

ESTTA Tracking number: **ESTTA109106**

Filing date: **11/10/2006**

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

Proceeding	91159367 41159137
Party	Plaintiff THRESHOLD ENTERPRISED LTD THRESHOLD ENTERPRISED LTD
Correspondence Address	STEVEN L. BARON MANDELL MENKES LLC 333 W. WACKER DR. SUITE 300 CHICAGO, IL 60606
Submission	Motion to Compel Discovery
Filer's Name	Kristin L. Lingren
Filer's e-mail	klingren@mandellmenkes.com, sbaron@mandellmenkes.com
Signature	/Kristin Lingren/
Date	11/10/2006
Attachments	Opposer Motion for Entry of Protective Order.pdf (36 pages)(2797518 bytes)

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

In re Matter of U.S. Application Serial No. 76/506,477
For: SOURCED FROM NATURE...PERFECTED BY SCIENCE
Filed: April 8, 2003
Date of Publication: January 6, 2004

OPPOSER THRESHOLD)	
ENTERPRISES, LTD.)	
Opposer,)	
	)	Opposition No. 159,137
	)	(Parent)
v.	)	Opposition No. 159,361
)	
NATURAL SOURCE)	
INTERNATIONAL, LTD.)	
)	
Applicant.)	

OPPOSER'S MOTION FOR ENTRY OF PROTECTIVE ORDER

Opposer Threshold Enterprises Ltd. ("opposer") submits this motion pursuant to 37 C.F.R. §§ 2.120 (e)-(f), Trademark Rule 2.120 (e)-(f), and Rule 37 of the Federal Rules of Civil Procedure, for entry of its proposed Protective Order governing the production of documents and other information in this matter.

1. On August 11, 2006, applicant Natural Source International, Ltd. ("applicant") sent opposer a proposed stipulated protective order to govern this proceeding.
2. On August 30, 2006, opposer wrote a two-page letter to applicant concerning various discovery matters, including applicant's proposed protective order. Opposer objected to the terms of the proposed protective order as having several problems and identified the most important deficiency -- that it did not contain an "attorneys eyes only" provision and therefore did not adequately protect opposer's highly proprietary information. (A true and correct copy of

D). Opposer's revisions principally added an attorney's eyes only provision -- just as opposer had told applicant would be necessary back on August 30, 2006. (*Id.* at ¶¶ 1-2).

6. Opposer tried twice to reschedule the parties' conference call, but applicant refused to do so, stating on November 2, 2006, that it would not discuss the protective order until opposer explained -- in writing -- its position on every outstanding discovery request. (*See* Exhibits D and E).

7. On November 3, 2006, opposer again requested that applicant reconsider its position, explaining that the parties likely could quickly agree on a stipulated protective order and therefore make it unnecessary for the Board to adjudicate that portion of the Motion to Compel. (*See* Exhibit F). Applicant refused to reconsider its position.

8. Applicant ignored opposer's timely objection to applicant's protective order. It lacked an "attorneys eyes only" provision, and therefore the proposal applicant has submitted to the Board does not adequately protect highly confidential information opposer may need to disclose. Opposer's subsequent, repeated efforts to engage applicant in a substantive discussion to agree on the terms of a revised stipulated protective order have failed.

9. Because: (a) opposer timely raised its objections to applicant's proposed protective order; (b) applicant refuses to discuss any proposal for a protective order, and (c) the subject matter of this filing is highly germane to the subject matter of the Motion to Compel, opposer's motion is justified, procedurally proper, and necessary to adequately protect the rights of opposer.

10. "Good cause" exists for the Board to enter a protective order under 37 C.F.R. § 2.120(f), and an "attorneys eyes only" provision is appropriate as a part of that order:

a. Opposer and applicant are competitors in the market of dietary and nutritional

supplements (Notice of Opposition, ¶¶ 2-3);

- b. Opposer competed in this market for at least twenty years before applicant even first used its mark (*Id.* ¶ 3);
- c. Upon information and belief as the more senior market participant, opposer has greater market penetration and more extensive sensitive business, market, and customer information than applicant;
- d. Opposer has invested substantial amounts of time, effort and money in developing and enhancing its sensitive business, market, and customer information (*see id.* ¶ 5);
- e. If applicant were to have access to such highly confidential and competitively sensitive information, disclosure likely would cause competitive injury to the opposer;³

11. Attached as Exhibit G is a non-redlined copy of the stipulated protective order that opposer proposed to applicant on October 26, 2006 and which contains an “attorneys eyes only” provision that would sufficiently protect any highly confidential information opposer is required to disclose.

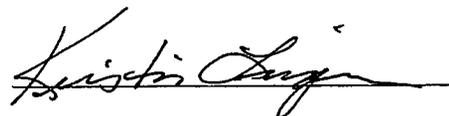
WHEREFORE, opposer Threshold Enterprises, Ltd. respectfully requests that the Board enter the protective order attached hereto as Exhibit G.

Respectfully submitted,

THRESHOLD ENTERPRISES LTD.

Date: November 10, 2006

By:



³ By virtue of any statement made in this motion, opposer does not intend to limit or waive its right to object to discovery requests seeking such information as may be appropriate.

