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

Proceeding	91179798
Party	Plaintiff Medquest Global Marketing Research, Inc.
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Signature	/Danielle M Criona/
Date	12/13/2007
Attachments	Stipulated Protective Order (signed).pdf (15 pages)(562650 bytes)

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Opposed Mark: MEDQUEST
U.S. Trademark App. Ser. No. 76/661,551

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

Medquest Global Marketing Research, Inc.	)	
	)	
Opposer,	)	Opposition No.: 91179798
	)	
v.	)	
	)	**STIPULATED PROTECTIVE ORDER**
Medquest Research, LLC	)	
	)	
Applicant.	)	
	)	
	)	

The discovery procedures in this case may require disclosure of information, either documentary or testimonial or both, regarded by the producing party as confidential information incorporating proprietary data, know-how, trade secrets, financial and other valuable commercial information (hereinafter "Confidential Information"). Accordingly, all parties in this action, by and through their respective attorneys, stipulate and agree to the following terms and conditions, which shall apply to this action:

1. Any document or testimonial information provided by either party which that party in good faith contends contains Confidential Information that is entitled to protection under Rule 26(c) of the Federal Rules of Civil Procedure, may be designated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEY'S EYES ONLY" and, except as permitted by further order of the TTAB or a court of competent jurisdiction or by subsequent written agreement of the producing party, such designated documents or testimonial information shall be received by counsel of record for the receiving party upon the terms and conditions of this Stipulated Protective Order (hereafter, "this Protective Order").

2. Documents or tangible items shall be designated "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" within the meaning of this Protective Order in the following ways.

(a) In the case of documents and information contained therein, by placing on the document the legend "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEY'S EYES ONLY."

(b) In the case of interrogatory answers and the information contained therein, designation shall be made by placing on the pages containing the Confidential Information the legend "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEY'S EYES ONLY."

(c) In the case of tangible items, designation shall be made by visibly marking or labeling the item "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEY'S EYES ONLY."

(d) In producing original files and records for inspection, no marking need be made by the producing party in advance of the inspection. For the purposes of

inspection, all documents produced shall be considered as marked "CONFIDENTIAL - ATTORNEY'S EYES ONLY." Thereafter, upon selection of specified documents for copying, the producing party shall mark as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEY'S EYES ONLY" the copies of such documents as may contain Confidential Information at the time the copies are produced to the inspecting party.

3. With respect to all documents, information, or tangible items, produced or furnished by a party during this litigation, which are designated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEY'S EYES ONLY" by the producing party, such documents, information, or tangible items shall be kept confidential and shall not be given, shown, made available, discussed or otherwise communicated in any manner ("disclosed"), either directly or indirectly, to any person not authorized to receive the information under the terms of this Protective Order. In the event that the producing party contends that the receiving party violated its duty to keep such information confidential, the dispute shall be resolved by the parties negotiating in good faith. If the parties thereafter cannot reach agreement, the dispute shall be presented to the Trademark Trial and Appeals Board (hereinafter "TTAB") for resolution in accordance with governing rules..

4. If, in the course of this proceeding, depositions are conducted that involve Confidential Information, counsel for the witness or party producing such information may state on the record the portion of the deposition which counsel believes may contain Confidential Information. If such designation is made, that portion of the deposition will be taken with no one present except those persons who are authorized to have access to such Confidential Information in accordance with this Protective Order. Subject to the terms hereof, CONFIDENTIAL or

CONFIDENTIAL-ATTORNEY'S EYES ONLY information may be disclosed by a receiving party in depositions of the following individuals:

(a) the present Directors or Officers of the producing party;

(b) present employees of the producing party, to the extent such persons would be entitled to receive such information pursuant to the producing party's internal policies respecting confidentiality;

(c) an author, addressee or other person indicated on the document itself as a lawful recipient of a document containing the Confidential Information;

(d) a person clearly identified by the producing party in prior discovery or by the deponent during his or her deposition as an author or lawful recipient of the information (without prior disclosure of the specific confidential information). Prior to any disclosure under this subparagraph (d), notice must be given to the producing party of the specific information so that it has a fair opportunity to object to the disclosure. Notice may be given at the time of the deposition. The parties agree to cooperate and, if necessary, to defer any such disclosure, to allow either party to initiate action, by motion or otherwise, with the TTAB. The producing party bears the burden of establishing confidentiality, but the receiving party may not disclose the producing party's Confidential Information to the person in dispute in the event the producing party objects to the disclosure, absent an Order by the TTAB to the contrary;

(e) an independent legal, technical or damages expert otherwise qualified under this Stipulated Protective Order to receive such information; or

(f) any person for whom prior authorization is obtained from the producing party or the TTAB or otherwise is authorized to have access to such information under this Stipulated Protective Order.

