

TTAB

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

In the Matter of Registration No. 2,576,808

NY-EXOTICS, INC.,
Petitioner,

v.

EXOTICS.COM, INC.,
Respondent.

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Cancellation No. 92040976

U.S. Patent & TM Office Mail Receipt # 10-30-2003

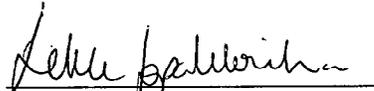
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Commissioner for Trademarks
2900 Crystal Drive
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CERTIFICATE OF EXPRESS MAIL	
"EXPRESS MAIL" Mailing Label No.: EL 749029675 US	
Date of Deposit: October 30, 2003	
I hereby certify that this paper or fee is being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, BOX TTAB NO FEE, 2900 Crystal Drive, Arlington, VA 22202-3514	
Signature	<i>Marcy Overstreet</i>
Print Name	Marcy Overstreet

ENTRY OF STIPULATED PROTECTIVE ORDER

Pursuant to T.B.M.P. § 416.02, the parties have entered into a stipulated protective order. The parties now seek to file the protective order with the Board. A copy of the protective order signed by counsel for both parties is attached for entry and filing by the Board.

Respectfully submitted,



Cathryn A. Berryman
Mitchell S. Shapiro
Lekha Gopalakrishnan

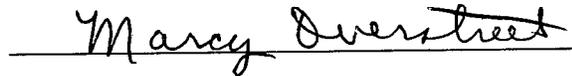
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ATTORNEYS FOR PETITIONER
NY-EXOTICS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Entry of Stipulated Protective Order" was served via United States Mail, First Class, postage prepaid, this 30th day of October 2003, upon Respondent's attorney of record as follows:

Michael M. Krieger
KRIEGER LAW OFFICES
10920 Wilshire Blvd., Suite 150-9168
Los Angeles, California 90024



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STIPULATED PROTECTIVE ORDER

10-30-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #78

Petitioner NY-Exotics, Inc. ("Petitioner") and Respondent Exotics.com, Inc. ("Respondent") (collectively, "the parties") hereby agree and stipulate that the terms of this Protective Order shall govern the dissemination of certain documents and information produced or provided during the course of the above-referenced cancellation proceeding before the Trademark Trial and Appeal Board (the "TTAB").

It is hereby AGREED AND ORDERED that:

1. All Classified Information produced or exchanged by the parties or by third parties in the course of this cancellation proceeding shall be used solely for the purpose of preparation of, trial of, submission of papers to the TTAB in connection with this cancellation proceeding, and any appeal of this cancellation proceeding and for no other purpose whatsoever, and shall not be disclosed to any person except in accordance with the terms hereof.
2. "Classified Information," as used herein, means any information of any type, kind or character that is designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" by any of the supplying or receiving parties, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer, or otherwise. In designating information as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," a party will make such designation only as to that information that it in good

faith believes contains confidential information. Information or material that is available to the public, including catalogues, advertising materials, and the like shall not be classified as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL."

3. "Qualified Persons," as used herein means:

(a) Attorneys of record for the parties in this cancellation proceeding including the respective partners, of counsel, associates, and employees of such attorneys to whom it is necessary that the material be shown for purposes of this cancellation proceeding;

(b) Actual or potential independent technical experts or consultants, who have been designated in writing by notice to all counsel at least fourteen (14) working days prior to any disclosure of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information to such person, and who have signed a document in the form of Exhibit A attached hereto, however, during such fourteen (14) day period, opposing counsel may object to disclosure of the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information to such person and such objection shall bar the disclosure of the designated material to that person until the parties agree otherwise or until the TTAB rules otherwise;

(c) In-house counsel and two (2) additional "in-house" corporate officers or employees of a corporate party, who shall be entitled to receive "CONFIDENTIAL" information, *but not* "HIGHLY CONFIDENTIAL" information under the following conditions: (1) that such persons shall be designated in writing by notice to all counsel prior to any disclosure of "CONFIDENTIAL" information to such person; and (2) that such person shall sign a document in the form of Exhibit A attached hereto (a copy of which signed document will be provided to all counsel at the time each person is designated in writing);

(d) TTAB board members, appellate courts and their respective staffs and clerks; and

(e) If the TTAB so elects, any other person may be designated as a Qualified Person by order of this TTAB, after notice to all parties.

