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

Proceeding	91171281
Party	Defendant Jarrow Formulas, Inc.
Correspondence Address	MARK D GIARRATANA MCCARTER AND ENGLISH LLP 185 ASYLUM STREET, CITYPLACE I HARTFORD, CT 06103 3495 UNITED STATES mgiarratana@mccarter.com, sschlesinger@mccarter.com, jwhitney@mccarter.com, dewen@mccarter.com
Submission	Other Motions/Papers
Filer's Name	David Ewen
Filer's e-mail	dewen@mccarter.com, mgiarratana@mccarter.com, jwhitney@mccarter.com, hartforddocketing@mccarter.com
Signature	/David Ewen/
Date	09/21/2012
Attachments	Motion to Modify.pdf (6 pages)(49570 bytes) Exhibits to Motion 3.pdf (23 pages)(119644 bytes)

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

PomWonderful LLC	)	Opposition (Parent) No.: 91171281
)	
Opposer,)	
	)	JOINT MOTION FOR AN EXTENSION
v.	)	OF TIME AND STATUS REPORT
)	
Jarrow Formulas, Inc.,	)	Marks and Related (Consolidated) Proceedings:
	)	Opp. No. 91171281 (Parent) re POM ^{MAZING}
	)	Opp. No. 91191283 re POME GREAT
Applicant.	)	Opp. No. 91171284 re POMESYNERGY
	)	Opp. No. 91173117 re POMOPTIMIZER
	)	Opp. No. 91173118 re POMGUARD
	)	Opp. No. 91186414 re POMEZOTIC
	)	Opp. No. 91191995 re PRICKLYPOM
	)	Opp. No. 91194226 re POM and POM
)	

**APPLICANT’S MOTION TO MODIFY THE
STANDARD PROTECTIVE ORDER**

Pursuant to TBMP § 412, Applicant Jarrow Formulas, Inc. (“JFI”) submits for the Board’s consideration a [Proposed] Protective Order in the form shown in Exhibit A (“Proposed Order”). JFI and Opposer PomWonderful LLC (“PW”) agree on the vast majority of provisions contained in the Proposed Order. Nevertheless, the Parties are at an impasse on two material issues discussed below. The Parties have met and conferred by email and phone, but have been unable to resolve these remaining issues.

**I. JFI’S PROPOSED ORDER PROVIDES A CLEAR AND NECESSARY
DEFINITION OF IN-HOUSE COUNSEL**

To the extent that counsels’ access to designated materials depends on their characterization as “in-house” or “outside” counsel, any protective order entered by the Board must define what the term “in-house” means. JFI’s proposed definition focuses on the substance

of the relationship between a Party and its counsel, and is an appropriate means of answering this critical question.

PW is represented by Roll Law Group P.C. (“RLG”), which “primarily provides legal services to Roll Global LLC and its affiliated portfolio of operating companies, including ... Pom Wonderful LLC.” *See* Exhibit B. On this basis, JFI expressed its concern that RLG effectively functions as in-house counsel for PW, and, as such, that RLG’s access to certain materials and information designated under a protective order should be limited accordingly. To address this concern, JFI’s Proposed Order sets forth a standard for determining whether an entity like RLG should be considered in-house counsel or outside counsel:

For purposes of this Order: The term “in-house counsel” shall mean counsel or a law firm, and employees thereof, who are employed by or are an Affiliate of a Party. The term “outside counsel shall mean counsel or a law firm, and employees thereof, who are not employed by and are not an Affiliate of a Party. The term “Affiliate” shall mean, with respect to any person or entity, any other person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person or entity specified. The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

Exhibit A at § 1(g).

