

ESTTA Tracking number: **ESTTA142543**

Filing date: **05/25/2007**

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

Proceeding	91175564
Party	Plaintiff Consilient Restaurants, L.P. Consilient Restaurants, L.P. ,
Correspondence Address	Linda M. Novak Fish & Richardson P.C. 1717 Main Street, Suite 5000 Dallas, TX 75201 UNITED STATES novak@fr.com, jkg@fr.com, tmdocdal@fr.com, kzw@fr.com
Submission	Other Motions/Papers
Filer's Name	Linda M. Novak
Filer's e-mail	novak@fr.com
Signature	/lmn/
Date	05/25/2007
Attachments	19438-004PP1-po.pdf (12 pages)(2586769 bytes)

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

In the matter of Application Serial No. 76/403,255
For the Mark CUBA LIBRE
Published in the Official Gazette on October 10, 2006 at TM 1077

Consilient Restaurants, L.P.,

Opposer,

v.

Thursday Enterprises, LLC,

Applicant.

Opposition No. 91175564

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

**CONSENTED MOTION FOR BOARD TO ORDER
PROVISIONS FOR PROTECTING CONFIDENTIALITY OF
INFORMATION REVEALED DURING BOARD PROCEEDING**

Opposer Consilient Restaurants, L.P. respectfully requests that the Board order the enclosed Provisions for Protecting Confidentiality of Information Revealed During Board Proceeding (the "Protective Order"). Counsel for both Opposer and Applicant Thursday

CERTIFICATE OF MAILING BY ELECTRONIC SUBMISSION

I hereby certify under 37 CFR §2.197 that this correspondence is being deposited with the United States Postal Service by electronic submission on the date indicated below and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451

..... May 25, 2007

Date of Deposit

.....
Signature

..... Linda M. Noyak

Typed or Printed Name of Person Signing Certificate

Applicant : Thursday Enterprises, LLC
Serial No. : 76/403,255
Filed: : May 2, 2002
Mark : CUBA LIBRE
Page : 2

Attorney's Docket No.: 19438-004PP1

Enterprises, LLC have executed the endorsed Protective Order and the Parties have assented to this Motion.

Respectfully submitted,

Date: May 25, 2007



J. Kevin Gray
Linda M. Novak
FISH & RICHARDSON P.C.
1717 Main Street
Suite 5000
Dallas, Texas 75201
Telephone: (214) 292-4083
Facsimile: (214) 747-2091

Attorneys for Opposer,
CONSILIENT RESTAURANTS, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Consented Motion for Board to Order Provisions for Protecting Confidentiality of Information Revealed During Board Proceeding has this 25th day of May, 2007, been mailed by prepaid first class mail to the below-identified Attorney at his place of business:

Lane Fisher
Fisher Zucker, LLC
121 South Broad Street, Suite 1200
Philadelphia, PA 19107



Patricia L. Bradford

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

.....	:	
CONSILIENT RESTAURANTS, L.P.	:	U.S. Service Mark Application
	:	Opposition No.: 91175564
Opposer,	:	
	:	Serial No.: 76/403,255
v.	:	
	:	Mark: CUBA LIBRE
THURSDAY ENTERPRISES, LLC	:	
	:	
Applicant.	:	
.....	:	

**PROVISIONS FOR PROTECTING
CONFIDENTIALITY OF INFORMATION
REVEALED DURING BOARD PROCEEDING**

Information disclosed by any party or non-party witness during this proceeding may be considered confidential, a trade secret, or commercially sensitive by a party or witness. To preserve the confidentiality of the information so disclosed, **either** the parties have agreed to be bound by the terms of this order, in its standard form or as modified by agreement, and by any additional provisions to which they may have agreed and attached to this order, **or** the Board has ordered that the parties be bound by the provisions within. As used in this order, the term "information" covers both oral testimony and documentary material.

Parties may use this standard form order as the entirety of their agreement or may use it as a template from which they may fashion a modified agreement. If the Board orders that the parties abide by the terms of this order, they may subsequently agree to modifications or additions, subject to Board approval.

Agreement of the parties is indicated by the signatures of the parties' attorneys and/or the parties themselves at the conclusion of the order. Imposition of the terms by the Board is indicated by signature of a Board attorney or Administrative Trademark Judge at the conclusion of the order. If the parties have signed the order, they may have created a contract. The terms are binding from the date the parties or their attorneys sign the order, in standard form or as modified or supplemented, or from the date of imposition by a Board attorney or judge.

TERMS OF ORDER

1) Classes of Protected Information.

The Rules of Practice in Trademark Cases provide that all inter partes proceeding files, as well as the involved registration and application files, are open to public inspection. The terms of this order are not to be used to undermine public access to files. When appropriate, however, a party or witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations.

Confidential—Material to be shielded by the Board from public access.

