

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

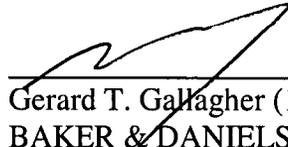
AM GENERAL, LLC:            )  
  )  
                                  Opposer    )  
                                  v.            )  
  )  
OPTIMIZER, INC.            )  
  )  
                                  Applicant    )

Opposition No. 91161306

**MOTION FOR ENTRY OF PROTECTIVE ORDER**

Opposer, AM General, LLC, hereby moves for entry of the enclosed Protective Order in this matter. The Protective Order has been stipulated to by the parties as indicated by the signatures of counsel on Page 7. Entry of the Order is, therefore, respectfully requested.

Respectfully submitted,

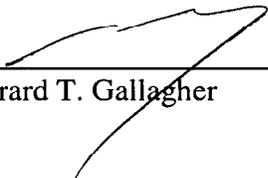
  
\_\_\_\_\_  
Gerard T. Gallagher (16718-71)  
BAKER & DANIELS  
204 West Jefferson Boulevard, Suite 250  
South Bend, IN 46601  
Telephone: (219) 234-4149  
Fax: (219) 239-1900

Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19th day of January, 2005, a true and correct copy of the foregoing was served upon the following counsel of record, via United States mail, postage prepaid.

Gregg Reed  
Kluger, Peretz, Kaplan & Berlin, P.L.  
Miami Center, Suite 1700  
201 South Biscayne Boulevard  
Miami, FL 33131

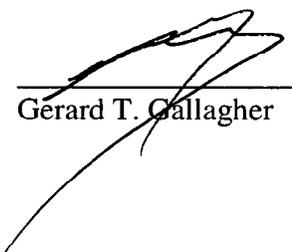


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Gerard T. Gallagher

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of January, 2005, this Motion for Entry of Protective Order, as well as an executed copy of the Protective Order, was served upon the United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451, by depositing the same in the United States mail, postage prepaid.



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Gerard T. Gallagher

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

AM GENERAL, LLC:	)	
	)	
Opposer	)	
v.	)	Opposition No. 91161306
	)	
OPTIMIZER, INC.	)	
	)	
Applicant	)	

**PROTECTIVE ORDER**

IT IS HEREBY ORDERED THAT:

1. All Protected Information produced or exchanged in the course of this opposition proceeding shall be used solely for the purpose of this opposition proceeding or litigation between the parties relating thereto, and information thus disclosed shall not be used for any other purpose or for any other action.

2. Protected Information as used herein shall mean Confidential Information and/or Confidential Attorneys' Eyes Only Information and shall include:

**Any material or information which is designated "Confidential Information" or "Confidential Attorneys' Eyes Only Information" by any party, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory or other discovery response, or otherwise. By way of example and not limitation, Confidential Information or Confidential Attorneys' Eyes Only Information may include information relating to sales, costs, pricing, profits, research, business plans, finances, employment policies, customer identities, internal procedures, and the like. In designating Protected Information, the designating party will make such designation**

only as to that information that it in good faith believes to be confidential or sensitive.

Confidential Information shall be designated by marking the thing or page of a document containing such information as follows: "CONFIDENTIAL."

Confidential Attorneys' Eyes Only Information shall be designated by marking the thing or page of a document containing such information as follows: "CONFIDENTIAL – ATTORNEYS' EYES ONLY."

In lieu of marking and producing the original of a document, a marked copy thereof may be produced, provided that the unmarked original is kept available by the producing party for inspection.

3. Confidential Attorneys' Eyes Only Information shall only be made

available to:

**attorneys who have appeared in this opposition proceeding and employees of the attorneys' law firms to whom it is necessary that the material be disclosed for purposes of this opposition proceeding;**

**judges, attorneys, employees and staff at the TTAB;**

**any independent accountants, statisticians, economists, or other experts, retained or employed by a party as an expert in connection with this opposition proceeding who have no relationship, other than as an expert witness, with any of the parties hereto or any of their competitors and who have signed a document in the form of Exhibit "A" attached hereto, PROVIDED, however, that the name(s) of such person(s) shall be disclosed to the party that provided the Protected Information to be disclosed at least five (5) business days prior to any disclosure of Protected Information to them. Such disclosure shall not be made if written notice of objection is served within said five (5) day period, and any such objection must be based on the objecting party's good faith claim based on a business conflict or competitive injury; but the party seeking disclosure shall have the right to bring the dispute before the Board for resolution if it cannot be resolved by the parties; and**

**any other person who is designated by stipulation of the parties or by order of the Board, after notice to all parties upon a showing of good cause why such person shall be so designated and opposing parties have had an opportunity to be heard in opposition thereto. All such persons designated by the Board or by stipulation shall sign an undertaking, in the form of Exhibit "A" attached hereto, to maintain the information confidential.**

Confidential Information shall only be made available to those above-identified categories of persons to whom Confidential Attorneys' Eyes Only Information may be shared, as well as the parties to this opposition proceeding.