JFI’s proposal that in-house counsel include “an Affiliate of” a Party is appropriate under the circumstances, even if PW’s counsel maintain that they are not employees of PW, and their firm is not owned by Roll Global LLC. *See, e.g., JMAS Enters., Inc. v. PHD Marketing, Inc.*, No. 11-cv-06258, 3 (C.D. Cal. Dec. 12, 2011) (order on stipulated protective order) (defining in-house counsel as “any attorney who is an employee of a party, or of an entity under common control of a party, who is responsible for managing litigation for that party”); *Arenas v. Shed Media US Inc.*, No. 11-cv-5279, (C.D. Cal. Dec. 21, 2011)(order on joint motion for protective order) (same); *see also Hollywood Foreign Press Ass’n*, No. 10-cv-8833, 2 (C.D. Cal. Dec. 21,

2011)(order on stipulated protective order) (“‘In-House Counsel’ means an employee in the legal department (or the functional equivalent) of a Party whose responsibilities consist of performing legal services for a Party”).

Other courts have taken a similar approach, defining “in-house counsel” in terms broader than merely being employed by, or a department of, a party. In *Upjohn Co. v. Hygieia Biological Labs.*, the court issued a protective order limiting disclosure of confidential information to “[r]etained counsel for any party to this action, but not including in-house counsel to either party, *defined as counsel regularly employed or paid by, or associated with, a party, and/or whose office are located within any premises of a party.*” *Upjohn Co. v. Hygieia Biological Labs.*, 151 F.R.D. 355, 361 (E.D. Cal. 1993) (emphasis added). *See also, Baxter Travenol Labs. V. Lemay*, 89 F.R.D. 410, 419 (S.D. Ohio 1981)(defining “in-house counsel” as “attorneys in the regular employ of a corporate party”).

As the above cases demonstrate, the proper inquiry is not simply one of formal employment or ownership; such would be unduly narrow and elevate form over substance. Therefore, JFI respectfully submits that its Proposed Order, including its definition of “in-house counsel” be endorsed by the Board.

II. JFI’S PROPOSED ORDER PROVIDES GUIDANCE ON DESIGNATION OF INFORMATION AND MATERIALS

For a protective order to function effectively, it must provide guidance as to the proper use of the designations it provides. JFI’s Proposed Order provides such guidance, using the designation “Trade Secret/Commercially Sensitive” in place of the ill-defined and arbitrary designation “Highly Confidential.” Because “Trade Secret/Commercially Sensitive” implicitly

describes the threshold showing required for this designation, it will provide much needed clarity in the designation of discovery materials.

By way of example, the Board's Standard Protective Order provides three designations: Confidential, Highly Confidential, and Trade Secret/Commercially Sensitive. However, the Standard Protective Order draws no distinction between the designations "Confidential" and "Highly Confidential," except as may be agreed upon by the parties. Prior drafts exchanged by the parties provided for "Confidential" and "Highly Confidential" designations, but similarly lacked any guidance on the propriety of classifying materials and information under one or the other designation.

To address this ambiguity, JFI's Proposed Order sets forth a two-tiered approach, providing designations of "Confidential" and "Trade Secret/Commercially Sensitive." Exhibit A at §§ 1(a) & 1(b). JFI believes that the designation "Trade Secret/Commercially Sensitive" provides more clarity than the designation "Highly Confidential," as the former implies that designated materials will meet a certain threshold of sensitivity, and not be based on an arbitrary decision-making process. Alternatively, JFI is not in principle opposed to a three-tiered approach, like that provided by the Standard Protective Order, provided some guidance is offered as to the proper designation of materials under an intermediate, "Highly Confidential" designation.

III. CONCLUSION

In sum, JFI respectfully requests that its Proposed Order be endorsed by the Board in order to provide much-needed clarity as to the meaning of “in-house counsel,” as well as the standards for designating materials during discovery.

Respectfully submitted,

/s/ David Ewen

Mark D. Giarratana
David Ewen
MCCARTER & ENGLISH, LLP
CityPlace I
185 Asylum Street
Hartford, CT 06103
Attorneys for Jarrow Formulas, Inc.

