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October 2, 2014

# TTAB

Commissioner for Trademarks  
United States Patent and Trademark Office  
P.O. Box 1451  
Arlington, Virginia 22313-1451

Attn.: Trademark Trial and Appeal Board

Re: PETITION TO CANCEL -- CANCELLATION NO. 92058330  
REGISTRATION NO. 4,138,717  
THE MARK: CRAFT & COMMERCE  
OUR FILE NO.: 5031-119US [17941.89974]

85,419,667

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Dear Sir/Madam:

Enclosed please find the parties' joint Protective Order and Agreement to Confidentiality to use in the above-captioned Cancellation Proceeding Number 92 058 330. The parties respectfully request that the Board enter this Protective Order and Agreement to maintain confidentiality to be used in connection with the above-captioned Cancellation Proceeding.

If the Board has any questions, it is encouraged to contact the undersigned directly.

Respectfully Submitted,

  
Brooks R. Bruneau

BRB/fem

cc: Gregory B. Phillips



10-06-2014

U.S. Patent & TMO/OTM Mail Rpt. Dt. #11

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

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CRAFT WORLDWIDE HOLDINGS, LLC	:	
	:	
Petitioner,	:	Cancellation No.: 92058330
	:	
Vs.	:	Registration No. 4,138,717
	:	Filing Date: September 10, 2011
SEKSCOBRA, INC.	:	Registration Date: May 8, 2012
	:	Mark: CRAFT & COMMERCE
Respondent.	:	
	:	
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**PROTECTIVE ORDER AND AGREEMENT**

**TO MAINTAIN CONFIDENTIALITY**

The parties having entered into this agreement to maintain confidentiality of certain documents and information, and having stipulated to its entry as a Protective Order pursuant to Fed. R. Civ. P. 26(c) and 37 C.F.R. §2.120, and it appearing to the Trademark Trial and Appeal Board that such an order is necessary, appropriate and will facilitate discovery,

IT IS HEREBY ORDERED that:

1. This Protective Order and agreement governs the use, disclosure, and designation of documents and information produced during all discovery, including third party discovery, in this action, including, without limitation, depositions, entry onto land or premises, inspection and copying of books, records, documents, machine-readable data and tangible things, and responses to interrogatories and requests to admit. Any such documents or information may be designated “Confidential” or “Attorneys’ and Experts’ Eyes Only.” Such designation shall be made as provided in paragraphs 6 – 8.

2. a. The term “Confidential” designates information which is non-competitive but which would harm the disclosing party if revealed to third parties, and is to be shielded by the Board from public access with access restricted as set forth in paragraph 4.

b. The term “Attorneys’ and Experts’ Eyes Only” designates material to be shielded by the Board from public access and with access limited as set forth in paragraph 5. The designation includes only current, highly sensitive competitive information, including, but not limited to, trade secrets, pending, non-public patent applications and documents associated with such applications, strategic marketing or business plans currently implemented or currently considered for implementation by the disclosing party, information and documents concerning programs under development and internal research and development, financial and business information, cost information, customer lists and other current customer information, and any other type of information contemplated by Rule 26(c)(1) of the Federal Rules of Civil Procedure, the disclosure of which to anyone other than outside those permitted herein to view Attorneys’ and Experts’ Eyes Only information, subject to the non-disclosure requirements herein, in this action could in the good faith judgment of the disclosing party seriously prejudice the current or future competitive position of the disclosing party.

c. The parties are without prejudice to request a change in designation and to challenge a designation, if agreement of its change cannot be reached. The parties pledge to make designations and challenges in good faith.

3. All Confidential information or Attorneys’ and Experts’ Eyes Only information produced or exchanged in the course of this Cancellation proceeding shall be used solely for the purpose of preparing for and conducting this proceeding, including trial and appeals, if any, and shall not be used in any other proceeding or for any other purpose except as may be ordered by the TTAB. Either party may use Confidential information or Attorneys’ and

Experts' Eyes Only information to support any additional claims or counterclaims to be brought against the other party in this proceeding.

