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

Proceeding	92060428
Party	Plaintiff Quality Bicycle Products, Inc.
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Date	12/03/2015
Attachments	Response_to_order_of_Nov_19.pdf(395302 bytes)

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

In the Matter of Registration Nos. 4,496,120 and 4,414,967

For the Marks  and **45NORTH**

Registered on October 8, 2013 and March 11, 2014

QUALITY BICYCLE PRODUCTS, INC.,	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92060428
	:	
MIDDLEBROOK DESIGN LLC	:	
dba LOVE TRAVERSE CITY,	:	
	:	
Registrant.	:	

**RESPONSE TO ORDER SUSPENDING PROCEEDINGS PENDING DISPOSITION OF
PETITIONER’S MOTION FOR SUMMARY JUDGMENT**

An order suspending proceedings pending disposition of Petitioner’s motion for summary judgment (the “Order”) was issued on November 19, 2015. The Order stated that Petitioner was allowed 15 days from the date of the Order in which to file redacted versions of its confidential exhibits in support of its motion.

In order to address the deadline to file redacted versions, we are submitting this response to note that it is our understanding that the filing of November 2, 2015, was proper. TBMP § 412.04 quotes the following paragraph from the Board’s Standard Protective Order:

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.**

TBMP § 412.04 (*italics added*).

In this case, two documents filed on November 2, 2015, included confidential material: the Affidavit of David Gabrys, the redacted version of which is publicly available as document 12 of the online file history of this proceeding; and the Declaration of Audrey Babcock in Support of Petitioner's Motion for Summary Judgment on Registrant's Counterclaim, the redacted version of which is publicly available in document 9 of the online file history, beginning on page 11. These two documents are discussed further below.

With regard to the Affidavit of David Gabrys (the "Affidavit"), the Affidavit includes confidential sales information as Exhibit B of the Affidavit. Therefore, a redacted version of the Affidavit, in which the pages of Exhibit B of the Affidavit were redacted, was filed, and is now viewable as document 12 of the online file history. The Petitioner believes that redacting the pages of Exhibit B was proper under TBMP § 412.04, as quoted above, because TBMP § 412.04 indicates that filing entire pages under seal, if they contain primarily confidential material, is proper. The entire Affidavit, including Exhibit B without redactions, was also filed by identifying it as "confidential" in the electronic filing process. Due to the size of the Affidavit when Exhibit B was included without redactions, the Affidavit without redactions was split into three files to accommodate the file size requirements for electronic filing. These three files were identified with the following filenames: Affidavit of Gabrys wexhibits_Part1.pdf, Affidavit of Gabrys wexhibits_Part2.pdf, and Affidavit of Gabrys wexhibits_Part3.pdf.

Although TBMP § 412.04 states that occasions when a whole document or brief must be submitted under seal should be very rare, the Petitioner respectfully notes that only the pages comprising Exhibit B of the Affidavit were filed under seal without a corresponding public copy. The remainder of the Affidavit is publicly available.

With regard to the Declaration of Audrey Babcock in Support of Petitioner's Motion for Summary Judgment on Registrant's Counterclaim (the "Declaration"), the Declaration includes confidential spreadsheets as Exhibit D of the Declaration. Paragraph 5 of the Declaration states that "Exhibit D . . . is submitted herewith under seal." The public version of the Declaration includes a place-holder for Exhibit D, which states: "Submitted Under Seal." *See* doc. 9 of the online file history, p. 27. Therefore, a redacted version of the Declaration was filed, in which the pages of Exhibit D of the Declaration were not included because that exhibit was filed under seal. The redacted version of the Declaration is now viewable as document 9 of the online file history. The Petitioner believes that filing Exhibit D of the Declaration under seal was proper under TBMP § 412.04, as quoted above, because TBMP § 412.04 indicates that filing entire pages under seal, if they contain primarily confidential material, is proper. Exhibit D of the Declaration was filed under seal by identifying it as "confidential" in the electronic filing process. Due to the size of Exhibit D of the Declaration, Exhibit D was split into two files to accommodate the file size requirements for electronic filing. These two files were identified with the following filenames: EX. D to babcock peel_Part1.pdf, and EX. D to babcock Declaration_Part2.pdf. Although TBMP § 412.04 states that occasions when a whole document or brief must be submitted under seal should be very rare, the Petitioner respectfully notes that only the pages comprising Exhibit D of the Declaration were filed under seal. The remainder of the Declaration was not filed under seal.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via regular U.S. Mail this 3rd day of December, 2015 upon the following:

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Dated: December 3, 2015

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