September 21, 2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 21, 2012, the foregoing document was submitted for filing to the Trademark Trial and Appeal Board through the ESTTA system and a copy of this paper has been served upon all parties by email, per the parties' prior agreement, at the address shown below:

Danielle M. Criona, Esq.
ROLL LAW GROUP P.C.
11444 West Olympic Blvd.
Los Angeles, California 90064
dcriona@roll.com

/s/ David Ewen

David Ewen

Exhibit A

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

PomWonderful LLC)	Opposition (Parent) No.: 91171281
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v.)	Marks and Related (Consolidated) Proceedings:
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)	
)	
)	

[PROPOSED] PROTECTIVE ORDER REGARDING
CONFIDENTIALITY OF DISCOVERY MATERIAL

Use and disclosure of certain materials and information exchanged by the Parties to the above-captioned proceedings, or provided by or obtained from non-parties in this Action, shall be restricted pursuant to the following terms of this Protective Order (the “Order”).

This Order does not affect the burden of proof that must be met by a Party seeking to protect such materials or information that is filed with the U.S. Patent and Trademark Office, Trademark Trial and Appeals Board (the “Board”) in the records in this Action. A Party seeking to protect such materials and information to be filed in the public records must prove that the materials or information meets the standards set forth in relevant authority. In meeting that burden, a Party may not rely on its own designation of materials or information as “Confidential” or “Trade Secret/Commercially Sensitive” under this Order.

Accordingly, it is this _____ day of _____, 2012, by the Board,
ORDERED:

1) Designation of Discovery Materials as Confidential or Trade Secret/Commercially Sensitive. All documents, depositions, pleadings, exhibits and all other material or information subject to discovery in this Action, including but not limited to materials or information produced in the course of discovery, all answers to interrogatories, all answers to requests for admission, all responses to requests for production of documents, all deposition testimony and deposition exhibits, and all expert testimony and reports, as well as testimony adduced in this Action, exhibits, matters in evidence and any other material or information used or disclosed related to this Action, hereafter furnished, directly or indirectly, by or on behalf of any Party, person or witness in connection with this Action, may be considered confidential, or as trade secret/commercially sensitive. A Party may seek to protect such materials and information by employing one of the following designations:

a) “Confidential Information.” Information and materials shall be designated as confidential by placing or affixing the words “**CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER**” on the information and materials in a manner which will not interfere with their legibility.

b) “Trade Secret/Commercially Sensitive Information”: Information and materials shall be designated as trade secret/commercially sensitive by placing or affixing the words “**TRADE SECRET/COMMERCIALLY SENSITIVE– ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER**” on the information or materials, in a manner which will not interfere with their legibility.

c) The designation of Confidential Information or Trade Secret/Commercially Sensitive Information shall be made prior to, or contemporaneously with, the production or disclosure of such information and materials.

d) Portions of depositions of a Party's present and former officers, directors, employees, agents, experts, and representatives shall be deemed Confidential Information or Trade Secret/Commercially Sensitive Information only if it is designated as such when the deposition is taken or within thirty (30) days after receipt of the final transcript by counsel for the deposed Party. Any testimony which describes material or information which has been designated as Confidential Information or Trade Secret/Commercially Sensitive Information shall also be deemed to be designated as Confidential Information or Trade Secret/Commercially Sensitive Information as the case may be. To ensure that the Parties have the full thirty (30) business days to make the appropriate designation, all deposition transcripts will be automatically treated as Trade Secret/Commercially Sensitive Information for thirty (30) days after receipt of the final transcript by counsel for the deposed Party.

e) Where particular discovery material contains both Confidential Information, Trade Secret/Commercially Sensitive Information, and non-confidential information, only the Confidential Information and Trade Secret/Commercially Sensitive Information are subject to the limitations on disclosure as set forth in this Order.

f) Information or documents designated as Confidential Information or Trade Secret/Commercially Sensitive Information under this Order shall not be used or disclosed by the Parties or counsel for the Parties or any persons identified in subparagraph (g) below for any purposes whatsoever other than preparing for and conducting this Action (including appeals).

g) The Parties and counsel for the Parties shall not disclose or permit the disclosure of any materials or information designated as Confidential Information or Trade

Secret/Commercially Sensitive Information under this Order to any other person or entity, except that disclosures of Confidential Information may be made only in the circumstances set forth in Paragraphs (i) through (viii) below and disclosures of Trade Secret/Commercially Sensitive Information may be made only in the circumstances set forth in Paragraphs (i) and (iii) through (viii) below.