4. For purposes of discovery in this action, Protected Information may be disclosed by an adverse party to officers of the party which designated the information as Confidential Information or Confidential Attorneys' Eyes Only Information, or to the author or addressee or any person who, as a matter of record, actually received a document designated as Confidential, other than through discovery or through attorney client communications relating to this opposition proceeding without the prior written consent of the party who designated the information as Protected Information.

5. Information disclosed at a deposition in this action may be designated by a party as Protected Information by indicating on the record at the deposition that the specific part of the testimony and/or any documents or thing marked for identification is Protected Information and subject to the provisions of this Order. In the event a party designates information at a deposition as Confidential Information or Confidential Attorneys' Eyes Only Information, the reporter shall segregate those pages of the transcript from the remainder of the transcript and mark the segregated pages as designated. A party may also designate information disclosed at such deposition as Confidential Information or Confidential Attorneys' Eyes Only

Information by notifying all parties in writing, within ten (10) days of receipt of the transcript by attorneys for the designating party, of the specific pages and lines of the transcript which contain Confidential Information or Confidential Attorneys' Eyes Only Information. Each party shall attach a copy of such written statement to the face of the transcript and each copy thereof in its possession, custody or control. All depositions shall be treated as Confidential Information for a period of at least ten (10) days after a transcript of said deposition is actually received by attorneys for each of the parties.

6. Any information designated as Confidential Information or Confidential Attorneys' Eyes Only Information shall not be made available to or maintained by persons other than those expressly permitted by paragraph 3 above, or the party who produced the Protected Information.

7. Nothing shall prevent disclosure beyond the terms of this Order if the party designating the information as Protected Information consents to such disclosure, in writing, or if the Board, after notice to all affected parties, orders such disclosure.

8. The inadvertent or unintentional disclosure by the producing party of confidential information, documents or things regardless of whether the information was designated as Protected Information at the time of disclosure shall not be deemed a waiver, in whole or in part, of a party's claim of confidentiality, either as to the specific information disclosed or as to any other information relating thereto or on the same or related subject matter.

9. A party shall not be obligated to challenge the propriety of any confidential designation at the time made, and failure to do so shall not preclude a subsequent challenge thereto. In the event that any party to this litigation disagrees at any stage of these proceedings with any designation made by a producing or supplying party, the parties shall try

first to dispose of such dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting party may seek appropriate relief from the Board.

10. All information provided by non-parties may be made specifically subject to the terms of this Protective Order. Such non-parties and the parties to this litigation may designate information Confidential or Confidential Attorneys' Eyes Only, in accordance with this Order, but by so doing shall be bound by all the other applicable provisions of this Order. The confidential designations placed thereon, if any, shall have the same force and effect as if those designations were made pursuant to the terms of this Order.

11. In the event that a party wishes to use any Protected Information in any affidavits, briefs, memoranda of law, or other pleadings filed with the Board, such Confidential Information used therein shall be filed with the Board in a sealed, opaque container indicating on the outside thereof the case heading of this opposition proceeding and a notification that the contents are subject to a Protective Order and that the container is not to be opened except as permitted by this Protective Order or upon further order of the Board.

12. Within sixty (60) days after the conclusion of this opposition proceeding, the original and all copies of each document and thing produced by a party shall be returned to the producing party or destroyed and, in the event that such copies are destroyed, counsel shall certify in writing to the producing party or non-party that all such documents have been destroyed. Insofar as the provisions of any Protective Order entered in this action restrict the communication and use of the documents produced thereunder, such orders shall continue to be binding after the conclusion of this action except (a) that there shall be no restriction on documents that are used as an exhibit before the Board (unless such exhibit was maintained

under seal) and (b) that a party may seek the written permission of the producing party or further order of the Board with respect to dissolution or modification of such Protective Order.

