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

Proceeding	91125588
Party	Defendant GRACO, INC.
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Date	01/17/2006
Attachments	Stipulated Protective Order.pdf (15 pages)

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

CAMPBELL HAUSFELD/SCOTT FETZER)	Opposition No.: 91/125,588
CO.,)	
Opposer,)	Mark: THE COLOR BLUE
vs.)	Serial No.: 75/621,248
GRACO, INC.,)	Filed: January 13, 1999
Applicant.)	Published: March 26, 2002

STIPULATED PROTECTIVE ORDER

Applicant, Graco Inc., and Opposer, Campbell Hausfeld/Scott Fetzer Co., each assert that they possess information relating to the subject matter of this action which is confidential. Both parties recognize that in the course of discovery or other proceedings herein it may be necessary to disclose to the other party certain of its confidential information, but each wishes to ensure such information shall not be used for any purpose other than as agreed in this Order, and shall not be made public or be otherwise disseminated, beyond the extent necessary for the purposes agreed in this Order.

Accordingly, the following procedure shall be adopted for the protection of confidential and proprietary information:

1. “Confidential” and “Attorneys Eyes Only” Information and Unprotected Information

Any party to this action, or any nonparty who elects to be covered by this Order, who, in discovery or otherwise in the proceeding, produces or discloses any information, and who in good faith believes the information to constitute “Confidential” or “Attorneys Eyes Only”

information as defined by subparagraphs (a) and (b) below, may designate the same as “Confidential” or “Attorneys Eyes Only” information.

a. Definition of “Confidential” Information

For purposes of this Order, “Confidential” information shall mean all information and material which is produced for or disclosed to a receiving party, and which a producing party in good faith considers to constitute or to contain proprietary or confidential material or information which the designating party desires not to be made public, whether embodied in physical objects, documents, or the factual knowledge of persons, and which has been so designated in good faith by the producing party in the manner set forth hereafter. The party or nonparty who produces or discloses its own Confidential information is not precluded by this Order from disclosing or using that Confidential information in any manner as it may deem fit.

b. Definition of “Attorneys Eyes Only” Information

For purposes of this Order, “Attorneys Eyes Only” information shall mean all information and material, which is produced for or disclosed to a receiving party, and which a producing party in good faith considers to constitute or to contain trade secrets or other confidential research, development, design, financial data, business plans, or commercial information, whether embodied in physical objects, documents, or the factual knowledge of persons, and which is of a sensitive nature that could cause competitive harm if disclosed to a receiving party; and which has been so designated in good faith by the producing party in the manner set forth hereafter. The party or nonparty who produces or discloses

its own “Attorneys Eyes Only” information is not precluded by this Order from disclosing or using that Attorneys Eyes Only information in any manner as it may deem fit.

c. Categories of Unprotected Information

Testimony, documents, and other information shall not be considered Confidential or Attorneys Eyes Only to the extent the content or substance thereof:

- i. is, at the time of disclosure, in the public domain by publication or otherwise;
- ii. becomes at any time, through no act or failure to act on the part of the receiving party, part of the public domain by publication or otherwise;
- iii. is already in the possession of a party at the time of disclosure and was not acquired directly or indirectly from the producing party;
- iv. is made available to a party by a nonparty who obtained the same by legal means and without any obligation or confidence to the party claiming its confidential nature; or
- v. contains any information which a receiving party can show was independently and lawfully developed by it.

For purposes of this Order, specific disclosures of documents or information, including but not limited to, disclosures as to marketing practices and techniques, advertising, design specifications, operating procedures, operating conditions, financial data, and the like, shall not be deemed to fall within one of the exclusions listed above merely because such specific

disclosures are embraced by more general information in the public domain or in the possession of the receiving party. Further, any combination of features shall not be deemed to be within one of the foregoing exclusions merely because individual features are in the public domain or in the possession of the receiving party, but only if the combination itself is in the public domain or in the receiving party's possession.