4. Access to "Confidential" information shall be given to:

a. The Trademark Trial and Appeal Board;

b. Attorneys of record in this proceeding for each party; and other attorneys of record in this action or their law firms, and the office personnel of such firms that need access to the documents to facilitate actions by the attorneys.

c. Officers and employees of the parties that are involved in the litigation and have a bona fide need to be exposed to such "Confidential" information for purposes of assisting in litigation activities or making decisions on litigation strategy.

d. Persons independent from any of the parties to this action and consulted solely for the purpose of providing expert or technical services in connection with discovery or preparation for trial of this action, or for the purpose of offering expert testimony at the trial of this action, provided that such persons shall execute an acknowledgement in the form annexed hereto as Exhibit A.

e. Outside photocopying, graphic production services or litigation support services employed by the Parties' counsel to assist in this cancellation action, and computer service personnel performing duties in relation to a computerized litigation system.

f. Stenographic, video or audio reporters engaged to record depositions in this cancellation action.

5. All of the provisions of this order applicable to Confidential information shall apply to Attorneys' and Experts' Eyes Only information, with the exception that access to "Attorneys' and Experts' Eyes Only" information shall be limited to the persons set forth in paragraphs 4(a), 4(b) and 4(d) above.

6. The persons entitled to have access to Confidential information or Attorneys' and Experts' Eyes Only information pursuant to the terms of paragraphs 4 and 5 shall not make available such Confidential information or Attorneys' and Experts' Eyes Only information to any person other than (i) those persons entitled to such access pursuant to the terms of paragraphs 4 or 5 or (ii) the parties who produced the information.

7. Documents produced by a party or non-party may be designated as containing Confidential information or Attorneys' and Experts' Eyes Only information by marking each page of the document with the following legend (or some other comparable notice):

CONFIDENTIAL

OR

ATTORNEYS' AND EXPERTS' EYES ONLY (alternatively "AEEO")

as appropriate under this Protective Order. Electronically stored information produced on CD-ROM may be designated under this Order by labeling the CD-ROM either Confidential or Attorneys' and Expert' Eyes Only (AEEO).

8. Written discovery requests and responses thereto, and all other discovery documents and things which will be produced by any party or non-party to this action, may be designated as containing Confidential information or Attorneys' and Experts' Eyes Only information by marking each page of the document or the specific discovery response with the legend quoted in paragraph 7 (or some other comparable notice) or, in the case of a physical specimen or thing with a legend including the words CONFIDENTIAL or ATTORNEYS' AND EXPERTS' EYES ONLY (AEEO).

9. If a party or non-party believes that inspection, measuring, testing, sampling or photographing of the party's processes, products, equipment, premises or other property pursuant to Fed. R. Civ. P. 34 will reveal or disclose information that is in good faith deemed Confidential information or Attorneys' and Experts' Eyes Only information, that party or non-party shall

advise in advance the party or parties seeking such discovery that the inspection, measuring, testing, sampling or photographing will be permitted only on a confidential basis, and that the material discovered, and any information derived from the material, shall be treated as Confidential information or Attorneys' and Experts' Eyes Only information.

10. If a party or non-party through inadvertence produces any Confidential information or Attorneys' and Experts' Eyes Only information without labeling or marking or otherwise designating it as such in accordance with the provisions of this Protective Order, the producing party or non-party may give written notice to the receiving party that the document or thing produced is deemed Confidential information or Attorneys' and Experts' Eyes Only information and should be treated as such in accordance with the provisions of this Protective Order. Any written notice shall be provided within ten (10) business days of the discovery of the inadvertent production. The receiving party must treat such documents or things as Confidential information or Attorneys' and Experts' Eyes Only information from the date such notice is received. Disclosure, prior to the receipt of such notice, of such Confidential information or Attorneys' and Experts' Eyes Only information shall not be deemed a violation of this Protective Order. The receiving party shall take reasonable efforts to retrieve any document subsequently designated as Confidential or Attorneys' and Experts' Eyes Only that has been disseminated to individuals or parties otherwise not entitled to view the document under the protective designations.