For purposes of this Order: The term “in-house counsel” shall mean counsel or a law firm, and employees thereof, who are employed by or are an Affiliate of a Party. The term “outside counsel” shall mean counsel or a law firm, and employees thereof, who are not employed by and are not an Affiliate of a Party. The term “Affiliate” shall mean, with respect to any person or entity, any other person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person or entity specified. The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

- i) Disclosure may be made to outside counsel and employees of outside counsel for the Parties (not including in-house counsel), including law clerks, analysts, paralegals, secretaries, translators and clerical staff, who are assisting with the preparation and trial of the Action. Any such employee of outside counsel to whom counsel for the Parties makes a disclosure shall be provided with a copy of, and become subject to, the provisions of this Order requiring that the documents and information be held in confidence.

ii) Disclosure may be made only to employees and Affiliates of a Party (including in-house counsel) required in good faith to provide assistance in the conduct of the litigation in which the information was disclosed, and who execute the acknowledgement attached hereto at **Exhibit A** prior to receipt of any such material or information.

iii) Disclosure may be made to court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents, and any interpreter, court or other shorthand reporter or typist translating, recording or transcribing testimony.

iv) Disclosure may be made to non-party consultants, investigators, or experts (hereinafter referred to collectively as “experts”) who are expressly retained by the Parties or counsel for the Parties to assist in the preparation and trial of the action, so long as any such expert is not a current or former employee of or consultant to either Party, or a current employee of or consultant to any of the disclosing Party’s competitors, and with disclosure only to the extent reasonably deemed necessary within disclosing counsel’s sole discretion for such expert to perform such work.

v) Disclosure may be made to the Board, as well as personnel of the Board and all appropriate courts of appellate jurisdiction.

vi) Disclosures may be made to service contractors (such as document copy services), jury consultants and graphic artists by any attorney or individual described in sub-paragraph (i) or (ii) above, to assist in the preparation of this

Action, with disclosure only to the extent reasonably deemed necessary within disclosing counsel's sole discretion to perform such work.

vii) Disclosures may be made to any person who authored and/or was an identified original recipient of the particular Confidential Information or Trade Secret/Commercially Sensitive Information sought to be disclosed to that person, or any deponent when the examining attorney has a good faith basis to believe the deponent is aware of the particular Confidential Information or Trade Secret/Commercially Sensitive Information sought to be disclosed.

viii) Disclosures may be made to any other person agreed-to by the producing Party in writing.

h) Ten (10) days prior to the disclosure of any Confidential Information or Trade Secret/Commercially Sensitive Information of the producing Party to persons described in paragraphs (iv) and (viii), above, the attorney for the receiving Party shall serve notice on the producing Party identifying the person(s) to receive such Confidential Information or Trade Secret/Commercially Sensitive Information together with a fully executed copy of the acknowledgement attached hereto as **Exhibit B**, completed by such person. If the producing Party objects in writing to disclosure to such consultant, investigator, or expert within the ten (10) day period, no disclosure of material designated as Confidential Information or Trade Secret/Commercially Sensitive Information may be made to the consultant, investigator, or expert. If the Parties cannot resolve the issue within five (5) days after such written objection is received by the non-objecting Party, the Party objecting to the proposed disclosure may thereupon seek, within ten (10) days of receipt of the written objection by the non-objecting Party, an appropriate order from the Board

protecting against the proposed disclosure of Confidential Information or Trade Secret/Commercially Sensitive Information to the consultant, investigator, or expert. Failure to seek an order from the Board within the time provided herein shall constitute a waiver of the objecting Party's objection. Until the Board rules on the matter, no disclosure of information or materials designated as Confidential Information or Trade Secret/Commercially Sensitive Information shall be made to the consultant, investigator, or expert. Nothing herein shall give any Party the right to depose or obtain any discovery from any expert disclosed herein unless such expert is disclosed pursuant to Fed. R. Civ. P. 25(a)(2).