Steven L. Baron
Kristin L. Lingren
Mandell Menkes LLC
333 West Wacker Drive, Ste. 300
Chicago, Illinois 60606
sbaron@mandellmenkes.com
(312) 251-1000 (phone)
(312) 251-1010 (fax)
Attorneys for Opposer

Mary Catherine Merz, Esq.
Ameen Imam, Esq.
MERZ & ASSOCIATES. P.C.
Attorneys at Law
1140 Lake Street, Suite 304220
Oak Park, Illinois 60301
mmerz@merz-law.com
(708) 383-8801 (phone)
(708) 383-8897 (fax)
Attorneys for Opposer

158590.2

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Attorneys at Law
1140 Lake Street, Suite #304
Oak Park, Illinois 60301-1051
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*Mary Catherine Merz, Esq
Direct Dial. (708) 383-8801 ext 22
Fax: (708) 383-8897
Email: mmerz@merz-law.com*

*DOMESTIC/INTERNATIONAL
Trademarks, Copyrights
Unfair Competition and
Advertising Law*

VIA FACSIMILE
CONFIRMATION U.S. MAIL

August 30, 2006

Paul M. Fakler
THELEN REID & PRIEST LLP
875 Third Avenue
New York, New York 10022

Re: Opposition v. "SOURCED FROM NATURE...PERFECTED BY
SCIENCE" in the U.S.
(Opp. No. 159,137; Our Ref. 21436)

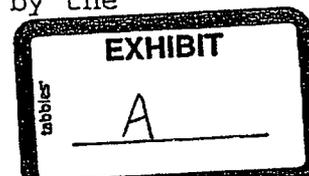
Dear Paul:

I have spoken with my client regarding the status of discovery in the above-referenced opposition and the related issues you have raised. He has advised me as follows.

First, Threshold Enterprises Ltd. ("Threshold") is in the process of bringing new counsel into this opposition; new counsel will get back to you as soon as possible regarding the discovery concerns you have raised in your recent correspondence.

Second, there are problems with the stipulated protective agreement that Natural Source International Ltd. ("NSI") has proposed. Most importantly, the agreement does not adequately protect Threshold's proprietary information; a provision such as an "attorney's eyes only" limitation is going to have to be added to protect Threshold's confidential information.

Third, Threshold is surprised by your concern about the speed with which Threshold is responding to NSI's recent interest in moving this proceeding forward. Kevin McCarthy of NSI has continuously delayed this proceeding by delaying his responses to Threshold's correspondence concerning settlement negotiations. Threshold has been more than patient with these delays over the past two years. Furthermore, Threshold is quite troubled by the bad faith in which Mr. McCarthy appears to have



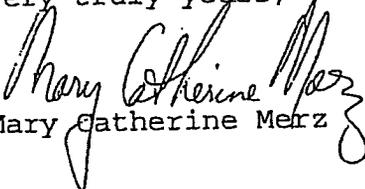
MERZ & ASSOCIATES®

Mr. Paul Faulker
August 30, 2006
Page 2

been negotiating on behalf of NSI. As you may be aware, the parties had reached an agreement in principal during negotiations between Mr. McCarthy and Brian Cayton of Threshold. However, when it came to putting those terms in a written agreement, the terms to which NSI was willing to agree were very different from the ones that had been discussed, particularly with respect to the use of NSI's trade name prominently on its product labels and packaging.

Finally, given that Threshold is beginning to work with new counsel in this proceeding, Threshold would be willing to agree to a further extension of the discovery period. The length of that extension, however, will need to be discussed with Threshold's new counsel. As stated above, Threshold's new counsel will be in touch with you as soon as possible.

Very truly yours,


Mary Catherine Merz

MCM/mm
cc: Barry Sugarman
Carla Oakley, Esq.
via E-mail

Kristin L. Lingren

From: Kristin L. Lingren
Sent: Thursday, October 12, 2006 11:50 AM
To: 'pfakler@thelenreid.com'
Cc: Steven L. Baron
Subject: Threshold Enterprises v. Natural Source
Attachments: Threshold Additional Appearance.pdf

Dear Mr. Fakler,

We have been retained as co-counsel for Threshold Enterprises in the TTAB opposition proceeding *Threshold Enterprises Ltd. v. Natural Source Int'l, Ltd.* A courtesy copy of the appearance we filed yesterday is attached.

If possible, we would like to schedule a short call with you later this afternoon in anticipation of a more substantive discussion of discovery matters with you next week. Please let us know if you have any availability after 4:00 or so your time.

We look forward to speaking with you.

Regards,

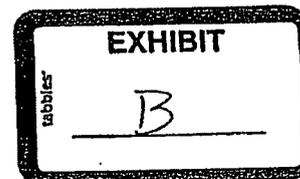
Kristin Lingren
Mandell Menkes LLC
333 W. Wacker Drive, Suite 300
Chicago, Ill. 60606
312.251.1000 (main)
312.759.2766 (direct)
312.251.1010 (fax)
e-mail: klingren@mandellmenkes.com

Web site: www.mandellmenkes.com

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11/9/2006



Kristin L. Lingren

From: Fakler, Paul [pfakler@thelenreid.com]
Sent: Friday, October 13, 2006 12:54 PM
To: Kristin L. Lingren
Cc: Steven L. Baron
Subject: RE: Threshold Enterprises v. Natural Source

Kristen,

I have been out of the office this week, and do not have any availability today, but can do a call next week. Please let me know when you would like to speak and I will set the time aside.