2. Methods of Designating Confidential and Attorneys Eyes Only Information

a. Designation of "Confidential" Information

For the purposes of this Order, Confidential information contained in physical objects or documents, including any transcripts, exhibits, answers to interrogatories, responses to requests for admission, etc., or copies thereof, shall be designated by stamping or affixing thereto a legend substantially as follows:

CONFIDENTIAL.

b. Designation of "Attorneys Eyes Only" Information

For the purposes of this Order, "Attorneys Eyes Only" information contained in physical objects or documents, including any transcripts, exhibits, answers to interrogatories, responses to requests for admissions, etc., or copies thereof, shall be designated by stamping or affixing thereto a legend substantially as follows: **ATTORNEYS EYES ONLY.**

c. Designation of Oral Deposition Testimony

Oral deposition testimony of any party, nonparty or any person employed by, formerly employed by or acting on behalf of a party to this action may be designated Confidential or Attorneys Eyes Only by asking the reporter to insert a statement regarding the confidentiality of the information into the deposition

transcript or by giving written notice to all other parties of the portions of the transcribed testimony designated Confidential or Attorneys Eyes Only information within thirty (30) days of the date that the deposition transcript is received by counsel. No such deposition transcript shall be disclosed to any person other than the persons described in paragraph 6a below and the deponent (and the deponent's counsel in the case of a separately represented nonparty) during those thirty (30) days, and no person attending such a deposition shall disclose the contents of the deposition of any person other than those qualified to receive such information pursuant to this Order during the said thirty (30) days.

3. Designation of Information Produced for Inspection

In the event the producing party elects to produce files and records for inspection and the inspecting party desires to inspect these files and records, no marking need be made by the producing party in advance of initial inspection, although the producing party may do so at its discretion. For purposes of the initial inspection, all documents within the produced files and records shall be considered as marked "ATTORNEYS EYES ONLY" in accordance with this Order. Thereafter, upon selection of specified documents for copying by the inspecting party, the producing party shall mark the copies of such documents that may contain Confidential information as "CONFIDENTIAL" and documents that may contain Attorneys Eyes Only information as "ATTORNEYS EYES ONLY" in accordance with this Order prior to producing the copies.

4. Challenges to Designations

A party shall not be obligated to challenge the propriety of a designation at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. In the event that

any party challenges in writing at any stage in this action the designation of information, the designating party shall, within seven (7) business days following receipt of such challenge, substantiate the basis for such designation in writing. If no substantiation is proffered, the information shall not thereafter be deemed designated under this Protective Order. If substantiation is provided, the parties shall try first to resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved, the party challenging the claim of confidentiality may seek appropriate relief from the Board.

5. Inadvertent Disclosure

a. If a furnishing party inadvertently discloses to a receiving party any document, thing, or information containing information that the furnishing party deems Confidential without designating it as CONFIDENTIAL information or Attorneys Eyes Only information without designating it as ATTORNEYS EYES ONLY, the furnishing party shall promptly upon discovery of such inadvertent disclosure inform the receiving party in writing and the receiving party shall thereafter treat the document, thing, or information as CONFIDENTIAL or ATTORNEYS EYES ONLY as specified by the furnishing party under this Order. To the extent such document, thing, or information may have been disclosed to persons other than authorized persons described in this document, the receiving party shall make every reasonable effort to retrieve the document, thing or information promptly from such persons and to limit any further disclosure to authorized persons.

b. If a producing party inadvertently discloses to a receiving party information that is privileged or otherwise immune from discovery, said

producing party shall promptly upon discovery of such disclosure so advise the receiving party in writing and request that the item or items of information be returned, and no party to this action shall thereafter assert that such disclosure waived any privilege or immunity. It is further agreed that the receiving party will return such inadvertently produced item or items of information and all copies thereof within ten (10) days of receiving a written request for the return of such item or items of information from the producing party. The party having returned such inadvertently produced item or items of information may thereafter, without asserting waiver because of inadvertent production, seek production of any such documents in accordance with the Federal Rules of Civil Procedure.

6. Restrictions on Disclosure of Protected Information

Confidential or Attorneys Eyes Only information shall be held in confidence by each authorized person to whom it is disclosed, shall be carefully maintained so as to preclude access by persons who are not authorized under this Order to receive such information, and shall be used in accordance with the terms of this Order solely for the limited purposes of preparing for and conducting the trial and pretrial proceedings of this proceeding. Any Confidential or Attorneys Eyes Only information designated as set forth in Section 2 of this Order shall be handled by a receiving party in accordance with this Order.

a. Restrictions on Disclosure of Attorneys Eyes Only Information

Attorneys Eyes Only information shall not be disclosed to any person other than:

- i. outside counsel of record selected by each party in this action and paralegal, secretarial, and clerical personnel assisting such counsel;