11. With respect to information disclosed at a deposition or other testimony, such information or testimony shall be deemed and treated automatically as Attorneys' and Experts' Eyes Only for a period of thirty (30) days from receipt of a transcript, unless otherwise agreed by the parties, or otherwise ordered by the TTAB. The parties agree that after that 30-day period, at a minimum all copies of deposition transcripts will be marked and treated as

CONFIDENTIAL, and to exclude from all deposition proceedings any person not entitled to receive Confidential information pursuant to this Protective Order. However, if the information disclosed at deposition includes information properly designated as Attorneys' and Experts' Eyes Only information, that portion of the deposition proceedings shall be identified by the disclosing party and treated by the parties as Attorneys' and Experts' Eyes Only information pursuant to the terms of this order and shall be marked ATTORNEYS' AND EXPERTS' EYES ONLY. Each Party will have 30 days from receipt of the deposition transcript to designate specific testimony as Attorneys' and Expert's Eyes Only. All persons not entitled to receive Attorneys' and Experts' Eyes Only information shall be excluded from that portion of the deposition proceedings. If no designation is made by either party within 30 days of the parties' receipt of the deposition transcript, the transcript will be treated as marked Confidential.

12. Notwithstanding any other provision of this Protective Order, any person indicated on the face of a Confidential or Attorneys' and Experts' Eyes Only document(s) as having been its originator or author or recipient may be shown that document.

13. All correspondence, legal memoranda, motion papers, pleadings and other written materials which quote or refer to the substance of any Confidential information or Attorneys' and Experts' Eyes Only information shall also be treated as Confidential information or Attorneys' and Experts' Eyes Only information in accordance with the provision of this Protective Order, and at least the first page of such documents shall be marked with the legend of paragraph 7 (or some other comparable notice).

14. The parties and any non-parties will use reasonable care to avoid designating any material or information as Confidential information or Attorneys' and Experts' Eyes Only information which has been published or can otherwise be shown to be in the public domain. In the event of a dispute with respect to the designation of any discovery material as Confidential

information or Attorneys' and Experts' Eyes Only information, counsel shall attempt in good faith to resolve their dispute on an informal basis before presenting the matter to the TTAB for resolution.

15. 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, and comply with the terms of this Order.

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 this paragraph 15.

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.

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 affected.

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 with its electronic filing system [ESTTA], or if a paper filing 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.***

16. As long as the terms of this Protective Order are complied with, nothing in this Protective Order shall prevent a party or non-party from using any Confidential information or Attorneys' and Experts' Eyes Only information (i) at a deposition or hearing, (ii) to prepare for and conduct discovery in this action, (iii) to support or oppose any motion made in this action, (iv) to prepare for trial or (v) during trial except as expressly provided herein. Under these circumstances, the portion of any transcript designated as containing Confidential information or Attorneys' and Experts' Eyes Only information shall be subject to all of the provisions of this Protective Order.

17. Documents and things designated as containing Confidential information or Attorneys' and Experts' Eyes Only information and any copies or extracts thereof shall be retained in the custody of the trial attorneys of record during the pendency of this action, except as reasonably necessary to provide access to a person authorized under the provisions of this Protective Order.

18. Within sixty (60) days after final termination of this action, each party shall assemble all documents and things furnished and designated by any other party or non-party as containing Confidential information or Attorneys' and Experts' Eyes Only information and shall either (i) return any original documents and things to the producing party or non-party or (ii) destroy the remaining documents and things, such election to be made by the producing party or producing non-party. The trial attorneys of record for each party shall be entitled to retain all pleadings, motion papers, legal memoranda, correspondence and work product, subject to the non-disclosure restrictions herein. The counsel who is returning or destroying documents subject to this Order, shall execute a Declaration in the form attached hereto as Exhibit B, which shall be mailed to counsel for the party who produced the materials so destroyed or returned.

