

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

**In the Matter of Registration Nos.  
534,259; 1,391,401; 1,927,755; 2,087,020**



11-14-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

**JOHN L. MINASIAN,**

Petitioner,

**Cancellation No. 92041607**

v.

**SEARS, ROEBUCK AND CO.,**

Respondent.

**MOTION TO APPROVE STIPULATED PROTECTIVE ORDER**

Respondent, by counsel, moves the Board to approve the attached Stipulated Protective Order. Counsel for Respondent has conferred with counsel for Petitioner who has agreed and consented to the form and content and has signed the Stipulated Protective Order, which is submitted herewith.

Date: 11/14/03

Timothy P. Getzoff, Esq.  
Holland & Hart, LLP  
1050 Walnut Street Suite 500  
Boulder, CO 80302  
(303) 473-2700  
(312) 466-0077  
**Attorneys for Respondent  
Sears, Roebuck and Co.**

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**CERTIFICATE OF MAILING BY EXPRESS MAIL**

Box TTAB  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202

Sir:

The undersigned hereby certifies that the foregoing MOTION TO APPROVE STIPULATED PROTECTIVE ORDER was deposited as "Express Mail", Mailing Label No. EV259741918US with the United States Postal Service, addressed to Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on November 14, 2003.

11/14/2003  
Date

11/14/03  
Date

Jane Guy  
Mailer

Timothy P. Getzoff  
HOLLAND & HART LLP  
555 17<sup>th</sup> Street, Suite 3200  
Denver, CO 80302  
(719) 475-6465  
**Attorneys for Respondent  
Sears, Roebuck and Co.**



- (a) “Confidential”; or
- (b) “Confidential—Attorneys’ Eyes Only”.

All tangible items so designated shall be stamped or written upon each page or separate item by the Producing Person as “Confidential” or “Confidential-- Attorneys’ Eyes Only.”

2. “Confidential” information is information that a Producing Person in good faith regards as trade secret or other confidential information, such as pricing and profit information, research, development or technical information, sales and marketing information, or contractual information, but which is not “Confidential- Attorneys’ Eyes Only” information. “Confidential- Attorneys’ Eyes Only” information is information that a Producing Person in good faith regards as competitively sensitive information that, if known by others in similar industries, could provide a competitive advantage to a Receiving Person and/or compromise the Producing Person’s competitive position, such as business and marketing plans or strategies, sales data or forecasts, manufacturing or distribution information, pricing information, or other similar type information.

3. Designated Information furnished in the form of testimony shall be designated either at the time any such testimony is taken or in writing within ten days after the transcript of the testimony is available. When properly designated by the designating party, such designating party shall bear the burden of ensuring that the cover page, those portions of the original transcripts and all copies of deposition transcripts which contain protected subject matter shall bear the legend “Confidential--Subject to Protective Order” or “Confidential--Attorneys’ Eyes Only” and shall be bound separately from the non-confidential portion of the transcript.

4. All Designated Information shall be used solely for the purpose of this case. At the conclusion of the litigation, the Receiving Party shall return to the Producing Person all Designated Information, or shall certify in writing that all such information has been destroyed, including all copies made of that information by the Receiving Person still in existence at that time, unless counsel for both parties agree in writing to the contrary.

5. Designated Information shall not be disclosed or made available in any form to any other person or party, except:

A. Attorneys of record in this Action and regular employees and support staff of such attorneys;

B. The parties to this Action, including agents and employees of the parties, to whom it is necessary that the designated information be shown for purposes of this Action;

C. Any expert or consultant retained by an attorney of record in this Action for the purpose of consulting or testifying in this Action;

D. The TTAB and any of its staff and personnel; and

E. Any other person who is designated by stipulation of all parties or by Order of the TTAB, after notice to all parties.

6. All information designated "Confidential-- Attorneys' Eyes Only" shall be subject to the following additional restrictions: It shall be held in confidence by outside trial counsel, their employees, and expert(s) retained for consultation or designated to testify at trial for the Receiving Person; it shall not be disclosed by counsel or the expert(s) to their respective clients or to anyone else including (but not by way of limitation) any officers, agents or employees of the

client. Information designated “Confidential-- Attorneys’ Eyes Only” may also be disclosed to reporters before whom depositions are conducted and to the TTAB and TTAB personnel.