4. Documents produced in this proceeding may be designated by any party or third party as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information by marking each page of the document(s) so designated with a stamp stating "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." In lieu of marking the original of a document, if the original is not produced, the designating party may mark the copies that are produced or exchanged.

5. Information disclosed at (a) the deposition (whether during the discovery period or the trial period) of a party or one of its present or former officers, directors, employees, agents, or independent experts retained by counsel for the purpose of this cancellation proceeding, or (b) the deposition (whether during the discovery period or the trial period) of a third party, which information pertains to a party or is confidential or trade secret information belonging to the third party, may be designated by any party or the third party as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information by indicating on the record at the deposition that the testimony is "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" and is subject to the provisions of this Order. At that time, all persons not qualified to receive that category of information shall leave the room prior to continuation of the deposition.

6. Any party or third party may also designate information disclosed at such deposition as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" by notifying all of the parties in writing within thirty (30) days of receipt of the transcript, of the specific pages and lines of the transcript which should be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" thereafter. Each party shall attach a copy of such written notice or notices to the face of the transcript and each copy thereof in his/its possession, custody or control. All deposition transcripts shall be treated as "HIGHLY CONFIDENTIAL" for a period of fifteen (15) days after the receipt of the transcript.

7. To the extent possible, the court reporter shall segregate into separate transcripts information designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," with blank,

consecutively numbered pages being provided in a non-designated main transcript. The separate transcript containing "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" information shall have page numbers that correspond to the blank pages in the main transcript.

8. (a) "CONFIDENTIAL" information shall not be disclosed or made available by the receiving party to persons other than to "Qualified Persons" as defined in Paragraph 3 of this Protective Order. Information designated as "HIGHLY CONFIDENTIAL" shall be restricted in circulation to those Qualified Persons described in Paragraphs 3(a), (b), (d) and (e) above.

(b) Copies of "HIGHLY CONFIDENTIAL" information provided to a receiving party shall be maintained in the offices of outside counsel for Petitioner and Respondent. Any documents produced in this cancellation proceeding, regardless of classification, which are provided to Qualified Persons of Paragraph 3(b) above, shall be maintained only at the office of such Qualified Person and only working copies shall be made of any such documents.

(c) Copies of documents produced under this Protective Order may be made, or exhibits prepared by independent copy services, printers, or illustrators for the purpose of this cancellation proceeding.

9. Documents to be inspected shall be treated as "HIGHLY CONFIDENTIAL" during inspection. At the time of copying for the receiving parties, such appropriate documents shall be stamped prominently "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" by the producing party.

10. Nothing herein shall prevent disclosure beyond the terms of this Order if each party or a third party designating the information as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" consents to such disclosure or if the TTAB, after notice to all affected parties, orders such disclosures. Nor shall anything herein prevent any counsel of a party from utilizing "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information in the examination or cross-examination of any person who is indicated on the document as being an author, source or recipient of the document containing "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information, regardless of which party produced such document.

11. A party shall not be obligated to challenge the propriety of a designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. In the event that any party to this cancellation proceeding disagrees at any stage of these proceedings with the designation by the designating party of any information as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” or the designation of any person as a Qualified Person, the parties shall first try to resolve such dispute in good faith on an informal basis, such as production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who has designated the document or information as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” The designating party shall be required to move the TTAB for an order preserving the designated status of such information within fourteen (14) days of receipt of the written objection, and failure to do so shall constitute a termination of the restricted status of such item.