19. If Confidential information or Attorneys' and Experts' Eyes Only information is disclosed to or comes into the possession of any person other than in the manner authorized by this Protective Order, the party responsible for the disclosure must immediately inform the designating party of all pertinent facts relating to such disclosure and shall make every effort to retrieve copies of any improperly disclosed documents and things, and to bind each such person to this Protective Order by having that person execute an agreement in the form annexed hereto as Exhibit C. The designating party is not prohibited from seeking any other remedies based upon the improper disclosure of its Confidential or Attorneys' and Experts' Eyes Only information.

20. It is not the intention of this Protective Order to fully address discovery objections to produce, answer or respond on the grounds of attorney-client privilege or work product nor to preclude a party or a non-party from seeking further relief or protective orders from the TTAB as may be appropriate under the Federal Rules of Civil Procedure. Nothing in this Protective Order and Agreement shall prevent either party from raising objections on any ground (except confidentiality) to the production of documents or responses to written discovery or the admission of evidence in this Opposition proceeding.

21. Each party reserves the right to request that any hearing or other proceeding before the TTAB be held *in camera* and to request that the transcript of any hearing or other proceeding before the TTAB be sealed from electronic filing and public view.

22. The terms of this Protective Order shall survive the final termination of this action to the extent that any Confidential information or Attorneys' and Experts' Eyes Only information is not or does not become known to the public.

23. The production of any Confidential or Attorneys' or Experts' Eyes Only Information pursuant to this Protective Order and Agreement will not constitute a waiver, either in whole or in part, of any attorney-client privilege or attorney work product or fifth amendment privilege which may be applicable to any material not so produced.

24. The inadvertent production of any document, information or material during discovery in this action shall be without prejudice to any claim that such material is privileged under any claim of privilege, work product privilege or other legitimate, good faith ground for withholding production and no party shall be held to have waived any rights by such inadvertent production provided the sending party advises the receiving party of the claim of privilege within a reasonable time after discovery of any such inadvertent production of said document or information. Upon written request by the party that made the production, the receiving party

shall, within five business days: (a) return to the producing party or destroy the original and all copies of such documents, and (b) destroy any transcripts, excerpts, abstracts, summaries or descriptions thereof. In addition, upon receipt of the written request, the receiving party shall not use such information for any purpose, unless allowed by order of the TTAB.

25. The parties represent that this Protective Order and Agreement is executed by a duly authorized representative and officer of Petitioner and Respondent and their respective counsel. To expedite the discovery in this proceeding, counsels' and the parties' signatures on this Protective Order and Agreement acts as an undertaking on their part to comply with the terms of this Protective Order and Agreement as if it were entered by the Board, and to comply with this Protective Order and Agreement as if it were entered by the Board with respect to all discovery received prior to the time that notice is received that the Board will not enter this proposed Protective Order and Agreement in the form in which it is being presented, and maintain the confidentiality designation until a form of Protective Order is accepted and entered by the Board.

26. The parties recognize and agree that this document acts as Agreement between the parties, separate and apart from the Protective Order, and the terms can be enforced in any court of competent jurisdiction.

SO AGREED:

FOR PETITIONER:

**CRAFT WORLDWIDE  
HOLDINGS, LLC**

Dated: 9.29.14

BY: [Signature]  
Signature

Kate Bruce Partner  
Print Name and Title

Dated: 10/2/2014

BY: [Signature]  
Brooks R. Bruneau, Esq.  
Porzio, Bromberg & Newman  
Attorney for Petitioner

(Signatures continued on next page)

FOR RESPONDENT:

SEKSCOBRA, INC.

Dated: 9/10/2014

BY: \_\_\_\_\_

Signature

Arsalun Tafazoli, Vice President

Dated: 9/12/2014

BY: \_\_\_\_\_

Gregory B. Phillips, Esq.

Knobbe Martens Olson & Bear LLP  
Attorneys for Respondent

SO ORDERED:

UNITED STATES TRADEMARK TRIAL AND APPEAL BOARD

Dated: \_\_\_\_\_

BY: \_\_\_\_\_

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

-----  
CRAFT WORLDWIDE HOLDINGS, LLC :

Petitioner,

Vs.

