ESTTA Tracking number: **ESTTA495937**

Filing date: **09/21/2012**

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

Proceeding	91171281
Party	Plaintiff PomWonderful LLC
Correspondence Address	DANIELLE M CRIONA ROLL LAW FIRM PC 11444 WEST OLYMPIC BOULEVARD LOS ANGELES, CA 90064 UNITED STATES dcriona@roll.com, sweiner@roll.com, mrivera@roll.com, tackerman@roll.com
Submission	Other Motions/Papers
Filer's Name	Danielle M. Criona
Filer's e-mail	dcriona@roll.com, takerman@roll.com, mrivera@roll.com
Signature	/s/ Danielle M. Criona /s/
Date	09/21/2012
Attachments	Decl. of D. Criona with Exhibits Pt. 2_Part4.pdf (41 pages)(456966 bytes)

for Trademark Trials and Appeals (ESTTA); or (b) 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 Highly Confidential 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 Information or Highly Confidential Information. A designation of Confidential Information or Highly Confidential Information may be challenged upon motion. The burden of proving the proprietary 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 Highly Confidential Information is not entitled to such designation. The producing Party bears the burden to establish that such discovery material is Confidential Information or Highly Confidential Information and is entitled to such protection under this Order.

d) Notwithstanding any such challenge to Confidential Information or Highly Confidential 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 Highly Confidential 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 Highly

Confidential 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 Highly Confidential 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 Highly Confidential 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 Highly Confidential 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 Highly Confidential Information. Each Party's obligation to destroy or return materials or information 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 Highly Confidential 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 Highly Confidential Information and shall provide the Party with an opportunity to object to the production of such Confidential Information or Highly Confidential 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 Highly Confidential Information. Such right of exclusion shall be applicable only during periods of examination or testimony directed to Confidential Information or Highly Confidential 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 Highly Confidential 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 Highly Confidential 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 Highly Confidential Information are enjoined from producing them to any other persons, except in conformance with this Order. Each individual who receives Confidential Information or Highly Confidential 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.

SEEN AND AGREED:

Dated: August __, 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

Dated: August __, 2012

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

DECLARATION OF _____

1. I serve as [counsel/ law clerks/ analyst/ paralegal / secretary/ translator/ clerical staff] for _____ ("Party"). My title is _____ and my employer is _____ ("Employer"). [I am a licensed attorney in the state(s) of _____. In my role as counsel, I have responsibility for directing, overseeing, or otherwise participating in the litigation of this matter.] I do not have any ownership interest in the entity that I represent.

2. By signing below, I agree that I will not use, convey or distribute any information learned as a result of the receipt or review of documents (or other information) pursuant to this Protective Order ("Order") for any purpose relating to Party's sales, marketing, pricing, product design, product research and development, competition, employment, or any other business decision, unless expressly authorized by this Protective Order or any other order by any court or administrative body (including but not limited to TTAB).

3. I agree to abide by the terms of the Order on _____, and I have informed management and other relevant Party employees of my duties under that Order.

NOW, THEREFORE, I I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct

Dated: _____

_____
Name:
Address:

EXHIBIT B

WHEREAS, I, _____, am an employee of _____ and may have cause to examine Confidential Information or Highly 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 C

[SEE NEXT PAGE]

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

POMWONDERFUL LLC Opposer, v. JARROW FORMULAS, INC. Applicant.	Consolidated Opposition No. 91171281 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)

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 Highly Confidential Information, as such terms are defined in the Order.

7. I will return all Confidential Information or Highly Confidential 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:

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

POMWONDERFUL LLC Opposer, v. JARROW FORMULAS, INC. Applicant.	Consolidated Opposition No. 91171281 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)

STIPULATED PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF DISCOVERY MATERIAL

Whereas, the parties to the above-captioned action (the "Action"), POMWonderful LLC and Jarrow Formulas, Inc. (each, a "Party" and together, the "Parties"), have stipulated that the use and disclosure of certain materials and information exchanged by the Parties, or provided by or obtained from non-parties in this Action, 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~~Highly Confidential" 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~~Highly Confidential. 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.~~highly confidential. 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~~or materials in a manner which will not interfere with their legibility.