Notwithstanding the above, no Party shall be required to serve such notice if disclosure would reveal the identity of an expert retained purely for consulting and non-testifying purposes and which would disclose the receiving Party's attorney work product, so long as any such expert is not (i) a current or former employee of or consultant to either Party, (ii) a current or former employee of or consultant to any of the disclosing Party's competitors, or (iii) a consultant to or employed in the field of dietary and nutritional supplements, and with disclosure only to the extent reasonably deemed necessary within disclosing counsel's sole discretion for such expert to perform such work. The Party who retained any such consulting and non-testifying expert that was not disclosed must provide a copy of the undertaking signed by such expert within thirty (30) days after settlement or conclusion of this proceeding, including all appeals.

i) Except as provided in subparagraph (e) above, counsel for the Parties shall keep all materials and information designated as Confidential Information and Trade Secret/Commercially Sensitive Information which are received under this Order secure

within their exclusive possession and shall exercise the same standard of due and proper care with respect to the storage, custody, use and/or dissemination of such information and materials as is exercised with respect to their own proprietary or highly sensitive information.

j) All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as “copies”) of Confidential Information or Trade Secret/Commercially Sensitive Information under this Order or any portion thereof, shall be immediately affixed with the words “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER,” or “TRADE SECRET/COMMERCIALLY SENSITIVE – ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER,” to be consistent with the original, if those words do not already appear.

2) None of the provisions of this Order shall apply to the following categories of materials and information, and any Party may seek to remove the restrictions set forth herein on the ground that Confidential Information or Trade Secret/Commercially Sensitive Information has/had been:

- a) available to the public at the time of its production hereunder;
- b) available to the public after the time of its production through no act, or failure to act, on behalf of the receiving Party, its counsel, representatives or experts;
- c) known to such receiving Party, or shown to have been independently developed by such receiving Party, prior to its production herein without use or benefit of the information;
- d) obtained outside of this action by such receiving Party from the producing Party without having been designated as Confidential Information or Trade

Secret/Commercially Sensitive Information; provided, however, that this provision does not negate any pre-existing obligation of confidentiality;

e) obtained by such receiving Party after the time of disclosure hereunder from a third party having the right to disclose the same; or

f) previously produced, disclosed, and/or provided by the producing Party to the receiving Party or any third party without an obligation of confidentiality.

3) Confidential or Trade Secret/Commercially Sensitive Information Filed with the Board. To the extent that any materials or information subject to this Order (or any pleading, motion or memorandum referring to them) are proposed to be filed or are filed with the Board, those materials and information, or any portion thereof which discloses Confidential Information or Trade Secret/Commercially Sensitive Information, shall be filed under seal (by the filing Party) with the Board either (1) as a “Confidential Filing” made electronically through the Board’s Electronic System for Trademark Trials and Appeals (ESTTA); or (2) in an envelope marked “SEALED PURSUANT TO ORDER OF BOARD DATED _____”, together with an appropriate interim sealing motion and a statement substantially in the following form:

“This envelope, containing documents which are filed in this case by (name of party), is not to be opened or the contents thereof to be displayed or revealed except by Order of TTAB or consent of the parties to this action.”

Even if the filing Party believes that the materials or information subject to this Order are not properly classified as Confidential Information or Trade Secret/Commercially Sensitive Information, the filing Party shall file an appropriate interim sealing motion; provided, however, that the filing of the interim sealing motion shall be wholly without prejudice to the filing Party’s rights under paragraph of this Order.