Attorney's Eyes Only — Material to be shielded by the Board from public access, restricted from any access by the Parties, available for review only by counsel for the Parties and, subject to the provisions of paragraph 4, by independent experts or consultants for the Parties. This designation should be used only for trade secret or non-public, commercially sensitive information.

Trade Secret/Commercially Sensitive—Material to be shielded by the Board from public access, restricted from any access by the parties, and available for review by outside counsel for the parties and, subject to the provisions of paragraph 4 and 5, by independent experts or consultants for the parties.

Confidential information includes, without limitation, private, non-public information, a trade secret or other confidential research, development or commercial information. Any confidential document or testimonial information produced by any party that contains information proprietary to the Producing Party and which is particularly sensitive competitive information (for example, highly sensitive commercial or competitive information, which is otherwise not public or publicly available) may be designated in writing as "Attorney's Eyes Only." Any document or testimonial information designated as Attorney's Eyes Only shall be restricted from access by the Receiving Party, and available for review only by outside counsel for the Receiving Party. Examples of the types of information that may be designated as Attorney's Eyes Only include, but are not limited to:

- (a) The names, or other information tending to reveal the identities, of a party's supplier;
- (b) The names, or other information tending to reveal the identities, of a party's present or prospective customers;
- (c) Proprietary technical or financial information of a party, including, without limitation, revenues, costs, profits, deductions, expenses, and income relating to any goods or services sold, offered for sale, or rendered by a party;
- (d) The names, or other information tending to reveal the identities, of a party's distributors; and

- (e) Marketing or advertising plans or strategies, or financial information related thereto, of a party.
- (f) Other categories of Attorney's Eyes Only information may exist.

The parties agree to designate information as Confidential or Attorney's Eyes Only on a good faith basis and not for purposes of harassing the Receiving Party or for purposes of unnecessarily restricting the Receiving Party's access to information concerning the lawsuit.

2) Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the approval of the designating party.

3) Access to Protected Information.

The provisions of this order regarding access to protected information are subject to modification by written agreement of the parties or their attorneys, or by motion filed with and approved by the Board.

Judges, attorneys, and other employees of the Board are bound to honor the parties' designations of information as protected but are not required to sign forms acknowledging the terms and existence of this order. Court reporters, stenographers, video technicians or others who may be employed by the parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the parties or their attorneys make it a condition of employment or obtain agreements from such individuals, in accordance with the provisions of paragraph 4.

- The **Parties** are defined as Consilient Restaurants, L.P. and Thursday Enterprises, LLC, including officers, directors, and management employees of each company.
- **Attorneys** for parties are defined as including **in-house counsel** and **outside counsel**, including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.

- **Independent experts or consultants** include individuals retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys.
- **Non-party witnesses** include any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness.

Parties and their attorneys shall have access to information designated as confidential, subject to any agreed exceptions.

Outside counsel, but not in-house counsel, shall have access to information designated as Attorney's Eyes Only.

Independent experts or consultants may have access to Confidential and Attorney's Eyes Only information if such access is agreed to by the Parties or ordered by the Board, in accordance with the terms that follow in paragraph 4.

4) Disclosure to Any Individual.

Prior to disclosure of protected information by any party or its attorney to any individual not already provided access to such information by the terms of this order, the individual shall be informed of the existence of this order and provided with a copy to read. The individual will then be required to certify in writing that the order has been read and understood and that the terms shall be binding on the individual. No individual shall receive any protected information until the party or attorney proposing to disclose the information has received the signed certification from the individual. A form for such certification is attached to this order. The party or attorney receiving the completed form shall retain the original.

5) Disclosure to Independent Experts or Consultants.

Prior to disclosure of protected information by any party or its attorney to an independent expert or consultant, the independent expert or consultant shall be informed of the existence of this order and provided with a copy to read. The independent expert or consultant will then be required to certify in writing that the order has been read and understood and that the terms shall be binding on him or her. No individual shall receive any protected information until the party or attorney proposing to disclose the information has received the signed certification from the individual and the party has followed the procedures outlined below. A form for such certification is attached to this order. The party or attorney receiving the completed form shall retain the original.

The party or attorney proposing to share disclosed information with an independent expert or consultant must also notify the party that designated the information as protected. Notification must be sent via facsimile with confirmation of delivery received, or by mail, return receipt requested, and shall provide notice of the

name, address, occupation and professional background of the expert or independent consultant.

The party or its attorney receiving the notice shall have five (5) business days to object to disclosure to the expert or independent consultant. If objection is made, then the Parties must negotiate the issue before raising the issue before the Board. If the Parties are unable to settle their dispute, then it shall be the obligation of the party or attorney proposing disclosure to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the Parties have made to settle their dispute. The party objecting to disclosure will be expected to respond with its arguments against disclosure or its objections will be deemed waived.