Each party shall have until thirty (30) days after receipt of the deposition transcript within which to inform the other parties to the action of the portions of the transcript (by specific page and line reference) to be designated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEY'S EYES ONLY." The right to make such designation shall be waived unless made within the thirty (30) day period. Prior to such designation, or expiration of the thirty (30) day period, the entire deposition transcript shall be deemed as "CONFIDENTIAL - ATTORNEY'S EYES ONLY" information, unless otherwise agreed to by the parties. The thirty (30) day period may be reduced by agreement of the parties and any requests for reduction of such time period will not be unreasonably refused. Transcripts of testimony, or portions thereof, containing Confidential Information shall be filed only as described in paragraph 5, until further order of the TTAB.

5. Any document, pleading, or tangible item which contains confidential information, if filed or submitted to the TTAB, shall be filed in a sealed envelope marked as Confidential Materials in accordance with the procedures set forth by the governing TTAB rules. This envelope shall read:

CONFIDENTIAL INFORMATION

[or CONFIDENTIAL—ATTORNEYS' EYES ONLY]

SUBJECT TO PROTECTIVE ORDER

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.

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6. Any confidential document or testimonial information produced by any party which contains information proprietary to the producing party and which is particularly sensitive competitive commercial and/or financial information, may be designated in writing as "CONFIDENTIAL - ATTORNEY'S EYES ONLY." The parties currently anticipate that categories of such Confidential Information that may be disclosed in discovery by the parties and/or by nonparties will or may include:

(a) Confidential information regarding the identities of a party's suppliers, distributors, or present or prospective customers;

(b) Confidential technical and financial information and financial data that is not known generally to the trade or to competitors, including financial data relating to marketing, sales, cost and profit information;

(c) The specific terms of agreements with, and information received from, third parties that a Party is required to disclose only under conditions of confidentiality;

(d) Business plans and/or strategic product information that are not known generally to the trade or to competitors, including non-public information relating to marketing and product promotion; and

(e) Personnel files and other private or confidential employment information.

Other categories of CONFIDENTIAL - ATTORNEY'S EYES ONLY information may exist. The parties agree to designate information as CONFIDENTIAL or CONFIDENTIAL - 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 Opposition.

7. Before disclosure of any information subject to this Protective Order is made to any employee or officer of the non-producing party, or to any consultant or expert retained by the non-producing party, or to any witness or prospective witness, counsel for the party disclosing the information shall obtain a written affidavit, in the form attached hereto as Exhibit "A," from each person to whom disclosure is to be made, acknowledging that any document, information or tangible item that has been designated as confidential is subject to this Protective Order, that the person has read this Protective Order, that such person agrees to comply with, and be bound by, this Protective Order, and that such person is aware that contempt sanctions may be entered for violation of this Protective Order. All signed affidavits shall be maintained through the conclusion of this Opposition.

8. Except as permitted by further order of the TTAB or by subsequent written agreement of the producing party, disclosure of CONFIDENTIAL - ATTORNEY'S EYES ONLY documents or information, including summaries thereof, but not including documents with the confidential portions redacted, shall be strictly limited to:

(a) outside counsel of record for the parties, and outside associate attorneys and paralegal and clerical employees assisting such counsel;

(b) TTAB Board Members, law clerks and personnel of the TTAB before whom this action is pending, as well as any Court to which an appeal in this action might lie;

(c) independent legal, technical or damages experts (not present or former employees, agents or officers of the parties), retained by either of the parties to consult or testify in the case (only after the execution of Exhibit "A");

(d) directors, employees and officers of the party producing the documents or information;

(e) authors or drafters of the documents or information; and

(f) court reporters and other persons engaged in preparing transcripts of testimony or hearings for this action.

9. Disclosure of information designated as CONFIDENTIAL, including summaries thereof, shall be limited to:

(a) the persons and entities identified in paragraph 8;

(b) employees and officers of the non-producing party whose access to the Confidential Information is necessary for the preparation of the non-producing party's case; and

(c) representatives of the parties' insurance carriers, if any, but only to the extent any such carriers are participating in the defense of this action and only to the extent necessary to report such information as material to the defense of the action.