Regards,
Paul

Paul M. Fakler
Thelen Reid & Priest LLP
875 Third Avenue
New York, NY 10022-6225
www.thelenreid.com

phone (212) 603-2143
fax (212) 829-2076
e-mail pfakler@thelenreid.com

-----Original Message-----

From: Kristin L. Lingren [mailto:KLingren@mandellmenkes.com]
Sent: Thursday, October 12, 2006 12:50 PM
To: Fakler, Paul
Cc: Steven L. Baron
Subject: Threshold Enterprises v. Natural Source

Dear Mr. Fakler,

We have been retained as co-counsel for Threshold Enterprises in the TTAB opposition proceeding *Threshold Enterprises Ltd. v. Natural Source Int'l, Ltd.* A courtesy copy of the appearance we filed yesterday is attached.

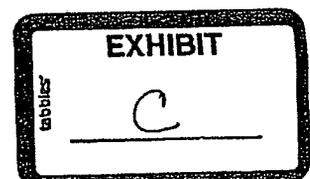
If possible, we would like to schedule a short call with you later this afternoon in anticipation of a more substantive discussion of discovery matters with you next week. Please let us know if you have any availability after 4:00 or so your time.

We look forward to speaking with you.

Regards,

Kristin Lingren
Mandell Menkes LLC
333 W. Wacker Drive, Suite 300
Chicago, Ill. 60606

11/9/2006



-----Original Message-----

From: Kristin L. Lingren [mailto:KLingren@mandellmenkes.com]
Sent: Thursday, October 19, 2006 2:00 PM
To: Fakler, Paul
Cc: Steven L. Baron
Subject: RE: Threshold Enterprises v. Natural Source

Paul,

Do you have any availability for a call tomorrow around noon Chicago time?

Kristin Lingren
Mandell Menkes LLC
333 W. Wacker Drive, Suite 300
Chicago, Ill. 60606
312.251.1000 (main)
312.759.2766 (direct)
312.251.1010 (fax)
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Web site: www.mandellmenkes.com

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From: Fakler, Paul [mailto:pfakler@thelenreid.com]
Sent: Friday, October 13, 2006 12:54 PM
To: Kristin L. Lingren
Cc: Steven L. Baron
Subject: RE: Threshold Enterprises v. Natural Source

Kristen,

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Regards,
Paul

Paul M. Fakler
Thelen Reid & Priest LLP
875 Third Avenue
New York, NY 10022-6225
www.thelenreid.com

Kristin L. Lingren

From: Fakler, Paul [pfakler@thelenreid.com]
Sent: Thursday, October 19, 2006 1:02 PM
To: Kristin L. Lingren
Cc: Steven L. Baron
Subject: RE: Threshold Enterprises v. Natural Source

Sure That would be fine.

Paul M. Fakler
Thelen Reid & Priest LLP
875 Third Avenue
New York, NY 10022-6225
www.thelenreid.com

phone (212) 603-2143
fax (212) 829-2076
e-mail pfakler@thelenreid.com

-----Original Message-----

From: Kristin L. Lingren [mailto:KLingren@mandellmenkes.com]
Sent: Thursday, October 19, 2006 2:00 PM
To: Fakler, Paul
Cc: Steven L. Baron
Subject: RE: Threshold Enterprises v. Natural Source

Paul,

Do you have any availability for a call tomorrow around noon Chicago time?

Kristin Lingren
Mandell Menkes LLC
333 W. Wacker Drive, Suite 300
Chicago, Ill. 60606
312.251.1000 (main)
312.759.2766 (direct)
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Web site: www.mandellmenkes.com

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Kristin L. Lingren

From: Kristin L. Lingren
Sent: Thursday, October 19, 2006 1:08 PM
To: 'Fakler, Paul'
Cc: Steven L. Baron
Subject: RE: Threshold Enterprises v Natural Source

Great We'll plan on giving you a call then.

Kristin Lingren
Mandell Menkes LLC
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From: Fakler, Paul [<mailto:pfakler@thelenreid.com>]
Sent: Thursday, October 19, 2006 1:02 PM
To: Kristin L. Lingren
Cc: Steven L. Baron
Subject: RE: Threshold Enterprises v. Natural Source

Sure. That would be fine.

Paul M. Fakler
Thelen Reid & Priest LLP
875 Third Avenue
New York, NY 10022-6225
www.thelenreid.com

phone (212) 603-2143
fax (212) 829-2076
e-mail pfakler@thelenreid.com

fax (212) 829-2076
e-mail pfakler@thelenreid.com

-----Original Message-----

From: Kristin L. Lingren [mailto:KLingren@mandellmenkes.com]
Sent: Thursday, October 19, 2006 5:29 PM
To: Fakler, Paul
Subject: RE: Threshold Enterprises v. Natural Source

Paul,

Can we push back our call until 2:30 Chicago time?