b) ~~"Trade Secret/Commercially Sensitive~~"Highly Confidential Information": Information and materials shall be designated as ~~trade secret/commercially sensitive~~highly confidential by placing or affixing the words "~~**TRADE SECRET/COMMERCIALLY SENSITIVE ATTORNEYS'**~~**HIGHLY CONFIDENTIAL – ATTORNEY'S 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~~Highly Confidential Information shall be made prior to, or contemporaneously with, the production or disclosure of such information ~~and~~or 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~~Highly Confidential 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~~Highly Confidential Information shall also be deemed to be designated as Confidential Information or ~~Trade Secret/Commercially Sensitive~~Highly Confidential 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~~Highly Confidential 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~~Highly Confidential Information, and non-confidential information, only the Confidential Information and ~~Trade Secret/Commercially Sensitive~~Highly Confidential 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~~Highly Confidential Information under this Order shall not

be used or disclosed by the Parties or counsel for the Parties or any persons identified in subparagraph (ge) 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~~Highly Confidential 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~~Highly Confidential 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 or other legal department

employees of a Party), including law clerks, analysts, paralegals, secretaries, translators and clerical staff, who are assisting with the preparation and trial of the Action; so long as each such individual provides opposing counsel with a declaration under penalty of perjury in the form of **Exhibit A** attached hereto. 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) Notwithstanding anything to the contrary in this Order, if counsel of record for any party to this Action has any ownership interest in any party to this Action, such counsel will not have access to or be allowed to review any material marked as "Highly Confidential";

iii) ~~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~~B** prior to receipt of any such material or information.

iv) ~~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.

v) ~~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.

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

vii) ~~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.

viii) ~~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~~Highly Confidential 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~~Highly Confidential Information sought to be disclosed.

ix) ~~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~~Highly Confidential 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~~Highly Confidential Information together with a fully executed copy of the acknowledgement attached hereto as **Exhibit ~~B~~C**, 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~~Highly Confidential 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~~Highly Confidential 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~~Highly Confidential 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~~Highly Confidential 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~~Highly Confidential 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~~HIGHLY CONFIDENTIAL – 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~~Highly Confidential 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~~Highly Confidential 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~~Highly Confidential 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~~Highly Confidential Information, shall be filed under seal (by the filing Party) with the Board either (~~1~~a) as a "Confidential Filing" made electronically through the Board's Electronic System for Trademark Trials and Appeals (ESTTA); or (~~2~~b) 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~~Highly Confidential 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 or Highly Confidential Information. A designation of Confidential Information or ~~Trade Secret/Commercially Sensitive~~Highly Confidential Information ~~under this Order~~ may be challenged upon motion. The burden of proving the ~~propriety~~proprietary 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~~Highly Confidential 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~~Highly Confidential Information and is entitled to such protection under this Order.

d) Notwithstanding any such challenge to Confidential Information or ~~Trade Secret/Commercially Sensitive~~Highly Confidential 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~~Highly Confidential 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~~Highly Confidential 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~~Highly Confidential 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~~Highly Confidential 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~~Highly Confidential 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~~Highly Confidential Information. Each Party's obligation to destroy or return materials or information 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~~Highly Confidential 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~~Highly Confidential Information and shall provide the Party with an opportunity to object to the production of such Confidential Information or ~~Trade Secret/Commercially Sensitive~~Highly Confidential 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~~Highly Confidential Information. Such right of exclusion shall be applicable only during periods of examination or testimony directed to Confidential Information or ~~Trade Secret/Commercially Sensitive~~Highly Confidential 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~~Highly Confidential 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~~Highly Confidential 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~~Highly Confidential 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~~Highly Confidential 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.

SEEN AND AGREED:

Dated: August __, 2012

Danielle M. Criona
ROLL LAW GROUP P.C.
11444 W. Olympic Blvd.