10. If it becomes necessary for counsel for a party receiving CONFIDENTIAL or CONFIDENTIAL - ATTORNEY'S EYES ONLY information to seek the assistance of any other person, other than those referred to in paragraphs 8 and 9, and to disclose CONFIDENTIAL or CONFIDENTIAL - ATTORNEY'S EYES ONLY information to such person in order to properly prepare this litigation for trial, the following procedures shall be employed:

(a) Counsel for the receiving party shall notify, in writing, counsel for the party producing the CONFIDENTIAL or CONFIDENTIAL - ATTORNEY'S EYES ONLY information of their desire to disclose such CONFIDENTIAL or CONFIDENTIAL - ATTORNEY'S EYES ONLY information and shall identify

the person(s) to whom they intend to make disclosure and the purpose of such disclosure;

(b) If no objection to such disclosure is made by counsel for the producing party within seven (7) days of such notification, counsel for the receiving party shall be free to make such disclosure to the designated person(s); provided, however, that counsel for the receiving party shall obtain, prior to disclosure, an Affidavit in the form attached hereto as Exhibit "A," whereby such person agrees to comply with and be bound by this Protective Order;

(c) If the producing party objects to such disclosure, no disclosure shall be made. Any party may bring before the TTAB the question of whether the particular CONFIDENTIAL or CONFIDENTIAL - ATTORNEY'S EYES ONLY information can be disclosed to the designated person(s).

11. If, through inadvertence, a producing party provides any information pursuant to this litigation without marking the information as CONFIDENTIAL or CONFIDENTIAL - ATTORNEY'S EYES ONLY information, the producing party may subsequently inform the receiving party of the CONFIDENTIAL or CONFIDENTIAL - ATTORNEY'S EYES ONLY nature of the disclosed information, and the receiving party shall treat the disclosed information as CONFIDENTIAL or CONFIDENTIAL - ATTORNEY'S EYES ONLY information upon receipt of written notice from the producing party.

12. The restrictions set forth in this Order will not apply to information which is known to the receiving party or is publicly available before the date of its transmission to the receiving party, or which becomes known to the public after the date of its transmission to the receiving party, provided that such information does not become publicly known by any act or omission of

the receiving party, its employees, or agents which would be in violation of this order or other law.

13. No person or party shall directly or indirectly utilize or disclose any CONFIDENTIAL or CONFIDENTIAL - ATTORNEY'S EYES ONLY information obtained pursuant to pretrial discovery in this action, except for the purpose of this action only and in accordance with any further order issued by the TTAB.

14. Confidential Information not introduced as evidence in the trial brief shall maintain such protections and designations after submission of trial briefs and conclusion of this Opposition.

15. Acceptance by a party of any information, document or thing designated as CONFIDENTIAL or CONFIDENTIAL - ATTORNEY'S EYES ONLY shall not constitute a concession that the information, document or thing is confidential. Either party may contest a claim of confidentiality. If the receiving party disagrees with the designation and marking by any producing party of any material as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEY'S EYES ONLY," then the parties shall first try to resolve such disputes on an informal basis. If agreement cannot be reached between counsel, then such dispute may be presented to the TTAB in accordance with the governing TTAB rules by either party by motion or otherwise, and the parties shall continue to treat the material as Confidential Information and to use and/or disclose the material only in the manner authorized by this Order until the TTAB rules that it may be treated otherwise. In the resolution of such matter, the burden of establishing confidentiality shall be on the party who made the claim of confidentiality.

16. This Protective Order shall be without prejudice to the right of any party to oppose production of any information on grounds other than confidentiality.

17. This Protective Order shall not prevent any party from applying to the TTAB for relief therefrom, or from applying to the TTAB for further or additional protective orders, or from agreeing among themselves to modify or vacate this Protective Order, by stipulation or by approval of the TTAB.

18. At the conclusion of this Opposition, including any appeals, all CONFIDENTIAL or CONFIDENTIAL - ATTORNEY'S EYES ONLY information – except such information contained in the text of pleadings actually filed with the TTAB or contained on outside counsel's email server – furnished pursuant to this Protective Order, and all copies thereof, shall be returned to the producing attorneys of record, or, at the producing party's option, destroyed by counsel for the receiving party, and written confirmation of such destruction shall be provided. Counsel for each party is responsible for collecting all such copies, including from their respective independent experts, for return or destruction. The provisions of the Protective Order insofar as it restricts the disclosure, communication of and use of, CONFIDENTIAL and CONFIDENTIAL-ATTORNEY'S EYES ONLY information produced hereunder shall continue to be binding after the conclusion of this action.