4) Party Seeking Greater Protection Must Obtain Further Order. No information or materials may be withheld from discovery on the ground that the material or information to be disclosed requires protection greater than that afforded by paragraph 1 of this Order unless the Party claiming a need for greater protection moves for an order providing such special protection pursuant to Fed. R. Civ. P. 26(c). This Order is without prejudice to the right of any Party to seek further or additional protection of information for which the protection of this Order is not believed by such Party to be adequate. Nothing in this Order shall be deemed to bar or preclude any producing Party from seeking such additional protection, including, without limitation, an order that certain information may not be discovered at all.

5) Challenging Designation of Confidential or Trade Secret/Commercially Sensitive Information. A designation of Confidential Information or Trade Secret/Commercially Sensitive Information under this Order may be challenged upon motion. The burden of proving the propriety of a designation under this Order remains with the designating Party. The process for making such an objection and for resolving the dispute shall be as follows:

- a) The objecting Party shall notify the producing Party in writing as to its objection(s) to the designations. This notice shall include, at a minimum, a specific identification of the designated material objected to as well as the reason(s) for the objection.
- b) The objecting Party shall thereafter have the burden of conferring with the producing Party claiming protection (as well as any other interested party) in a good faith effort to resolve the dispute.
- c) Failing agreement, the objecting Party may bring a noticed motion to the Board for a ruling that the discovery material or information sought to be protected as

Confidential Information or Trade Secret/Commercially Sensitive Information is not entitled to such designation. The producing Party bears the burden to establish that such discovery material is Confidential Information or Trade Secret/Commercially Sensitive Information and is entitled to such protection under this Order.

d) Notwithstanding any such challenge to Confidential Information or Trade Secret/Commercially Sensitive Information, all such material and information so designated shall be treated as such and shall be subject to the provisions of this Order until one of the following occurs: (i) the Party that designated the Confidential Information or Trade Secret/Commercially Sensitive Information withdraws such designation in writing; or (ii) the Board rules that the designation is not proper and that the designation be removed.

6) Errors in Designation. A producing Party that inadvertently fails to designate material or information pursuant to this Protective Order as Confidential Information or Trade Secret/Commercially Sensitive Information at the time of the production shall make a correction promptly, but in no event more than fifteen (15) days, after first becoming aware of such error or as soon thereafter as is commercially reasonable. Such correction and notice thereof shall be made in writing accompanied by substitute copies of each item, appropriately designated. Those individuals who reviewed the material or information prior to notice of the failure to designate by the producing Party shall, to the extent reasonably feasible, return to the producing Party or ensure destruction of all copies of such undesignated materials or information and shall honor the provisions of this Order with respect to the use and disclosure of any Confidential Information or Trade Secret/Commercially Sensitive Information contained in the undesignated material or information from and after the date of designation. The Party receiving the information or

material that the producing Party inadvertently failed to designate as Confidential Information or Trade Secret/Commercially Sensitive Information shall not be in breach of this Order for any use made of such material or information prior to receiving notice of the inadvertent failure to designate.

7) Improper Disclosure. If information or material designated pursuant to this Order is disclosed to any person other than in the manner authorized by this Order, the Party responsible for this disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the designating Party or its counsel, without prejudice to other rights and remedies of the designating Party, and shall make every effort to prevent further improper disclosure and to ensure that no further or greater unauthorized disclosure and/or use thereof is made.