Dated: August __, 2012

Mark D. Giarratana
MCCARTER & ENGLISH, LLP
CityPlace I

Los Angeles, CA 90064

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

Attorneys for PomWonderful LLC

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

DECLARATION OF _____

1. I serve as [counsel/ law clerks/ analyst/ paralegal / secretary/ translator/ clerical staff] for _____ ("Party"). My title is _____ and my employer is _____ ("Employer"). [I am a licensed attorney in the state(s) of _____. In my role as counsel, I have responsibility for directing, overseeing, or otherwise participating in the litigation of this matter.] I do not have any ownership interest in the entity that I represent.

2. By signing below, I agree that I will not use, convey or distribute any information learned as a result of the receipt or review of documents (or other information) pursuant to this Protective Order ("Order") for any purpose relating to Party's sales, marketing, pricing, product design, product research and development, competition, employment, or any other business decision, unless expressly authorized by this Protective Order or any other order by any court or administrative body (including but not limited to TTAB).

3. I agree to abide by the terms of the Order on _____, and I have informed management and other relevant Party employees of my duties under that Order.

NOW, THEREFORE, I I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct

Dated: _____

Name:

Address:

EXHIBIT B

WHEREAS, I, _____, am an employee of _____ and may have cause to examine Confidential Information or Highly 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~~C

[SEE NEXT PAGE]

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

POMWONDERFUL LLC Opposer, v. JARROW FORMULAS, INC. Applicant.	Consolidated Opposition No. 91171281 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)

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~~Highly Confidential Information, as such terms are defined in the Order.

7. I will return all Confidential Information or ~~Trade Secret/Commercially Sensitive~~Highly Confidential 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:

Document comparison by Workshare Compare on Tuesday, September 18, 2012 11:20:06 AM

Input:	
Document 1 ID	file://L:\WDOXS\New\RLG\TRADEMARKS\067514.DOC
Description	067514
Document 2 ID	file://L:\WDOXS\New\RLG\TRADEMARKS\066710.DOC
Description	066710
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	97
Deletions	93
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	190

EXHIBIT 7

From: Criona, Danielle
Sent: Thursday, September 20, 2012 9:10 AM
To: Akerman, Tammy; Giarratana, Mark; Ewen, David
Subject: RE: Revised protective order

Importance: High

Mark and David,

Do you have a new draft for us? We agreed that we would turn drafts around every 24 hours, considering the deadline on Friday, and we didn't see one from you yesterday.

Danielle M. Criona, Esq.
Roll Law Group PC
Intellectual Property Counsel

-----Original Message-----
From: Akerman, Tammy
Sent: Tuesday, September 18, 2012 11:31 AM
To: Giarratana, Mark; Ewen, David
Cc: Criona, Danielle
Subject: Revised protective order

Mark and David,

Attached please find a revised clean version of the protective order with our changes as well as a redline against the version you circulated to us this morning.

As a preliminary matter, we have left the term "highly confidential" in the place of "trade secrets" for the reasons we explained on the call yesterday. "Trade Secrets" has special legal meaning and is to be applied only to documents that are under lock and key like formulations etc. POM expects to produce documents that it still would like to afford more protection than "confidential" and we would prefer not to argue over whether material is a "trade secret". It therefore makes more sense to leave it to each party to designate material as "confidential" or "highly confidential" depending on the material. Even the standard protective order contemplates this level of protection.

In addition, as we mentioned on the call yesterday, I think we are splitting hairs with the definition of what constitutes "in house counsel" and we don't want to argue about it later on or be faced with the situation where material is not produced. The issue seems to be that there is concern over business information that may be shared. To overcome this, and as suggested on the call yesterday, we have included language that counsel that has ownership interest in a client may not review highly confidential documents. In addition, we have included a declaration for all counsel to execute prior to review of any highly confidential documents. Hopefully this will alleviate all concerns regarding this issue.

We would prefer to discuss this matter if there is additional concern so that we can finalize the order in short term so please call us if there are additional concerns or if you feel we did not capture your concerns.

Thanks,
Tammy

-----Original Message-----
From: Ewen, David [mailto:DEwen@McCarter.com]
Sent: Tuesday, September 18, 2012 9:00 AM
To: Criona, Danielle
Cc: Giarratana, Mark
Subject: RE: ESTTA. Stipulated/Consent Motion to Extend confirmation receipt ID: ESTTA494932

Danielle,

Attached is a redline showing our revisions to the draft you last provided, as well as a clean copy. We'll look forward to your comments.