19. If discovery is sought of a person not a party to this action ("third party") requiring disclosure of such third party's CONFIDENTIAL or CONFIDENTIAL - ATTORNEY'S EYES ONLY information, the information disclosed by such third party will be accorded the same protection as the parties' CONFIDENTIAL or CONFIDENTIAL - ATTORNEY'S EYES ONLY information, and will be subject to the same procedures as those governing disclosure of the parties' Confidential Information pursuant to this Stipulated Protective Order.

20. Inadvertent production of documents subject to work product immunity or the attorney-client privilege shall not constitute a waiver of the immunity or privilege. However, the

producing party must notify the receiving party in writing of such inadvertent production within twenty (20) calendar days of the discovery of the inadvertent production by the producing party. Such inadvertently produced documents, and all copies thereof, shall be returned to the producing party upon request.

21. Nothing in this Order shall bar or otherwise restrict counsel of record herein from rendering advice to his client with respect to this litigation and, in the course thereof, referring to or relying upon his examination of "CONFIDENTIAL or "CONFIDENTIAL - ATTORNEY'S EYES ONLY" information provided, however, that in rendering such advice and in otherwise communicating with his clients, the attorney shall not make specific disclosure of any item of CONFIDENTIAL or CONFIDENTIAL - ATTORNEY'S EYES ONLY information.

22. Production or disclosure of "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEY'S EYES ONLY" information under this Order shall not prejudice the right of any party making that production or disclosure to maintain the trade secret status or confidentiality of that "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEY'S EYES ONLY" information in other contexts.

23. The Board is responsible for the interpretation and enforcement of this Protective Order. All disputes concerning CONFIDENTIAL MATERIALS produced under the protection of this Order shall be resolved by this Board. The parties shall remain bound by this Order and the Board shall retain jurisdiction to enforce or modify this Protective Order even after the termination of this Opposition.

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The foregoing Stipulated Protective Order is hereby stipulated by and between counsel for the parties.

Dated: ~~November~~ December 5, 2007

MEDQUEST GLOBAL MARKETING RESEARCH, INC

By: Danielle M. Criona

Bruce A. Jagger, Esq.
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Attorneys for Opposer

Dated: ~~November~~ December 4, 2007

MEDQUEST RESEARCH, LLC

By: Thomas V. Smurzynski

Thomas V. Smurzynski
LAHIVE & COCKFIELD LLP
One Post Office Square
Boston, MA 02109-2127

Attorneys for Applicant

Exhibit "A"

UNDERTAKING OF _____

I, _____, declare that: I reside at _____in the City of _____, County of _____, State of _____; I have read and understand the Stipulated Protective Order dated _____and of record in Opposition No. 91179798 entitled *Medquest Global Marketing Research, Inc., Opposer v. Medquest Research, LLC, Applicant* pending before the United States Trademark Trial and Appeals Board ("TTAB"). I agree to comply with and be bound by the provisions of said Order. I hereby submit to the jurisdiction of the TTAB or a court having jurisdiction over this action for the purpose of enforcement of the Stipulated Protective Order against me in this action.

Dated: _____ _____

Name:
Title:
Employer:

PROOF OF SERVICE

I am over the age of eighteen years and not a party to the instant action. My business address is 6100 Center Drive, Suite 630, Los Angeles, California 90045.

On December 13, 2007, I served the following document described as **STIPULATED PROTECTIVE ORDER** on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelope(s) and/or package(s) addressed as follows:

Attorneys for Applicant:

Thomas V. Smurzynski
LAHIVE & COCKFIELD LLP
One Post Office Square
Boston, MA 02109-2127

☒ **BY MAIL**: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY MAIL:** I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California as first class mail.

☐ **BY FACSIMILE**: I served said document to be transmitted by facsimile to the addressee(s) at the listed facsimile number(s). The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error.

☐ **BY FEDERAL EXPRESS**: I served such envelope or package to be delivered for the next day upon the addressee(s).

☐ **BY HAND DELIVERY**: I caused such envelope(s) to be delivered by hand to the office of the addressee(s).

I declare that I am employed in the office of a member of the bar of this Court at whose direction such service was made.

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

Executed on December 13, 2007, at Los Angeles, California.

Patricia Anne McNulty