Notwithstanding the foregoing, each party may designate one in-house attorney employed by that party to whom may be disclosed “Attorneys’ Eyes Only” material to the extent necessary to assist trial counsel in preparing for and litigating this Action. Such designated persons shall be specifically identified by the respective party and shall abide by all the provisions of this Order.

7. All Designated Information shall be stored and maintained in a manner that will prevent access to that information by unauthorized persons.

8. All persons, including trial counsel, in-house attorneys, and expert(s), shown or given any Designated Information, shall be advised of this Order and bound thereby.

Furthermore, with the exception of secretaries, paralegals, and law clerks of trial counsel, secretaries of the expert(s), stenographic reporters, and the TTAB and TTAB personnel, all persons shown or given any Designated Information shall sign an undertaking in the form attached hereto as Exhibit A.

9. Designation of information as “Confidential” or “Confidential- Attorneys’ Eyes Only” shall not prevent either party from use of such information at trial as permitted by the TTAB or applicable rule of evidence or civil procedure.

10. This Order shall not expand or limit the rights of any party to demand additional information during the course of discovery on any grounds. This Order shall not inhibit the dissemination or use of any Designated Information if that information has been or is obtained by the Receiving Person (1) from sources which are public, or (2) from sources other than the

Producing Person under circumstances that place no restriction on the use or disclosure of the information by the Receiving Person. Nothing in this Order or in any party's compliance with its provisions shall be construed to preclude a party from seeking and obtaining designated or other information either informally or by discovery request or other judicial process in this action.

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

12. Maintenance of the confidential status of any such Designated Information shall in all cases be subject to further order of the TTAB and nothing herein shall preclude any party from moving the TTAB to compel discovery or for sanctions for abuse of this Order, or applying to the TTAB for any modification of this Order, or moving the TTAB for an order changing the status of any Designated Information or otherwise relieving the Receiving Person from the restrictions contained in this Protective Order, or applying to the TTAB for further or additional Protective Orders.

13. When a party submits documents containing Designated Information with the TTAB, or file any pleading, brief, or paper disclosing Designated Information, the protected documents or material shall be filed in a sealed envelope or container marked on the outside with the title of the action and a statement substantially in the following form:

**CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER**

[OR **CONFIDENTIAL--ATTORNEYS' EYES ONLY**]

This envelope (or container) filed by [name of party] is not

to be opened nor the contents thereof displayed or revealed except by Order of the TTAB or by agreement of the parties.

14. The parties and any other person subject to the terms of this Order agree that the TTAB shall have and shall retain jurisdiction over it and them after this action is terminated for the purpose of enforcing this Order.

15. The inadvertent production of any privileged or otherwise protected materials shall not be deemed a waiver or impairment of any claim of privilege or protection, including, but not limited to the attorney-client privilege, the protection afforded to work-product materials, the confidentiality protection of this Protective Order, or the subject matter thereof. Upon receiving notice from the Producing Person that materials have been inadvertently produced, they shall be promptly returned to the Producing Person. Such return shall not be deemed an admission or concession regarding any claimed privilege or protection under this Order.

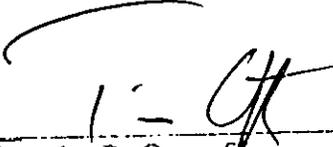
SO ORDERED:

DATED: \_\_\_\_\_

\_\_\_\_\_  
Trademark Trial and Appeal Board

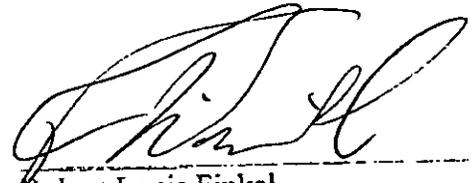
STIPULATED AND AGREED TO BY:

DATED: 11/14/03

  
\_\_\_\_\_  
Timothy P. Getzoff  
Kristine M. Miller  
HOLLAND & HART LLP  
1050 Walnut Street, Suite 500  
Boulder, Colorado 80302-5144  
(303) 473-2700

**ATTORNEYS FOR RESPONDENT  
SEARS, ROEBUCK AND CO.**

DATED: 11/13/03

  
\_\_\_\_\_  
Robert Louis Finkel  
5215-2 White Oak Avenue  
P.O. Box 19276  
Encino, CA 91416-9276  
(818) 705-9861

**ATTORNEY FOR PETITIONER  
JOHN L. MINASIAN**