13. Nothing in this Order shall bar or otherwise restrict any attorney herein from rendering advice to his or her client with respect to this opposition proceeding and, in the course thereof, referring to or relying upon his or her examination of Protected Information provided, however, that in rendering such advice and in otherwise communicating with his or her client, the attorney shall not disclose the content of any Protected Information except if and as permitted by paragraph 3 of this Protective Order.

14. This Order shall be without prejudice to the right of any party to oppose production of any information for lack of relevance or any other ground other than confidentiality.

15. 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 produced, such production shall not constitute a waiver of the parties' respective work product or attorney-client privileges.

16. This Protective Order shall be without prejudice to the right of the parties to request additional protection under Rule 26(c), Fed. R. Civ. P., for discovery requests made hereafter by any party. Nothing in this Order shall prejudice any party or non-party from seeking additional orders with respect to the treatment of information or documents as Confidential.

17. This Order shall not be construed to prevent any person, including those identified in paragraph 3 of this Protective Order, from making use of designated Protected Information which (a) was lawfully in his or her possession prior to the receipt from the supplying party, (b) appears in any printed publication, or other published material available to

the general public, (c) was or is hereafter obtained from a source or sources not under an obligation of secrecy to the other party or parties, (d) is exempted from the operation of this Order by written consent of the party producing such Protected Information, (e) which hereafter becomes available to the public as a result of acts by others not a party to this Order, or (f) by order of the Board.

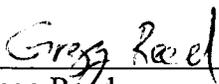
18. Nothing in this Order is to be construed as a waiver or agreement to produce any information protected by the attorney-client privilege and/or work product doctrine.

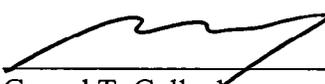
19. Any notice required to be given under this Order shall be given by hand delivery, facsimile delivery or overnight delivery to attorneys of record.

By the Board:

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

So Stipulated:

  
\_\_\_\_\_  
Gregg Reed  
Kluger, Peretz, Kaplan & Berlin, P.L.  
Attorneys for Applicant Optimizer, Inc.  
Miami Center, Suite 1700  
201 South Biscayne Boulevard  
Miami, FL 33131  
Telephone: 305-379-9000  
Fax: 305-379-3428

  
\_\_\_\_\_  
Gerard T. Gallagher  
BAKER & DANIELS  
Attorneys for Opposer AM General, LLC  
205 West Jefferson Boulevard  
South Bend, IN 46601  
Telephone: (574) 234-4149  
Fax: (574) 239-1900

**EXHIBIT A**

\_\_\_\_\_ declares that:

1. I reside at \_\_\_\_\_.
2. I have read and understand the Protective Order in AM General, LLC v. Optimizer, Inc., Opposition No. 91161306, in the United States Patent and Trademark Office Before the Trademark Trial and Appeal Board.
3. I agree to comply with and be bound by all of the terms of the Protective Order.
4. I agree not to disclose any Confidential Information or Confidential Attorneys' Eyes Only Information obtained pursuant to the Protective Order to any persons other than those specifically authorized by the Protective Order.
5. I agree that I will not use such Confidential Information or Confidential Attorneys' Eyes Only Information for any purpose other than the preparation and trial of this opposition proceeding or litigation relating thereto.
6. I agree that, at the conclusion of this opposition proceeding, I will return to the person from whom I obtained Confidential Information or Confidential Attorneys' Eyes Only Information I received pursuant to this Protective Order, as well as any documents derived therefrom, including any and all copies, summaries, abstracts, excerpts, indices, and descriptions of such Protected Information .

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

TAB

# BAKER & DANIELS

Est. 1863

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Indiana  
Washington, D.C.  
China

January 19, 2005

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

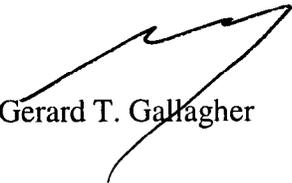
Re: AM General, LLC v. Optimizer, Inc.  
Mark: OPTIMIZER  
Serial No. 76/519,210  
Our Reference: AMG-L0011 (971153.2)

Dear Sir:

Enclosed for filing are an original and two copies of a Motion for Entry of Protective Order, and an original and two copies of the executed Protective Order. Please confirm receipt by date-stamping the enclosed filing receipt card and returning same to our offices. If there are any fees due, please charge them to Baker & Daniels' Deposit Account No. 02-0387 (971153.2).

Very truly yours,

BAKER & DANIELS

  
Gerard T. Gallagher

GTG:rac  
Enclosure  
cc: Kevin D. O'Rear, Esq.



01-25-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #66