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Filing date: **11/10/2005**

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

<b>Proceeding</b>	91163556
<b>Party</b>	Plaintiff TARGET BRANDS, INC. ,
<b>Correspondence Address</b>	Vanessa A. Ignacio, Esq. Lowenstein Sandler PC 65 Livingston Avenue Roseland, NJ 07068-1791 UNITED STATES lstrademark@lowenstein.com
<b>Submission</b>	Protective Order and Agreement to Maintain Confidentiality
<b>Filer's Name</b>	Michael A. Norwick
<b>Filer's e-mail</b>	lstrademark@lowenstein.com
<b>Signature</b>	/Michael A. Norwick/
<b>Date</b>	11/10/2005
<b>Attachments</b>	Protective Order.PDF ( 12 pages )

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

4 Opposition of Application Serial No. 78/170,846

5 Target Brands, Inc. ,

6 Opposer,

7 Opposition No. 91163556

8 v.

9 Shaun N.G. Hughes,

10 Applicant.

11 **PROTECTIVE ORDER AND AGREEMENT TO MAINTAIN**  
12 **CONFIDENTIALITY**

13 WHEREAS, each party believes that some of the discovery and testimony provided or to  
14 be provided by either party would involve disclosure of trade secrets or other confidential  
15 research, development, or commercial information (collectively, "Confidential Information")  
16 within the meaning of Rule 26(c) F.R.Civ.P., as applied by 28 C.F.R. § 2.120; and

17 WHEREAS, each party believes that it will serve the interests of the parties to conduct  
18 discovery and testimony periods under a Protective Order and Agreement to Maintain  
19 Confidentiality (hereinafter "Order and Agreement");

20 IT IS HEREBY ORDERED AND AGREED That:

21 1. For purposes of this Order and Agreement, the expression, "disclosing party",  
22 means the party to this Opposition that provides "Confidential Information" within its  
23 possession, custody or control, regardless of whether the Confidential Information relates to the  
24 disclosing party's operations or those of any third party; and the expression, "receiving party"

1 means the party to this Opposition whose attorneys receive or are otherwise apprised of the  
2 confidential information provided by the disclosing party, as well as those individuals identified  
3 in paragraphs 3-4; and independent experts who have been separately retained by the party for  
4 the purposes of this litigation, and who, pursuant to paragraph 4(d), have acknowledged their  
5 duty to maintain confidentiality by signing the Acknowledgement and Agreement attached  
6 hereto and identified as Exhibit I.

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8 2. Any producing party from whom discovery is sought in this Opposition  
9 proceeding, may designate as "CONFIDENTIAL any documents, testimony or other discovery  
10 material that contains confidential information. Any producing party from whom discovery is  
11 sought in this Opposition proceeding, may designate as "CONFIDENTIAL - ATTORNEYS  
12 ONLY" any proprietary technical, marketing, financial, or sales or other confidential business  
13 information or data, by marking each page that contains such information with the label  
14 'CONFIDENTIAL - ATTORNEYS ONLY' and by marking the specific information or data in  
15 the document that is designated as such. The parties shall not designate information or data as  
16 "CONFIDENTIAL-ATTORNEYS ONLY" unless it comprises or contains technical, marketing,  
17 financial, sales or other confidential business information. "CONFIDENTIAL - ATTORNEYS  
18 ONLY" and "CONFIDENTIAL" material, as used in this Order and Agreement, shall refer to  
19 any so designated documents or parts of documents, deposition testimony or other discovery  
20 material and all copies thereof, and shall also refer to the information contained in such material.  
21 Designated documents shall bear the label designation "CONFIDENTIAL" or  
22 "CONFIDENTIAL - ATTORNEYS ONLY," as appropriate under this Order and Agreement at  
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1 the time of their production. Neither designation shall be made unless the producing party  
2 believes in good faith that the designated material is entitled to protection under the Federal  
3 Rules of Civil Procedure. Deposition testimony may be designated either "CONFIDENTIAL"  
4 or "CONFIDENTIAL-ATTORNEYS ONLY" by counsel for the witness providing the relevant  
5 testimony either on the record at such deposition or within fifteen (15) days following counsel's  
6 receipt of a copy of the transcript of such depositions. Until the expiration of such fifteen (15)  
7 day period, the entirety of any transcript of any deposition taken in this action shall be deemed  
8 "CONFIDENTIAL-ATTORNEYS ONLY."  
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10 3. Material marked or otherwise designated as "CONFIDENTIAL" shall be  
11 maintained in confidence by the receiving party and shall not be disclosed to any person except  
12 those listed below, and solely for purposes of this proceeding only:

13 (a) the TTAB and its staff;

14 (b) outside counsel of record, in-house counsel, their successors and their  
15 respective staff;

16 (c) employees and officers of the parties who are directly involved in this  
17 Opposition proceeding and need to have access to the material in order to assist, advise or direct  
18 counsel;

19 (d) translators, duplicating services, and auxiliary services of a like nature,  
20 routinely engaged by counsel;

21 (e) experts, who are not employees, representatives or agents of either party  
22 and are not potential fact witnesses in this action, engaged by counsel or the parties to assist in  
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1 this litigation, provided that any such third party has signed an Acknowledgement and  
2 Agreement in the form of Exhibit I attached hereto. A copy of the signed Acknowledgement and  
3 Agreement, a curriculum vitae of the proposed expert and an identification of any past or present  
4 employment or consulting relationship with the party or any related company shall be served on  
5 all counsel of record ten (10) business days before the confidential discovery material may be  
6 shown to such expert. If the other party objects in writing to such disclosure within that ten (10)  
7 day period stating the reasons for such objection, no disclosure of confidential discovery material  
8 shall be made to that expert until the matter is resolved by the TTAB or agreement of the parties.  
9

10 4. Material marked or otherwise designated as "CONFIDENTIAL – ATTORNEYS  
11 ONLY" shall be maintained in strict confidence by the receiving party and shall not be disclosed  
12 to any person except those listed below, and solely for purposes of this proceeding only:

- 13 (a) the TTAB and its staff;
- 14 (b) outside counsel of record, their successors and their respective staff;
- 15 (c) Target Brand, Inc.'s intellectual property attorney, Mr. Stephen C. Lee

16 who:

17 shall maintain the information and documents in strict confidence;

18 shall not disclose the information or documents containing the information to any  
19 other person at Target Brands, Inc.;

20 shall maintain the documents in an envelope which shall be marked: "*For*  
21 *Stephen C. Lee's Review Only -- not to be viewed or photocopied by any other Target Brands,*  
22 *Inc. employee*";  
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1 shall not make copies of the documents; and

2 shall return the documents to Target Brands, Inc.'s outside counsel

3 Mr. Michael A. Norwick upon the conclusion of this opposition proceeding;

4 (d) translators, duplicating services, and auxiliary services of a like nature,  
5 routinely engaged by counsel;

6 (e) experts who are not employees, representatives or agents of either party  
7 and are not potential fact witnesses in this action, engaged by counsel or  
8 the parties to assist in this litigation, provided that any such third party has  
9 signed an Acknowledgement and Agreement in the form of Exhibit I  
10 attached hereto. A copy of the signed Acknowledgement and Agreement,  
11 a curriculum vitae of the proposed expert and an identification of any past  
12 or present employment or consulting relationship with the party or any  
13 related company shall be served on all counsel of record ten (10) business  
14 days before the confidential discovery material may be shown to such  
15 expert. If the other party objects in writing to such disclosure within that  
16 ten (10) day period stating the reasons for such objection, no disclosure of  
17 confidential discovery material shall be made to that expert until the  
18 matter is resolved by the TTAB or agreement of the parties.  
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21 The parties shall not designate materials as "CONFIDENTIAL-ATTORNEYS ONLY" unless it  
22 comprises or contains technical, marketing, financial, sales or other confidential business  
23 information.  
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1           5.       At the conclusion of the Opposition Proceeding, the receiving party shall disclose  
2 the "CONFIDENTIAL" and "CONFIDENTIAL - ATTORNEYS ONLY" materials that were  
3 provided to each expert. The parties agree to complete all obligations under this paragraph 5  
4 within fifteen (15) days from the earliest date of the following occurrences: a final ruling by the  
5 Board, or execution by both parties of a settlement agreement, or the filing of a motion  
6 dismissing the proceeding.

7           6.       If either the "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS ONLY"  
8 designation (hereinafter collectively referred to as "Confidential Identification") is inadvertently  
9 omitted from any document, thing, interrogatory, answer, deposition testimony or other item  
10 containing Confidential Information, the disclosing party shall notify the receiving party  
11 promptly upon discovery of the omission, and the receiving party will promptly apply the  
12 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS ONLY" label and thereafter treat  
13 the information, document, thing, interrogatory answer, deposition testimony or other item in the  
14 manner set forth in this Order and Agreement.

15           7.       Subject to the exceptions expressed in this Section 7, the receiving party shall  
16 strictly limit its use of the Confidential Information of the disclosing party to the proceedings in  
17 this Opposition, and shall not use any of the Confidential Information of the disclosing party for  
18 any business purpose or for any other purpose whatsoever, and shall not disclose any of the  
19 Confidential Information of the disclosing party to anyone else. The parties shall, for business  
20 purposes, not contact the other party's customers or suppliers revealed and identified during this  
21 litigation, but nothing prevents either party from making contact with customers or suppliers of  
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1 the other party based upon identification of those customers or suppliers from other sources  
2 outside this proceeding. During this proceeding counsel for the parties shall be permitted to  
3 contact any customers so identified solely for the purposes of conducting discovery in this  
4 proceeding.

5 Exceptions:

6 None of the foregoing obligations apply to Confidential Information that is (1)  
7 public knowledge or generally known to the trade; (2) rightfully communicated to the receiving  
8 party by a third party who does not obligate the receiving party to keep it confidential; (3) known  
9 to the receiving party prior to disclosure, as can be demonstrated by written documents; or (4)  
10 permitted to be disclosed or used by the receiving party, said permission being in the form of a  
11 written release signed by the disclosing party. If only a portion of the Confidential Information  
12 falls within any of the foregoing exceptions, the remainder will continue to be subject to the  
13 prohibitions and restrictions contained in this Order and Agreement.

14 8. The Confidential Information of either party may accompany any affidavit, brief,  
15 deposition transcript or other paper filed in this Opposition; however, the portions of papers  
16 containing Confidential Information shall be sealed in an envelope labeled with the case caption,  
17 the title of the document to which it is attached and the following notice:

18 CONFIDENTIAL

19 FILED UNDER SEAL SUBJECT TO PROTECTIVE ORDER

20 The materials contained in this envelope have been designated  
21 confidential, pursuant to a protective order, and are not to be disclosed or  
22 revealed except to the Trademark Trial and Appeal Board and counsel for the  
23 parties, or by order of a court.

24 The contents of the envelope will not be made available to the public for inspection or copying  
25 unless and until ordered by the Trademark Trial and Appeal Board or Court of competent  
26 jurisdiction.  
27

1           9.       The receiving party shall treat the Confidential Information of the disclosing  
2 party with the same security and care that it provides to its own Confidential Information. If  
3 either party to this Opposition has reason to believe that any of the Confidential Information has  
4 been or is about to be disclosed or used in a manner inconsistent with this Order and Agreement,  
5 the party possessing such belief shall promptly notify the other party of its concerns, and the  
6 receiving party shall promptly take proper action to prevent or limit the nonconforming  
7 disclosure or use attributable to it.

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9           10.       Upon termination of this Opposition and any appeal thereof, the receiving party  
10 shall, at the request of the disclosing party, destroy or return to the disclosing party all originals  
11 and all copies of the disclosing party's Confidential Information. In the event that any documents  
12 covered by this paragraph contain materials or information added to them by the receiving party,  
13 the receiving party has the option of destroying them. In this event, the receiving party shall  
14 provide the disclosing party with written confirmation of destruction.

15  
16           11.       Nothing in this Order and Agreement constitutes a finding or an admission that  
17 any of the Confidential Information is in fact confidential, nor does the receiving party waive any  
18 right to later contend that any Confidential Information of the disclosing party is not confidential  
19 or falls within any of the exceptions expressed in Section 7 above.

20           12.       The production of any Confidential Information pursuant to this Order and  
21 Agreement will not constitute a waiver, either in whole or in part, of any attorney-client privilege  
22 or attorney work product or Fifth Amendment privilege which may be applicable to any material  
23 not so produced.  
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1 13. Nothing in this Order and Agreement shall prevent either party from raising  
2 objections on any ground (except confidentiality) to the production of documents or responses or  
3 the admission of evidence in this Opposition.

4 14. The obligations expressed in this Order and Agreement and Exhibit I will survive  
5 the conclusion of this Opposition and will continue to be binding upon the parties, their officers,  
6 directors, successors, and assigns, as well as upon those who execute the Acknowledgment and  
7 Agreement as set forth in Exhibit I hereto.

8 15. The parties represent that this Protective Order and Agreement is executed by  
9 their duly authorized respective counsel. To expedite the discovery in this proceeding, counsels'  
10 signatures on this Order and Agreement act as an undertaking on the parties' part to comply with  
11 the terms of this Order and Agreement as if it were entered by the Board, and to comply with this  
12 Order and Agreement with respect to all discovery received prior to the time that notice is  
13 received that the Board will enter this proposed Order and Agreement in the form in which it is  
14 being presented.  
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1           16.     The parties recognize that this document represents an Agreement between the  
2 parties, separate and apart from the Protective Order, and the terms can be enforced in any court  
3 of competent jurisdiction.

4           **SO AGREED.**

5  
6           Date: 11/10/05

TARGET BRANDS, INC. , Opposer

7           By: Michael A. Norwick  
8           Michael A. Norwick, Esq.  
9           Lowenstein Sandler, PC  
10           65 Livingston Avenue  
11           Roseland, New Jersey 07068  
12           (973) 597-2500  
13           Attorneys for Opposer

14           SHAUN N.G. HUGHES, Applicant

15  
16           Date: 11/10/05

17           By: James R. Uhlir  
18           James R. Uhlir, Esq.  
19           Christensen O'Connor Johnson Kindness PLLC  
20           1420 Fifth Avenue, Suite 2800  
21           Seattle, WA 98101  
22           (206) 682-8100  
23           Attorneys for Applicant

24           **SO ORDERED.**

25  
26           Date: \_\_\_\_\_

27           \_\_\_\_\_  
            Trademark Trial and Appeal Board

1 **EXHIBIT I**

2 **ACKNOWLEDGEMENT AND AGREEMENT**

3 Target Brands, Inc. and Shaun N.G. Hughes are engaged in Opposition  
4 Proceeding No. 91163556 before the Trademark Trial and Appeal Board of the U.S. Patent  
5 and Trademark Office. Each of these parties has agreed to protect the confidential  
6 information provided to it by the other party and to label this information  
7 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS ONLY (hereinafter  
8 "Confidential Information") as defined in the Protective Order and Agreement to  
9 maintain confidentiality between the parties (hereinafter "Order and Agreement"), and  
10 incorporated by reference. One of the conditions of the Order and Agreement between the  
11 parties is that independent experts engaged by either party receiving the Confidential  
12 Information of the other party, (hereinafter "Disclosing Party") and exposed to that  
13 Confidential Information in order to accomplish their assignments, agree to be legally  
14 bound to keep the promises expressed below.  
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16  
17 1. I acknowledge that I have conducted a thorough investigation for any  
18 possible conflict of interest with regard to the Disclosing Party and that I have no conflicts  
19 of interest.  
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21 2. I will not disclose any of the Confidential Information of the other  
22 party to anyone unless that person needs to be exposed to the Confidential Information for  
23 the purpose of engaging in the Opposition and that person is covered by Paragraph One of  
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1 the Order and Agreement or is an expert who has signed the Acknowledgment and  
2 Agreement substantially identical to this one.

3 3. I will not use the Confidential Information of the other party for any  
4 purpose other than engaging in the Opposition.

5 4. Upon request, I will promptly return to the attorney for the party by  
6 whom I am employed or engaged all documents and other items (originals and copies) that  
7 are labeled CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS ONLY and that were  
8 provided to me in connection with the Opposition.

9 5. My obligations expressed in Sections 1 through 3 above are binding  
10 upon me even after the Opposition is completed, and I am legally liable for any damages  
11 incurred by the Disclosing Party for any breach of this Agreement by me.  
12

13 SO ACKNOWLEDGED AND AGREED.

14 Date: \_\_\_\_\_

15  
16 \_\_\_\_\_  
17 (Printed Name)

18 \_\_\_\_\_  
19 (Signature)