SEKSCOBRA, INC.

Respondent.  
-----

:  
: Cancellation No.: 92058330  
:

:  
: Registration No. 4,138,717  
: Filing Date: September 10, 2011  
: Registration Date: May 8, 2012  
: Mark: CRAFT & COMMERCE  
:

**EXHIBIT A**

I hereby acknowledge that I have read, and am fully familiar with, the terms of the stipulated Protective Order and Agreement to Maintain Confidentiality entered in this action on \_\_\_\_\_. I agree to be bound by, and to comply fully with, the terms of the stipulated Protective Order. I agree not to disclose, use or disseminate any Confidential information or Attorneys' and Experts' Eyes Only information, as defined by the stipulated Protective Order except as permitted therein.

1. I acknowledge that I have conducted a thorough investigation for any possible conflicts of interest with regard to the Disclosing Party and that I have no conflicts of interests.

2. I will not disclose any of the Confidential information or Attorneys' and Experts' Eyes Only (hereinafter collectively "Confidential Information") of the other party to anyone unless that person needs to be exposed to it for the purpose of my engagement in the

Cancellation proceeding and that person is covered by paragraph Four (4) and Five (5) of the Agreement, is a staff member, or is an expert who has signed and acknowledgement of the stipulated Protective Order that is substantially identical to this one and in the form of a 28 U.S.C. §1746 Declaration.

3. I will not use the Confidential Information of the other party for any purpose other than engaging in the Cancellation proceeding.

4. Upon request, I will promptly return to the attorney for the party by whom I am employed or engaged all documents and other items (originals and copies) that are labeled CONFIDENTIAL or ATTORNEYS' AND EXPERTS' EYES ONLY and that were provided to me in connection with the Cancellation proceeding.

5. My obligations expressed in Sections 1 through 4 above are binding upon me even after the Cancellation proceeding is complete.

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_ (Name)

\_\_\_\_\_

Signature

Executed On: \_\_\_\_\_ (Date)

\_\_\_\_\_ (Occupation)

**EXHIBIT B**

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

-----  
CRAFT WORLDWIDE HOLDINGS, LLC :

Petitioner, :

Vs. :

SEKSCOBRA, INC. :

Respondent. :

Cancellation No.: 92058330

Registration No. 4,138,717

Filing Date: September 10, 2011

Registration Date: May 8, 2012

Mark: CRAFT & COMMERCE

**DECLARATION**

1. My name is \_\_\_\_\_. I am over the age of 18 years and am a resident of \_\_\_\_\_ County, \_\_\_\_\_. I made this Declaration based upon my personal knowledge, and I am competent to testify to the matters stated herein.

2. I have either destroyed or caused to be destroyed or attached hereto all of the materials, transcripts, and other things required by the Protective Order which was entered by the TTAB in Cancellation No. 92058330.

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
Signature

Executed On: \_\_\_\_\_ (Date)

\_\_\_\_\_  
(Occupation)



\_\_\_\_\_. I agree to be bound by, and to comply fully with, the terms of the Stipulated Protective Order and Agreement. I agree not to disclose, use or disseminate any Confidential information, as defined by the Stipulated Protective Order and Agreement except as permitted therein.

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_ (Name)

\_\_\_\_\_ Executed On: \_\_\_\_\_ (Date)

18641108

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the submission of the parties' Protective Order and Agreement to maintain confidentiality was served upon counsel below both via email and First Class Mail, Postage Prepaid, this 2<sup>nd</sup> day of October, 2014, addressed as follows:

Gregory B. Phillips  
KNOBBE, MARTENS  
2040 Main Street, 14<sup>th</sup> Floor  
Irvine, CA 92614  
Email: [gregory.phillips@knobbe.com](mailto:gregory.phillips@knobbe.com)

Date: 10/2/2014

By:   
Brooks R. Bruneau, Esq.  
Attorney for Petitioner  
Porzio, Bromberg & Newman, P.C.  
29 Thanet Road, Suite 201  
Princeton, NJ 08540