12. The parties may, by stipulation, provide for exceptions to this Order and any party may seek an order of the TTAB modifying this Protective Order.

13. Nothing shall be designated as “HIGHLY CONFIDENTIAL” information except information of the most sensitive nature that, if disclosed to persons of expertise in the area, would reveal significant technical or business advantages of the producing or designating party and that includes, as a major portion, subject matter believed to be unknown to the opposing party or parties. Nothing shall be regarded as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” information if it is information that either:

- (a) is in the public domain at the time of disclosure, as evidenced by a written document;
- (b) becomes part of the public domain through no fault of the other party, as evidenced by a written document;
- (c) the receiving party can show by written document that the information was in its rightful and lawful possession at the time of disclosure; or

(d) the receiving party lawfully receives such information at a later date from a third party without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

14. In the event a party wishes to use any "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information in any affidavits, declarations, briefs, memoranda of law, or other papers filed with the TTAB in this cancellation proceeding, such document containing "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information therein shall be filed under seal with the TTAB.

15. The TTAB shall maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, admissions and other pleadings filed under seal with the TTAB in this cancellation proceeding that have been designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information by a party to this proceeding. All documents and materials (or portions thereof) filed with the TTAB, including without limitation, transcripts of depositions, exhibits, answers to interrogatories, answers to requests for admissions, briefs, and memoranda of law that comprise or contain "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information, shall be filed in sealed envelopes or other appropriately sealed containers on which shall be endorsed the title of this proceeding, an indication of the nature of the contents of such sealed envelope or other container, the identity of the party filing the materials, the terms "CONFIDENTIAL-Subject to Protective Order" and a statement in substantially the following form:

FILED UNDER SEAL SUBJECT TO PROTECTIVE ORDER.

This envelope contains materials that have been designated CONFIDENTIAL and/or HIGHLY CONFIDENTIAL pursuant to a protective order, and are not to be disclosed or revealed except to the Trademark Trial and Appeal Board and counsel for the parties, or by order of a court.

Other than as necessary for review by the TTAB, no such sealed envelope shall be opened without an order from the TTAB identifying by name the person or persons who may have

access to the sealed material, and specifically designating those portions of the sealed file may be revealed to them. The first page of any documents filed with the TTAB, which documents comprise or contain "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information or information taken therefrom shall bear a notice substantially the same as that on the envelope.

16. Unless otherwise agreed to in writing by the parties or ordered by the TTAB, all proceedings involving or relating to documents or any other information shall be subject to the provisions of this Order.

17. Within ninety (90) days after conclusion of this cancellation proceeding and any appeal thereof, any document containing "Classified Information" and all reproductions of such documents produced by a party, in the possession of any of the persons qualified under Paragraphs 3(a) through (c) and (e) shall be returned to the producing party, except that outside counsel may retain copies of all Classified Information in their files, and except to the extent the parties agree otherwise or as the TTAB may otherwise order or to the extent such information was used as evidence at the trial. As far as the provisions of this Stipulated Protective Order restricts the dissemination, communication, and use of documents and information produced thereunder, the parties, by the signatures of their counsel below, recognize their agreement to the terms of the Stipulated Protective Order and that the terms of their agreement shall continue to be binding on the parties after the conclusion of this cancellation proceeding, except (a) that there shall be no restriction on documents that are used as exhibits with the TTAB, unless such exhibits were filed under seal, and (b) that a party may seek the written permission of the producing party. The agreement of the parties shall survive and remain enforceable as a contract between the parties after the conclusion of this cancellation proceeding.

18. This Order shall not bar any attorney herein in the course of rendering advice to his/her client with respect to this cancellation proceeding from conveying to any party client his/her evaluation in a general way of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information produced or exchanged herein; provided, however, that in rendering such advice and otherwise communicating with his/her client, the attorney shall not disclose the specific contents

of any "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information produced by another party herein, which disclosure would be contrary to the terms of this Protective Order.