Kristin Lingren
Mandell Menkes LLC
333 W. Wacker Drive, Suite 300
Chicago, Ill. 60606
312.251.1000 (main)
312.759.2766 (direct)
312.251.1010 (fax)
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From: Fakler, Paul [mailto:pfakler@thelenreid.com]
Sent: Thursday, October 19, 2006 1:02 PM
To: Kristin L. Lingren
Cc: Steven L. Baron
Subject: RE: Threshold Enterprises v. Natural Source

Sure. That would be fine.

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Thelen Reid & Priest LLP
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New York, NY 10022-6225
www.thelenreid.com

phone (212) 603-2143
fax (212) 829-2076
e-mail pfakler@thelenreid.com

Kristin L. Lingren

From: Kristin L. Lingren
Sent: Friday, October 20, 2006 1:44 PM
To: 'Fakler, Paul'
Subject: RE: Threshold Enterprises v. Natural Source

Paul,

Our apologies in advance - Steve Baron is currently on trial, and a few minutes ago the judge ordered the parties to appear back in court this afternoon, an unexpected development. Although there is a chance that they might not be tied up all afternoon, we think it more prudent to reschedule our call for Monday. We likely can get you our proposed revisions on the protective order to you in advance of that call, too. Do you have any availability Monday? We would prefer early in the morning, but will do our best to accommodate your schedule. Thanks for your flexibility.

Kristin Lingren
Mandell Menkes LLC
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Chicago, Ill. 60606
312.251.1000 (main)
312.759 2766 (direct)
312.251.1010 (fax)
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From: Fakler, Paul [<mailto:pfakler@thelenreid.com>]
Sent: Thursday, October 19, 2006 4:35 PM
To: Kristin L. Lingren
Subject: RE: Threshold Enterprises v. Natural Source

That is fine. Here is the protective order.

Paul M. Fakler
Thelen Reid & Priest LLP
875 Third Avenue
New York, NY 10022-6225
www.thelenreid.com

phone (212) 603-2143

11/9/2006

Kristin L. Lingren

From: Kristin L. Lingren
Sent: Thursday, October 26, 2006 8:03 PM
To: 'pfakler@thelenreid.com'
Cc: Steven L. Baron
Subject: Threshold Enterprises v. Natural Source – Revised proposed protective order
Attachments: 158099v2.DOC

Paul,

Attached is a revised version of the protective order for your consideration. The attorney's eyes only provision is the source of most of the changes. Please call me when you have a moment to discuss the draft.

Regards,

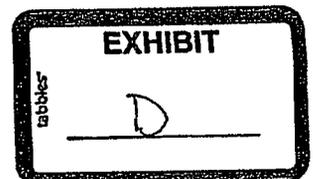
Kristin

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

THRESHOLD ENTERPRISES LTD,)
)
 Opposer,)
 v.)
)
 NATURAL SOURCE INTERNATIONAL,)
 LTD.,)
)
 Respondent.)
)
)
)

Opposition No.: 91159361
Serial No. 76/506477
Mark: SOURCED FROM NATURE . . .
PERFECTED BY SCIENCE

STIPULATED PROTECTIVE ORDER

Having agreed that discovery in this case may require disclosure of trade secrets or other confidential research, financial, product development or commercial information, and considering the privacy interests in disclosure of this information, and good cause having been shown pursuant to 37 C.F.R. § 2.120(f) and Rule 26(c) of the Federal Rules of Civil Procedure, the parties hereto, through their undersigned counsel, hereby stipulate and agree to the entry of the following order ("Protective Order"):

1 Any party to this action, and any non-party from whom discovery is sought in connection with this action (the "Designating Party"), may designate any documents, testimony or other discovery material with one of the following two designations:

(a) "CONFIDENTIAL": or

(b) "CONFIDENTIAL - ATTORNEYS' EYES ONLY".

All tangible items so designated shall be conspicuously stamped or written upon each page or separate item by the Designating Party as "CONFIDENTIAL" or "CONFIDENTIAL -

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ATTORNEYS' EYES ONLY." except where the parties have agreed to a designation without marking.

2. "CONFIDENTIAL" information is information that the Designating Party reasonably and in good faith believes comprises or contains confidential and sensitive technical, marketing, financial, sales or other confidential business information, but which is not "CONFIDENTIAL - ATTORNEYS' EYES ONLY" information. "CONFIDENTIAL - ATTORNEYS' EYES ONLY" information is highly confidential information that is so competitively sensitive that disclosure is likely to cause competitive injury to the Designating Party. Such information includes but is not limited to the Designating Party's trade secrets, customer lists, confidential competitive pricing and market analyses, business plans and product development information, business relationships with third parties, and confidential research. This Protective Order shall not protect from production information, documents or other material that (a) has been produced in any other legal action or proceeding without confidentiality protection, except inadvertently produced documents; (b) has been lawfully obtained by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding; or (d) has been denied confidential treatment in any other action or proceeding by a final order as to which all appeals and other opportunities to challenge have been exhausted or for which the time for appealing or otherwise challenging has expired, and is publicly available from the records of such proceeding without any further hearing, order, motion, notice or appeal

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Deleted: shall not designate material as "CONFIDENTIAL" unless it
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Deleted: and unless the above types of information are so competitively sensitive that their disclosure is likely to cause competitive injury to the Designating Party.

