained in such materials shall be restricted solely to:

(i) the attorneys in the law firms representing a party as Outside Counsel and personnel of such law firms or copy services assisting the attorneys working on this case;

(ii) any employee or representative of a party that counsel for that party in good faith believes has a need to know the information for the defense or prosecution of this litigation;

(iii) any translators, qualified person taking testimony involving such documents or information and necessary stenographic personnel thereof;

(iv) any person, including any outside consultant or expert (and his or her necessary assistants), or any in-house counsel, director, partner or officer of a party who is assisting counsel or a party to this litigation to whom it is necessary to disclose Confidential Information for the purpose of assisting in, or consulting with respect to, the preparation and trial of this lawsuit; and

(v) the Board and authorized Board personnel.

(b) Access to all materials designated with the Second CONFIDENTIAL legend and disclosure of the information contained in such materials shall be restricted solely to:

(i) the attorneys in the law firms representing a party as Outside Counsel and personnel of such law firms or copy services assisting the Outside Counsel working on this case;

(ii) any qualified person taking testimony involving such documents or information and necessary stenographic personnel thereof;

(iii) any outside consultant or expert (and his or her necessary assistants), who is assisting Outside Counsel to this litigation to whom it is necessary to disclose Confidential Information for the purpose of assisting in, or consulting with respect to, the preparation and trial of this lawsuit; and who has complied with the provisions of Section 5 hereof; and

(iv) the Board and authorized Board personnel.

4. Any Discovery Material designated with either of the CONFIDENTIAL legends and the information contained in such material (including extracts and summaries derived from such material) shall not be revealed to anyone other than those encompassed by Paragraph 3 above, unless the party producing the so-designated Discovery Material assents in writing to the disclosure or unless the Board otherwise directs.

5. Prior to being given access to any Confidential Information, each outside expert or consultant shall be provided with a copy of this Protective Order; shall agree in writing to be bound by the terms and conditions of this Protective Order, by signing an Acknowledgment in the form attached as Exhibit "A." Outside Counsel shall retain copies of all executed Acknowledgments by experts or consultants working for that Outside Counsel.

6. This Protective Order shall not preclude counsel for any party from using in the course of depositions or submitting to the Board for any purpose – including trial – any Discovery Material designated with either of the CONFIDENTIAL legends, provided that adequate steps are taken to preserve the confidentiality of such material, and provided further:

(a) that during the course of any deposition such material may be disclosed only to an employee or agent of the party providing such material, or a person who is

indicated to be the author, direct recipient or copy recipient of such material, or another person authorized by this Protective Order to receive such material; and

(b) that any party intending to make use of a disclosing party's Confidential Information at or in connection with any proceeding or appeal in this matter shall preserve the confidentiality of such material by filing it under seal or by notifying the disclosing party in advance thereof and attempting to agree upon appropriate procedures to protect confidentiality in such circumstances. A disclosing party may request the Board to accord special treatment to evidence previously designated as Confidential Information so as to protect the confidentiality of its contents to an extent not inconsistent with the reasonable use in this Opposition and in connection with any hearings on appeal. Such special treatment may include, without limitation, the maintaining of a document under seal when not being used in the courtroom and the dismissal from the courtroom, during any period of disclosure of the designated material, of all persons not authorized to have access to the document under the terms of this Protective Order.

7. When documents, briefs, transcripts or memoranda containing Discovery Material designated as Confidential Information are filed with the Board, they shall be placed in sealed envelopes or other appropriately sealed containers on which shall be endorsed:

- (a) the style of the action;
- (b) the name of the party filing the sealed envelope or other appropriately sealed container and an indication of the nature of the contents; and
- (c) a statement substantially in one of the following forms:

**CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER
NOT TO BE OPENED WITHOUT AUTHORIZATION**

Such envelope or container shall not be opened without further order of the Board except by persons qualified under the terms of this Protective Order, who shall return such envelope or container to the Board appropriately sealed and endorsed as provided above.

8. When Confidential Information is disclosed during any deposition, hearing or other proceeding, other than at trial, counsel for the parties shall make arrangements – or, when appropriate, request the Board to make arrangements – to ensure that only persons qualified under the terms of this Protective Order are present during such disclosure.

9. Persons having knowledge of information designated as Confidential Information solely by virtue of their participation in the conduct of this opposition shall use the designated information only in connection with the prosecution, defense or appeal of this opposition, and shall neither (1) use such designated information for any other purpose, nor (2) disclose such designated information to any person who is not permitted access to such designated information by this Protective Order.

10. At any time, a party may challenge a designation of material as Confidential Information. The party challenging such designation has the burden of making an appropriate motion to the Board and obtaining a ruling upon such motion. In such motion, the party claiming Confidential Information status shall have the burden of establishing the need for such status. Pending such determination by the Board, material designated by a party as Confidential Information shall be treated as Confidential Information.

11. The restrictions against disclosure set forth in this Protective Order shall not apply to information received by one party bearing the Confidential Information designation when such information:

(a) is at any time independently developed by the receiving party without use of or reliance upon any of the disclosing party's materials bearing either of the CONFIDENTIAL legends; or

(b) is rightfully acquired by the receiving party from an independent source, without restrictions as to use or obligations as to confidence; or

(c) was, prior to disclosure, rightfully in the possession or knowledge of the receiving party; or

(d) is publicly available in substantially the same form in which it was provided by the disclosing party; or

(e) is required by law to be made available to third parties (a party receiving a subpoena for a producing party's Confidential Information has the duty to notify said producing party as soon as practicable); or

(f) was, is or becomes public knowledge not in violation of this Protective Order.