6) Responses to Written Discovery.

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

7) Production of Documents.

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If the responding party makes documents available for inspection and copying by the inquiring party, all documents shall be considered protected during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

8) Depositions.

Protected documents produced during a discovery deposition, or offered into evidence during a testimony deposition shall be orally noted as such by the producing or offering party at the outset of any discussion of the document or information contained in the document. In addition, the documents must be prominently stamped or marked with the appropriate designation.

During discussion of any non-documentary protected information, the interested party shall make oral note of the protected nature of the information.

The transcript of any deposition and all exhibits or attachments shall be considered protected for 30 days following the date of service of the transcript by the party that took the deposition. During that 30-day period, either party may designate the portions of the transcript, and any specific exhibits or attachments, that are to be treated as protected, by electing the appropriate designation from paragraph 1. Appropriate stampings or markings should be made during this time. If no such designations are made, then the entire transcript and exhibits will be considered unprotected.

9) Filing Notices of Reliance.

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the information, so as to maintain the protected status of the information.

10) Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss protected information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 12 of this order.

11) Handling of Protected Information.

Disclosure of information protected under the terms of this order is intended only to facilitate the prosecution or defense of this case. The recipient of any protected information disclosed in accordance with the terms of this order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

12) Redaction; Filing Material With the Board.

When a party or attorney must file protected information with the Board, or a brief that discusses such information, the protected information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected.

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

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

CONFIDENTIAL

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

13) Acceptance of Information; Inadvertent Disclosure.

Acceptance by a party or its attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to designate as protected shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

14) Challenges to Designations of Information as Protected.

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designa-

tion by the disclosing party. If the parties are unable to resolve their differences, the party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made the challenge at an earlier time.

The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

15) Board's Jurisdiction; Handling of Materials After Termination.

The Board's jurisdiction over the parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

The parties may agree that archival copies of evidence and briefs may be retained, subject to compliance with agreed safeguards. Otherwise, within 30 days after the final termination of this proceeding, the parties and their attorneys shall return to each disclosing party the protected information disclosed during the proceeding, and shall include any briefs, memoranda, summaries, and the like, which discuss or in any way refer to such information. In the alternative, the disclosing party or its attorney may make a written request that such materials be destroyed rather than returned.

16) Other Rights of the Parties and Attorneys.

This order shall not preclude the parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the order preclude the filing of any motion with the Board for relief from a particular provision of this order or for additional protections not provided by this order.

Upon the request of any party for the return of a privileged or work product document, it and all copies of it shall be returned to the producing party, and no waiver of any privilege or immunity from disclosure shall have occurred. The parties agree that they will not claim waiver in the event of an inadvertent production of a privileged document.

A party who inadvertently fails to designate a document or deposition testimony as "Confidential" or "Attorneys' Eyes Only" does not thereby waive the right belatedly to do so, but the recipient of the information so inadvertently unmarked shall not suffer sanction for disclosure of the information prior to the date on

which it receives actual notice of the confidential nature of the information. The Parties agree to cooperate to minimize the publication of any inadvertently disclosed material. All copies of the inadvertently disclosed material shall be retrieved by the Parties' outside counsel from any person who would not have been allowed access to it if it had been properly designated.

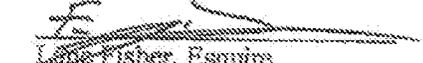
By Agreement of the
Following, effective

May 17, 2007


Tristan Simon, General Partner
Consilient Restaurant Group,
L.P.


Barry Guff, Managing Member
Thursday Enterprises, LLC


Linda Novak, Esquire
Fish & Richardson P.C.
Attorney for Opposer


Leslie Fisher, Esquire
Fisher Zucker, LLC
Attorney for Applicant

By Order of the Board, effective _____

{print or type name and title of Board attorney
or judge imposing order}

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

In the matter of Application Serial No. 76/403,255
For the Mark CUBA LIBRE
Published in the Official Gazette on October 10, 2006 at TM 1077

Consilient Restaurants, L.P.,

Opposer,

v.

Opposition No. 91175564

Thursday Enterprises, LLC,

Applicant.

**ACKNOWLEDGMENT OF
AGREEMENT OR ORDER PROTECTING
CONFIDENTIALITY OF INFORMATION
REVEALED DURING BOARD PROCEEDING**

I, _____ [print name], declare that I have been provided with a copy of the Agreement or Order regarding the disclosure of, and protection of, certain types of information and documents during and after the above-captioned opposition or cancellation proceeding before the Trademark Trial and Appeal Board.

I have read the Agreement or Order and understand its terms and provisions, by which I agree to be bound. Specifically, I agree to hold in confidence any information or documents disclosed to me in conjunction with any part I take in this proceeding.

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

[signature]

[print title, if applicable]

[date]