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Deleted: the Designating Party has not made reasonable efforts to keep confidential (including documents produced to federal, state and local legislators and their staff; federal, state and local agencies; trade associations, lawyers' committees, joint defense committees and advocacy organizations); (b)
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3. "Designated Information," as used in this Protective Order, shall refer to any document, testimony or other discovery material designated "CONFIDENTIAL" or

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"CONFIDENTIAL – ATTORNEYS' EYES ONLY", and all copies thereof, whether produced by a party or nonparty, and shall also refer to the information contained in such material.

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4. All persons receiving Designated Information (the "Receiving Party") shall take all steps reasonably necessary to prevent the disclosure of such Designated Information to anyone other than persons identified below.

Deleted: Confidential

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5. "CONFIDENTIAL" information shall be maintained in confidence by the Receiving Party and shall not be disclosed to any person except:

Deleted: Confidential

Deleted: 1

- a. the Board and its employees;
- b. counsel, whether retained counsel or in-house counsel;
- c. regular employees and support staff of counsel to whom it is necessary that the Designated Information be shown for purposes of this Opposition;
- d. present officers or employees of a party to this Opposition to the extent necessary in the prosecution of or in defense to claims made in this Opposition;

Deleted: proceeding

Deleted: , provided that such officers or employees of a party to this litigation have read this Protective Order and have signed an undertaking in the form of Exhibit A attached hereto

e. translators, duplicating services, auxiliary services of like nature, routinely engaged by counsel;

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f. expert witnesses retained by counsel of record in this Opposition for the purpose of preparing or testifying in this Opposition;

g. litigation consultants retained by counsel of record in this Opposition for the purpose of preparing or testifying in this Opposition; and

Deleted: and

h. any third party witness for the purpose of conducting an examination of such witness during the testimony period;

Deleted: trial or discovery deposition

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Material marked or otherwise designated "CONFIDENTIAL" shall not be disclosed to persons in categories 4(e), 4(f), 4(g), and 4(h) until such persons have executed the agreement annexed as

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Deleted: or
Deleted:

Exhibit A hereto

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6. "CONFIDENTIAL - ATTORNEYS' EYES ONLY" information shall be subject to the following restrictions: It shall be maintained in confidence by outside counsel of record, counsel of record's regular employees and support staff, and expert witnesses or litigation consultants retained by counsel of record in this Opposition for the purpose of preparing or testifying in this Opposition. The information shall not be disclosed by counsel of record, expert witnesses or litigation consultants to their respective clients or to anyone else including (but not by way of limitation) any officers, agents, employees, or staff of the client party to this Opposition, consultants retained by any client party to this Opposition, or employees of such consultants. This information may be disclosed to stenographic reporters before whom proceedings are conducted and to the Board and its employees.

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7. The parties hereto agree that if any person not authorized to receive Designated Information under the terms of this Protective Order is present at any deposition in this action or at a hearing, trial or other proceeding in connection with this Opposition, that person shall be asked to leave that proceeding for the period of time during which such information is the subject of questioning

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8. The attorneys of record for a party who wishes to disclose Designated Information to persons other than those identified in Paragraphs 5 and 6 shall notify the attorneys of record for the other party. The attorneys shall discuss in good faith whether disclosure will be allowed. If the parties cannot agree, the party seeking disclosure shall move the Board, on

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reasonable notice, for an order permitting disclosure. No disclosure of the information to persons other than those identified in Paragraphs 5 and 6 shall be made pending a ruling by the Board.

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9. A party shall not be obligated to challenge the propriety of the designation of information as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" at the time made, and failure to do so shall not preclude a later challenge thereof. If a party challenges such a designation, it shall send or give notice to the other party and to any third party who designated the information as confidential and shall attempt in good faith to resolve any challenge on an expedited and informal basis. The party which designated such information as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" shall have the burden of proof as the validity of each such designation. The information at issue shall continue to be treated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" until the parties reach an agreement or the Board makes a determination as to the propriety of the designation.

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10. Discovery material produced without the designation of "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" may be designated subsequent to production or testimony when the Designating Party failed to make such designation at the time of production or during the testimony through inadvertence or error. If discovery material is designated subsequent to production or testimony, the Receiving Party shall use its best efforts to promptly collect any copies that have been provided to individuals other than those identified in Paragraphs 5 and 6 of the Protective Order. For purposes of this Paragraph, material and information will be deemed to be "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" as of the date upon which notice of the designation is received.

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11. After each deposition, a party may designate portions of the transcript "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" within thirty (30) days from receipt of the transcript of the depositions.

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12. No Designated Information shall be filed in the public record of this Opposition. With respect to any documents or things containing or embodying Designated Information that are to be filed in this proceeding, the portions of such filings that disclose Designated Information should be redacted, to the extent reasonable.

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Deleted: Confidential

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small number of pages contain such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. Occasions when a whole document or brief must be submitted under seal should be very rare.