David

-----Original Message-----
From: Criona, Danielle [mailto:DCriona@Roll.com]
Sent: Monday, September 17, 2012 6:22 PM
To: Ewen, David
Cc: Giarratana, Mark
Subject: FW: ESTTA. Stipulated/Consent Motion to Extend confirmation receipt ID: ESTTA494932

Here it is. We look forward to getting this done by Friday and will look for your draft tonight. We will get our draft to you by tomorrow evening.

Danielle M. Criona, Esq.
Roll Law Group PC
Intellectual Property Counsel

-----Original Message-----
From: estta-server@uspto.gov [mailto:estta-server@uspto.gov]
Sent: Monday, September 17, 2012 3:20 PM
To: Criona, Danielle; Rivera, Mark; Akerman, Tammy
Subject: ESTTA. Stipulated/Consent Motion to Extend confirmation receipt ID: ESTTA494932

Opposition No.: 91171281

Tracking No: ESTTA494932

ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt

We have received your Opposition No.: 91171281 submitted through the Trademark Trial and Appeal Board's ESTTA electronic filing system. This is the only receipt which will be sent for this paper. If the Board later determines that your submission is inappropriate and should not have been accepted through ESTTA, you will receive notification and appropriate action will be taken.

Please note:

Unless your submission fails to meet the minimum legal requirements for filing, the Board will not cancel the filing or refund any fee paid.

If you have a technical question, comment or concern about your ESTTA submission, call 571-272-8500 during business hours or e-mail at estta@uspto.gov.

The status of any Board proceeding may be checked using TTABVUE which is available at http://ttabvue.uspto.gov Complete information on Board proceedings is not available through the TESS or TARR databases. Please allow a minimum of 2 business days for TTABVUE to be updated with information on your submission.

The Board will consider and take appropriate action on your filing in due course.

Printable version of your request is attached to this e-mail

ESTTA server at http://estta.uspto.gov

ESTTA Tracking number: ESTTA494932
Filing date: 09/17/2012

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

Proceeding: 91171281
Party: Plaintiff
PomWonderful LLC

Correspondence Address: DANIELLE M CRIONA ROLL LAW FIRM PC
11444 WEST OLYMPIC BOULEVARD
LOS ANGELES, CA 90064
UNITED STATES
dcriona@roll.com, sweiner@roll.com Phone:

Submission: Stipulated/Consent Motion to Extend

Filer's Name: Danielle M Criona
Filer's e-mail: dcriona@roll.com, mrivera@roll.com, tackerman@roll.com
Signature: /s/ Danielle M Criona /s/
Date: 09/17/2012

Attachments: Consent Motion to Extend Time to File PO.pdf (3 pages)

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action.** I am employed in the County of Los Angeles, State of California. My business address is 11444 West Olympic Boulevard, Los Angeles, CA 90064-1557.

On September 21, 2012, I served true copies of the following document(s) described as **OPPOSER'S MOTION REQUESTING ENTRY OF OPPOSER'S PROPOSED PROTECTIVE ORDER** on the interested parties in this action as follows:

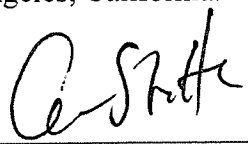
David Ewen
Dewen@mccarter.com
McCarter & English, LLP
CityPlace I
185 Asylum St.
Hartford, CT 06103
T: 860.275.6700 F: 860.724.3397
Counsel for Jarrow Formulas

Mark Giarratana
Mgiarrantana@mccarter.com
McCarter & English, LLP
CityPlace I
185 Asylum St.
Hartford, CT 06103
T: 860.275.6700 F: 860.724.3397
Counsel for Jarrow Formulas

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address estratte@yahoo.com to the persons at the e-mail addresses listed in the Service List. The document(s) were transmitted at 5:10 p.m. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on September 21, 2012, at Los Angeles, California.



Stratte, Erin