8) Inadvertent Production. Counsel shall make their best efforts to identify materials and information protected by the attorney-client privilege or the work product doctrine prior to the disclosure of any such materials or information. The inadvertent production of any material or information shall be without prejudice to any claim that such material is protected by the attorney-client privilege or protected from discovery as work product and no producing Party shall be held to have waived any rights thereunder by inadvertent production. If a producing Party discovers that materials or information protected by the attorney-client privilege or work product doctrine have been inadvertently produced, counsel for the producing Party shall promptly give written notice to counsel for the receiving Party. The receiving Party shall take prompt steps to ensure that all known copies of such material and information are returned to the producing Party within five (5) business days of such request or as soon thereafter as is reasonable. Any notes or summaries, other than those expressly permitted under this section,

referring to or relating to any such inadvertently produced information subject to a claim of immunity or privilege shall be destroyed. The receiving Party may afterwards contest such claims of privilege or work product as if the materials had not been produced, but shall not assert that a waiver occurred as a result of the production.

9) Return of Confidential Material at Conclusion of Litigation. At the conclusion of the Action, all Confidential Information or Trade Secret/Commercially Sensitive Information under this Order and not received in evidence, and all copies thereof, shall be returned to the originating Party within ninety (90) calendar days. If the Parties so stipulate, the materials may be destroyed and certified destroyed instead of being returned. Counsel for the parties may only retain one copy of pleadings filed for archival purposes, but may not otherwise keep any other Confidential Information or Trade Secret/Commercially Sensitive Information. Each Party's obligation to destroy or return materials stored in electronic format shall be limited to electronic data that is reasonably accessible to the Party, and shall not extend to offsite backup or archival media. The Board may return to counsel for the Parties, or destroy, any sealed material at the end of the Action, including any appeals.

10) Miscellaneous Provisions.

a) The entry of this Order shall not be construed as a waiver of any right to object to the furnishing of information or material in response to discovery and, except as expressly provided, shall not relieve either Party of the obligation of producing information or material in the course of discovery.

b) If at any time Confidential Information or Trade Secret/Commercially Sensitive Information is subpoenaed by any arbitral, administrative or legislative body, or the TTAB, the person to whom the subpoena or other request is directed shall immediately

give written notice thereof to counsel of the Party that has produced such Confidential Information or Trade Secret/Commercially Sensitive Information and shall provide the Party with an opportunity to object to the production of such Confidential Information or Trade Secret/Commercially Sensitive Information. If the producing Party does not move for a protective order within ten (10) calendar days of the date written notice is given, the Party to whom the referenced subpoena is directed may produce, on or after the date set for production in the subpoena but not prior to the end of the ten (10) calendar day notice period, such material in response thereto.

c) Counsel of either Party shall have the right to exclude from depositions, other than the deponent and the reporter, any person who is not authorized under this Order to receive Confidential Information or Trade Secret/Commercially Sensitive Information. Such right of exclusion shall be applicable only during periods of examination or testimony directed to Confidential Information or Trade Secret/Commercially Sensitive Information, as applicable.

d) All notices required by any paragraph of this Order may be made by facsimile and/or email to counsel representing the noticed Party, however, notice in those manners is not effective without evidence of receipt of the facsimile and/or email by the noticed Party's counsel. The date by which a Party receiving notice shall respond or otherwise take action shall be computed from the date of receipt of the notice. Any of the notice requirements herein may be waived in whole or in part, but only in a writing signed by counsel for the producing Party.

e) Nothing in this Order shall bar or otherwise restrict counsel from rendering advice to his or her client with respect to this Action and, in the course thereof, relying in a

general way upon his or her examination of Trade Secret/Commercially Sensitive Information produced or exchanged in this Action; provided, however, that in rendering such advice and in otherwise communicating with his or her client, counsel shall not disclose the contents of Trade Secret/Commercially Sensitive Information produced by any non-party.

f) Execution of this Order shall not constitute a waiver of the right of either Party to claim in this Action or otherwise that any documents, communications, or any portion thereof, are privileged or otherwise non-discoverable, or are not admissible in evidence in this Action or any other proceeding.

g) All persons receiving Confidential Information or Trade Secret/Commercially Sensitive Information are enjoined from producing them to any other persons, except in conformance with this Order. Each individual who receives Confidential Information or Trade Secret/Commercially Sensitive Information agrees to subject himself/herself to the jurisdiction of this Board for the purpose of any proceedings relating to the performance under, compliance with or violation of this Order.