Protected information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

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This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

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13. At the conclusion of this proceeding, all material produced pursuant to discovery, and all copies thereof, shall be returned to the Designating Party or, at the option of the Designating Party, opposing counsel shall certify in writing that such materials have been destroyed, except that counsel of record may retain one set of all papers filed with the court, including confidential discovery material

14. This Protective Order shall remain in full force and effect after the termination of this proceeding, or until canceled or otherwise modified by the Board, or by written agreement of the parties

Dated: October, 2006

Deleted: August

Agreed to by:

<p>MERZ AND ASSOCIATES, P.C.</p> <p>By: _____ Mary Catherine Merz</p> <p>1140 Lake Street Suite 304 Oak Park, Illinois 60301 Telephone: () - Facsimile: () -</p> <p>Counsel for Opposer <i>Threshold Enterprises Ltd</i></p>	<p>THELEN REID & PRIEST LLP</p> <p>By: _____ Paul M Fakler</p> <p>875 Third Avenue New York, New York 10022 Telephone: (212) 603-2143 Facsimile: (212) 829-2076</p> <p>Counsel for Applicant <i>Natural Source International, Ltd.</i></p>
--	--

By Order of the Board, effective _____

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NY #722816 v1

Administrative Trademark Judge
| Trademark Trial and Appeal Board

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¶

|

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NY #722816 v1

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EXHIBIT A

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

THRESHOLD ENTERPRISES LTD ,)	
)	
Opposer,)	
v	)	Opposition No : 91159361
	)	Serial No 76/506477
NATURAL SOURCE INTERNATIONAL,	)	Mark: SOURCED FROM NATURE
LTD ,	)	PERFECTED BY SCIENCE
)	
Respondent.)	
_____)	

AGREEMENT TO COMPLY WITH STIPULATED
PROTECTIVE ORDER

I hereby acknowledge receipt of materials or information alleged to be confidential by one or more parties to the above-captioned proceeding before the Trademark Trial and Appeal Board. I certify my understanding that such material is provided to me pursuant to the terms and restrictions of the Stipulated Protective Order in that proceeding ("Protective Order") and that I have been given a copy of and have read said Protective Order. I understand that I am to retain control of any copies of any of the aforesaid discovery material and that, upon completion of my assigned duties, I shall be responsible for the identification and disposition of the designated material, including any copies of documentary materials. I further agree to notify any stenographic or clerical personnel who are required to assist me of the terms of said Protective Order. I also agree not to disseminate such information, except for purposes of this action and as permitted by said Protective Order or a further Order of the Board.

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I declare under penalty of perjury that the above statements are true and correct.

Dated: _____ Signed: _____

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Kristin L. Lingren

From: Kristin L. Lingren
Sent: Thursday, November 02, 2006 7:50 AM
To: 'pfakler@thelenreid.com'
Cc: Steven L. Baron
Subject: Threshold Enterprises Opposition

Paul,

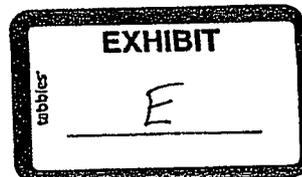
Do you have any availability today or tomorrow to discuss the protective order?

Kristin Lingren
Mandell Menkes LLC
333 W. Wacker Drive, Suite 300
Chicago, Ill. 60606
312.251.1000 (main)
312.759.2766 (direct)
312.251.1010 (fax)
e-mail: klingren@mandellmenkes.com
Web site: www.mandellmenkes.com

This e-mail may contain confidential and privileged material for the sole use of the intended recipient. Any review or distribution by anyone other than the intended recipient is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies of this e-mail immediately.

Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding any penalties that may be imposed under the Internal Revenue Code. (The foregoing legend has been affixed pursuant to US Treasury Regulations governing tax practice.)

11/9/2006



Kristin L. Lingren

From: Fakler, Paul [pfakler@thelenreid.com]
Sent: Thursday, November 02, 2006 11:16 AM
To: Kristin L. Lingren
Cc: Steven L. Baron
Subject: RE: Threshold Enterprises Opposition

Kristin,

I would rather not deal with the outstanding issues piecemeal. Please send me your written position on all of the outstanding discovery issues in our motion and perhaps we can move forward from there. It would also be helpful if Threshold would at least begin producing non-confidential documents.

Regards,
Paul

Paul M. Fakler
Thelen Reid & Priest LLP
875 Third Avenue
New York, NY 10022-6225
www.thelenreid.com

phone (212) 603-2143
fax (212) 829-2076
e-mail pfakler@thelenreid.com

-----Original Message-----

From: Kristin L. Lingren [mailto:KLingren@mandellmenkes.com]
Sent: Thursday, November 02, 2006 8:50 AM
To: Fakler, Paul
Cc: Steven L. Baron
Subject: Threshold Enterprises Opposition

Paul,

Do you have any availability today or tomorrow to discuss the protective order?