19. The inadvertent or unintentional disclosure by the producing party of information it/he believes is "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," regardless of whether the information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a party's claim of confidentiality, either as to the specific information disclosed or as to any other information relating thereto or on the same or related subject matter, provided that the party later asserting a claim of protection and privilege informs the opposing party of its/his claim within a reasonable time after learning of the disclosure. Information inadvertently or unintentionally disclosed without designation or designated late may be designated from the date written notice of the designation is provided to the receiving party. Any disclosures made before such late designation shall be considered as legal disclosures. However, reasonable effort shall be made by the receiving party after late designation to recover any documents, things or testimony transcripts containing the information which disclosure would have been improper had timely designation been made. Moreover, after late designation, the parties shall treat the subject matter as if timely designated except to the extent that disclosures before late designation have occurred.

20. Nothing in this Protective Order shall be deemed to preclude any party from seeking and obtaining, on an appropriate showing, such additional protection with respect to the confidentiality of documents or other discovery material as that party may consider appropriate; nor shall any party be precluded from claiming that any matter designated hereunder is not entitled to protection or is entitled to a more limited form of protection than designated.

21. Any party designating any person as a Qualified Person shall have the duty to reasonably ensure that such person observes the terms of this Protective Order and shall be responsible upon breach of such duty for the failure of any such person to observe the terms of this Protective Order.

22. The parties will have fourteen (14) days from the entry date of this Protective Order to designate portions of any discovery depositions "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL". Such designation will be done so in writing identifying, by page and line number, the portions of such deposition the designating party deems to be "CONFIDENTIAL" OR "HIGHLY CONFIDENTIAL".

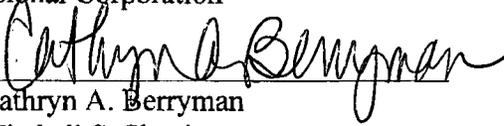
23. The parties expressly agree not to contact, with regard to the present Cancellation, persons identified by the other party as non-testifying or consulting experts pursuant to Paragraph 3(b). This Paragraph shall not apply to persons identified by the other party as non-testifying or consulting experts pursuant to Paragraph 3(b) that have become testifying experts in this Cancellation.

SIGNED and ENTERED this ____ day of _____, 2003.

AGREED AS TO FORM AND CONTENT:

JENKENS & GILCHRIST,
A Professional Corporation

By: _____


Cathryn A. Berryman
Mitchell S. Shapiro
Lekha Gopalakrishnan

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ATTORNEYS FOR PETITIONER NY-EXOTICS, INC.

AND

KRIEGER LAW OFFICES

By: _____


Michael M. Krieger

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Telecopy: (310) 208-2461

ATTORNEY FOR RESPONDENT EXOTICS.COM, INC.

EXHIBIT A

Acknowledgment of Obligation

I, the undersigned, hereby acknowledge that I have read the attached Stipulated Protective Order entered in the United States Trademark Trial and Appeal Board in the cancellation proceeding styled *NY-Exotics, Inc., Petitioner v. Exotics.com, Inc., Respondent*, Cancellation No. 92040976. I understand the terms of the Stipulated Protective Order and agree to be bound by all the terms thereof. Without limiting the generality of the foregoing statement, I agree not to disclose any document or information designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" pursuant to the terms of the Stipulated Protective Order (or any copies, extracts, summaries, or information otherwise derived therefrom) to any person or entity not authorized under the Stipulated Protective order to receive such information. I further agree to use any "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information disclosed to me in connection with this cancellation proceeding solely for the purposes of the cancellation proceeding and for no other purposes. I further acknowledge and agree that the terms of the Stipulated Protective Order are enforceable against me as a contract by any party both during and after the conclusion of the cancellation proceeding.

Date: _____

Signature: _____

Type or
print name: _____

Company: _____

Address: _____