12. All Discovery Material bearing either of the CONFIDENTIAL legends shall not be used by any recipient or disclosed to anyone for any purpose other than in connection with this opposition, and shall not be communicated in any manner, directly or indirectly, to anyone other than a person qualified to receive such material under the terms and conditions set forth herein unless and until the restrictions herein are modified either by agreement of counsel for all parties or by order of the Board.

13. A party or non-party that inadvertently fails to designate Discovery Material as Confidential Information at the time of the production shall be entitled to make a correction. Such correction and notice thereof ("Correction Notice") shall be made in writing, accompanied

by substitute copies of each item appropriately designated. Those individuals who reviewed the Confidential Information prior to receipt of the Correction Notice shall mark as CONFIDENTIAL, return or destroy all copies of such previously non-designated Discovery Material and shall honor the provisions of this Protective Order with respect to the use and disclosure of any Confidential Information contained in said Discovery Material. Within five (5) business days of receipt of the Correction Notice and substitute copies, the receiving party shall mark as CONFIDENTIAL, return or destroy the previously non-designated Discovery Materials and all copies thereof.

14. If Confidential Information is disclosed to any person other than in the manner authorized by this Protective Order, the party responsible for this disclosure shall make reasonable efforts to prevent further disclosure by it or by the person who was the recipient of such information.

15. This Protective Order is being entered without prejudice to the right of any party or other person to move the Board for modification of or relief from any of its terms.

16. This Order shall not bar attorneys from advising their clients with respect to this litigation, or to prevent counsel from generally commenting on, aggregating or summarizing Confidential Information, so long as such advice and comment does not disclose the Confidential Information.

17. Within sixty (60) days after the final termination of this opposition (whether by judgment, settlement or otherwise – including all appeals and applications for discretionary review) each party, at its election, shall: (1) return all Discovery Material – including copies, extracts and summaries of such material – to the party producing it, or (2) destroy such material and provide a letter certifying such destruction. For archival purposes, Outside Counsel may

retain copies of all pleadings, transcripts, exhibits and written discovery responses, including portions designated under this Protective Order.

18. The terms of the Protective Order shall survive the termination of this opposition purpose of enforcing this Protective Order.

19. Nothing in this Protective Order shall be deemed to prohibit a party from disclosing or using its own Confidential Information as it sees fit.

IT IS SO ORDERED:

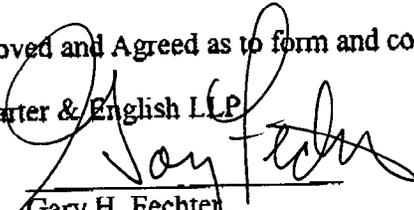
Dated: _____, 2003.

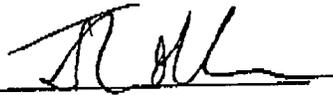
TRADEMARK TRIAL AND APPEAL BOARD

Approved and Agreed as to form and content .

McCarter & English LLP

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Opposition No. 91157022

ACKNOWLEDGMENT OF REVIEW OF STIPULATED CONFIDENTIALITY ORDER

The undersigned acknowledges that (s)he has received a copy of the Stipulated Confidentiality Order in this action signed by the Trademark Trial and Appeal Board on _____. The undersigned acknowledges that he/she has carefully read and understands the provisions of the Stipulated Confidentiality Order and in consideration for his/her retention as an expert in this matter will comply with all of the provisions of the Stipulated Confidentiality Order.

Signed this _____ day of _____, 2003.

NAME

TITLE

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October 27, 2003

VIA EXPRESS MAIL

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Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513



10-27-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #22

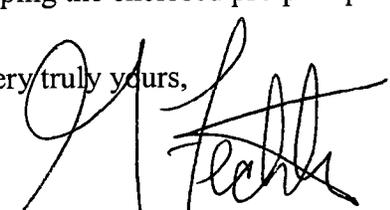
Re The Wet Seal, Inc. v. FD Management, Inc.
Opposition No. 91157022

Dear Sir or Madam:

We enclose for approval by the Board an original and two (2) copies of a Stipulated Protective Order regarding the above opposition.

Please indicate receipt of this Protective Order by stamping the enclosed pre-paid postage postcard, and return it to us.

Very truly yours,


Gary H. Fechter

GHF:rm
Enclosures
Cc: John M. Cone, Esq. (via Facsimile)

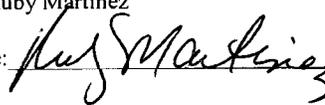
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I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service un 37 C.F.R. 1.10 on the date indicated above and is addressed to the Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513

Name: Ruby Martinez

Signature: 

NY1: 51536.01

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
5408 SOUTH DIVISION STREET
CHICAGO, ILLINOIS 60637

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By
Affirmation

know the contents thereof and the same are true to my knowledge, belief and honest conviction, and I believe that the facts stated herein are true to the best of my knowledge and belief.

The reason for this is that I believe that

I affirm that the contents of this document are true to the best of my knowledge and belief.

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City and
County of
New York

do hereby certify that the contents of this document are true to the best of my knowledge and belief.

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