Kristin Lingren
Mandell Menkes LLC
333 W. Wacker Drive, Suite 300
Chicago, Ill. 60606
312.251.1000 (main)
312.759.2766 (direct)
312.251.1010 (fax)
e-mail: klingren@mandellmenkes.com
Web site: www.mandellmenkes.com

This e-mail may contain confidential and privileged material for the sole use of the intended recipient. Any review or distribution by anyone other than the intended recipient is strictly prohibited. If you are not the

11/9/2006

Kristin L. Lingren

From: Kristin L. Lingren
Sent: Friday, November 03, 2006 1:20 PM
To: 'pfakler@thelenreid.com'
Cc: Steven L. Baron
Subject: Threshold Enterprises v. Natural Source International

Dear Paul,

Based on our recent exchange, I understand that before you will discuss our proposed revisions to your draft protective order (which we sent to you on October 26), you want us to respond in writing to all outstanding discovery matters. In our view, this approach is inefficient and counterproductive. We anticipate that the parties could come to an agreement on an appropriate protective order relatively quickly via conference call, as we have proposed. This would allow us to submit the agreed language to the Board, thereby making it unnecessary for the Board to consider at least one portion of applicant's pending motion to compel.

We expect to produce documents and respond to outstanding discovery matters in relatively short order, but it certainly will be at least a week before we can begin to finalize that process and obtain client sign-off on the responses. As we have indicated to you, Steve Baron has been out of town participating in a jury trial for nearly two weeks. That trial is expected to continue until November 13 or 14.

If you wish to re-consider discussing this matter, please contact me before the close of business on Monday, November 6. If we do not hear from you by then, we will submit the proposed protective order to the Board on our own.

Sincerely,

Kristin Lingren
Mandell Menkes LLC
333 W. Wacker Drive, Suite 300
Chicago, Ill. 60606
312.251.1000 (main)
312.759.2766 (direct)
312.251.1010 (fax)
e-mail: klingren@mandellmenkes.com
Web site: www.mandellmenkes.com

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Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding any penalties that may be imposed under the Internal Revenue Code. (The foregoing legend has been affixed pursuant to US Treasury Regulations governing tax practice.)

11/9/2006



2. "CONFIDENTIAL" information is information that the Designating Party reasonably and in good faith believes comprises or contains confidential and sensitive technical, marketing, financial, sales or other confidential business information, but which is not "CONFIDENTIAL - ATTORNEYS' EYES ONLY" information. "CONFIDENTIAL - ATTORNEYS' EYES ONLY" information is highly confidential information that is so competitively sensitive that disclosure is likely to cause competitive injury to the Designating Party. Such information includes but is not limited to the Designating Party's trade secrets, customer lists, confidential competitive pricing and market analyses, business plans and product development information, business relationships with third parties, and confidential research. This Protective Order shall not protect from production information, documents or other material that (a) has been produced in any other legal action or proceeding without confidentiality protection, except inadvertently produced documents; (b) has been lawfully obtained by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding; or (d) has been denied confidential treatment in any other action or proceeding by a final order as to which all appeals and other opportunities to challenge have been exhausted or for which the time for appealing or otherwise challenging has expired, and is publicly available from the records of such proceeding without any further hearing, order, motion, notice or appeal.

3. "Designated Information," as used in this Protective Order, shall refer to any document, testimony or other discovery material designated "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" and all copies thereof, whether produced by a party or nonparty, and shall also refer to the information contained in such material.

4. All persons receiving Designated Information (the "Receiving Party") shall take all steps reasonably necessary to prevent the disclosure of such Designated Information to anyone other than persons identified below.

5. "CONFIDENTIAL" information shall be maintained in confidence by the Receiving Party and shall not be disclosed to any person except:

- (a) the Board and its employees;
- (b) counsel, whether retained counsel or in-house counsel;
- (c) regular employees and support staff of counsel to whom it is necessary that the Designated Information be shown for purposes of this Opposition;
- (d) present officers or employees of a party to this Opposition to the extent necessary in the prosecution of or in defense to claims made in this Opposition;
- (e) translators, duplicating services, auxiliary services of like nature, routinely engaged by counsel;
- (f) expert witnesses retained by counsel of record in this Opposition for the purpose of preparing or testifying in this Opposition;
- (g) litigation consultants retained by counsel of record in this Opposition for the purpose of preparing or testifying in this Opposition; and
- (h) any third party witness for the purpose of conducting an examination of such witness during the testimony period.

Material marked or otherwise designated "CONFIDENTIAL" shall not be disclosed to persons in categories 4(e), 4(f), 4(g), and 4(h) until such persons have executed the agreement annexed as Exhibit A hereto.

6. "CONFIDENTIAL – ATTORNEYS' EYES ONLY" information shall be subject to the following restrictions: It shall be maintained in confidence by outside counsel of record, counsel of record's regular employees and support staff, and expert witnesses or litigation consultants retained by counsel of record in this Opposition for the purpose of preparing or testifying in this Opposition. The information shall not be disclosed by counsel of record, expert witnesses or litigation consultants to their respective clients or to anyone else including (but not by way of limitation) any officers, agents, employees, or staff of the client party to this Opposition, consultants retained by any client party to this Opposition, or employees of such consultants. This information may be disclosed to stenographic reporters before whom proceedings are conducted and to the Board and its employees.

7. The parties hereto agree that if any person not authorized to receive Designated Information under the terms of this Protective Order is present at any deposition in this action or at a hearing, trial or other proceeding in connection with this Opposition, that person shall be asked to leave that proceeding for the period of time during which such information is the subject of questioning.