h) The Parties agree that the terms of this Order shall survive and remain in effect after the termination of this Action. The Board shall retain jurisdiction to hear disputes arising out of this Order.

i) A Party may move at any time to modify the terms of this Order. A Party seeking to modify this Order shall request only the minimum modification as is reasonably necessary to address the grounds upon which its motion to modify is based.

j) Any headings used in this Order are for reference purpose only and are not to be used to construe or limit the meaning of any provision.

k) This Order may be executed in any number of counterparts, all of which, upon completed execution thereof by the Parties, together shall be deemed to constitute one original.

Dated: September __, 2012

Dated: September __, 2012

Danielle M. Criona
ROLL LAW GROUP P.C.
11444 W. Olympic Blvd.
Los Angeles, CA 90064

(312) 464-3100
(312) 364-3111 (fax)

Attorneys for PomWonderful LLC

Mark D. Giarratana
MCCARTER & ENGLISH, LLP
CityPlace I
185 Asylum Street, 36th Floor
Hartford, Connecticut 06103

(860) 275-6700
(860) 275-3397 (fax)

Attorneys for Jarrow Formulas, Inc.

SO ORDERED:

Judge

EXHIBIT A

WHEREAS, I, _____, am an employee of _____ and may have cause to examine Confidential Information pursuant to the foregoing Order. I have read and understand the provisions of the foregoing Order.

NOW, THEREFORE, I hereby consent to be bound by the provisions of the Order and to abide by all its terms with respect to materials and information deemed confidential in this proceeding.

Dated: _____

Name:

Address:

EXHIBIT B

[SEE NEXT PAGE]

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

<p style="text-align: center;">POMWONDERFUL LLC</p> <p style="text-align: center;">Opposer,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">JARROW FORMULAS, INC.</p> <p style="text-align: center;">Applicant.</p>	<p>Consolidated Opposition No. 91171281</p> <p>Marks: POMAMAZING (78/751,860) POMEGREAT (78/635,298) POMESYNERGY (78/727,050) POMGUARD (78/829,128) POMOPTIMIZER (78/829,152) POMEZOTIC (77/294,016)</p>
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ACKNOWLEDGEMENT

I, _____, declare as follows:

1. My present employer is _____.
2. My business address is _____.
3. My occupation is _____.
4. In the past 12 months, I have consulted and/or served as an expert for the following companies (attach additional sheets if necessary): _____.
5. I have reviewed a copy of the Order in this Action, and I understand and agree to be bound by its terms and provisions.
6. I will hold in confidence, will not disclose to anyone not qualified or cleared under the Protective Order, and will use only for approved purposes in this litigation, any Confidential Information or Trade Secret/Commercially Sensitive Information, as such terms are defined in the Order.
7. I will return all Confidential Information or Trade Secret/Commercially Sensitive Information that come into my possession, and all materials or information which I prepare relating thereto, to counsel for the Party by whom I am employed or retained.

8. I hereby submit myself to the jurisdiction of the United States Patent and Trademark Office, Trademark Trial and Appeal Board for the purposes of enforcement of the Order in this Action.

9. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

Name:
Address:

Exhibit B



About Us

Roll Law Group P.C. ("RLG") primarily provides legal services to Roll Global LLC and its affiliated portfolio of operating companies, including FIJI Water Company, Neptune Shipping Company, Paramount Citrus LLC, Paramount Farming Company, Paramount Farms International LLC, Pom Wonderful LLC, Suterra LLC, JUSTIN Vineyards & Winery and Teleflora LLC. For more information about Roll Global LLC, please visit www.roll.com. In addition, RLG provides legal services for, and on behalf of, a variety of trusts, charitable organizations, non-profit associations and agricultural cooperative associations that have business relationships with Roll and its affiliates.

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