8. The attorneys of record for a party who wishes to disclose Designated Information to persons other than those identified in Paragraphs 5 and 6 shall notify the attorneys of record for the other party. The attorneys shall discuss in good faith whether disclosure will be allowed. If the parties cannot agree, the party seeking disclosure shall move the Board, on reasonable notice, for an order permitting disclosure. No disclosure of the information to persons other than those identified in Paragraphs 5 and 6 shall be made pending a ruling by the Board.

9. A party shall not be obligated to challenge the propriety of the designation of information as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" at

the time made, and failure to do so shall not preclude a later challenge thereof. If a party challenges such a designation, it shall send or give notice to the other party and to any third party who designated the information as confidential and shall attempt in good faith to resolve any challenge on an expedited and informal basis. The party which designated such information as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" shall have the burden of proof as the validity of each such designation. The information at issue shall continue to be treated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" until the parties reach an agreement or the Board makes a determination as to the propriety of the designation.

10. Discovery material produced without the designation of "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" may be designated subsequent to production or testimony when the Designating Party failed to make such designation at the time of production or during the testimony through inadvertence or error. If discovery material is designated subsequent to production or testimony, the Receiving Party shall use its best efforts to promptly collect any copies that have been provided to individuals other than those identified in Paragraphs 5 and 6 of the Protective Order. For purposes of this Paragraph, material and information will be deemed to be "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" as of the date upon which notice of the designation is received.

11. After each deposition, a party may designate portions of the transcript "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" within thirty (30) days from receipt of the transcript of the depositions.

12. No Designated Information shall be filed in the public record of this Opposition. With respect to any documents or things containing or embodying Designated Information that

are to be filed in this proceeding, the portions of such filings that disclose Designated Information should be redacted, to the extent reasonable.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small number of pages contain such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. Occasions when a whole document or brief must be submitted under seal should be very rare.

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13. At the conclusion of this proceeding, all material produced pursuant to discovery, and all copies thereof, shall be returned to the Designating Party or, at the option of the

Designating Party, opposing counsel shall certify in writing that such materials have been destroyed, except that counsel of record may retain one set of all papers filed with the court, including confidential discovery material.

14. This Protective Order shall remain in full force and effect after the termination of this proceeding, or until canceled or otherwise modified by the Board, or by written agreement of the parties.

Dated: October __, 2006

Agreed to by:

MERZ AND ASSOCIATES, P.C.

THELEN REID & PRIEST LLP

By: _____
Mary Catherine Merz

By: _____
Paul M. Fakler

1140 Lake Street
Suite 304
Oak Park, Illinois 60301
Telephone: (708) 383-8801
Facsimile: (708) 383-8897

875 Third Avenue
New York, New York 10022
Telephone: (212) 603-2143
Facsimile: (212) 829-2076

Counsel for Opposer
Threshold Enterprises Ltd.

Counsel for Applicant
Natural Source International, Ltd.

By Order of the Board, effective _____.

Administrative Trademark Judge
Trademark Trial and Appeal Board

EXHIBIT A

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

THRESHOLD ENTERPRISES LTD.,)	
)	
Opposer,)	
v.	)	Opposition No.: 91159361
	)	Serial No. 76/506477
NATURAL SOURCE INTERNATIONAL,	)	Mark: SOURCED FROM NATURE . . .
LTD.,	)	PERFECTED BY SCIENCE
)	
Respondent.)	
)	
)	
)	

**AGREEMENT TO COMPLY WITH STIPULATED
PROTECTIVE ORDER**

I hereby acknowledge receipt of materials or information alleged to be confidential by one or more parties to the above-captioned proceeding before the Trademark Trial and Appeal Board. I certify my understanding that such material is provided to me pursuant to the terms and restrictions of the Stipulated Protective Order in that proceeding ("Protective Order") and that I have been given a copy of and have read said Protective Order. I understand that I am to retain control of any copies of any of the aforesaid discovery material and that, upon completion of my assigned duties, I shall be responsible for the identification and disposition of the designated material, including any copies of documentary materials. I further agree to notify any stenographic or clerical personnel who are required to assist me of the terms of said Protective Order. I also agree not to disseminate such information, except for purposes of this action and as permitted by said Protective Order or a further Order of the Board.

I declare under penalty of perjury that the above statements are true and correct.

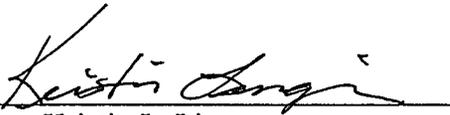
Dated: _____ Signed: _____

CERTIFICATE OF SERVICE

I, Kristin L. Lingren, an attorney, hereby certify that I caused to be served a true and correct copy of the foregoing *Opposer's Motion for Entry of Protective Order* upon counsel of record as follows:

Paul M. Fakler, Esq.
Thelen, Reid & Priest, LLP
875 Third Avenue
New York, New York 10022
Counsel for Natural Source International, Ltd.

by First Class mail, postage prepaid and properly addressed and placed in the mail chute at 333 West Wacker Drive, Chicago, Illinois 60606 on this 10th day of November, 2006.



Kristin L. Lingren