- ii. court reporters and their necessary stenographic and clerical personnel;
- iii. photocopy services employed or retained by the receiving party's outside counsel;
- iv. data entry or data processing staff who are employed or retained by the receiving party or its attorneys who are assisting in the development or use of data retrieval systems in connection with this action;
- v. staff of drafting or graphics firms employed or retained by the receiving party's attorneys;
- vi. independent outside experts or consultants (an independent outside expert or consultant being a person not employed by a party except to serve as an expert or consultant in this case) together with secretarial, clerical, and support personnel (collectively "the expert support staff") normally employed by such experts or consultants in the course of their activities; and
- vii. this Board and Its personnel.

b. Restrictions on Disclosure of Confidential Information

Confidential information shall not be disclosed to any person other than:

- i. outside counsel of record selected by each party in this action and paralegal, secretarial, and clerical personnel assisting such counsel;
- ii. court reporters and their necessary stenographic and clerical personnel;

- iii. photocopy services employed or retained by the receiving party's outside counsel;
- iv. data entry or data processing staff who are employed or retained by the receiving party or its attorneys who are assisting in the development or use of data retrieval systems in connection with this action;
- v. staff of drafting or graphics firms employed or retained by the receiving party's attorneys;
- vi. independent outside experts or consultants (an independent outside expert or consultant being a person not employed by a party except to serve as an expert or consultant in this case) together with secretarial, clerical, and support personnel (collectively "the expert support staff") normally employed by such experts or consultants in the course of their activities;
- vii. employees of a party, and their support staff, who have agreed on their own behalf and on behalf of their support staff to be bound by the provisions of the Undertaking set forth in the accompanying Exhibit A; and
- viii. this Board and Its personnel.

In the event that an employee identified under the preceding paragraph is no longer employed by a party to this action or undergoes a change in position within the party by virtue of which that individual is no longer performing duties in connection with this action, then that individual shall continue to be bound by this Order.

c. Qualification for Access to Confidential or Attorneys Eyes Only Information

- i. Independent outside experts and employees of a party receiving Confidential or Attorneys Eyes Only information shall be required, before receiving any such information, to sign an Undertaking in the form attached as Exhibit A to this Order. No “Confidential” or “Attorneys Eyes Only” information may be disclosed to such independent outside expert or consultant and employee of a party, until after notice of the signing of an undertaking is made to the other side by providing a copy of the completed undertaking. The opposing party will then have five business days following receipt of the notice to make any objection in writing to the other side. If an objection is made, the objecting party must file a motion within thirty days explaining why the person should not be permitted to see Confidential or Attorneys Eyes Only information. No Confidential or Attorneys Eyes Only information may be disclosed to the independent outside expert or consultant or the employee of a party until the Board rules on the motion, or the time for objecting has passed without objection, or the time for moving has passed without a motion being filed.
- ii. Counsel for each party signing an undertaking shall retain the original signed Undertaking.

7. Confidential information or Attorneys Eyes Only information identified and marked in accordance with paragraph 2 hereof shall not be filed with the Board or included in whole or in part in pleadings, motions, or briefs, except under seal marked with the caption of this action and the following notation, or in the form designated by the Board:

CONTAINS CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER

THIS ENVELOPE IS NOT TO BE OPENED, OR THE CONTENTS THEREOF
DISPLAYED, COPIED OR REVEALED, EXCEPT BY TRADEMARK TRIAL AND
APPEAL BOARD ORDER OR BY AGREEMENT OF THE PARTIES

To the extent such materials are so filed under seal, they shall be maintained by the Board in sealed envelopes and opened only by personnel authorized by the Board or by agreement of the parties.

8. This Protective Order shall not prevent either the Applicant or Opposer from (A) applying to the Board for relief therefrom or to permit access to additional persons or categories of persons; (B) applying to the Board for further or additional protective orders; or (C) agreeing to modification of this Protective Order, subject to the approval of the Board.

9. Within sixty days after final termination of this action, receiving counsel shall either return all materials containing or constituting Confidential information or Attorneys Eyes Only information in their possession, custody or control, and all copies, summaries, abstracts, or indices thereof (except to the extent that any of the foregoing includes or reflects receiving counsel's work product), to counsel for the party who provided them in discovery or shall certify that all such materials have been destroyed. This provision shall not apply to evidence admitted by the Board, whether through documents or testimony.

10. Nothing herein shall prevent disclosure if each party designating information as CONFIDENTIAL or ATTORNEYS EYES ONLY consents to such disclosure. Nor shall

anything herein prevent any counsel of the parties from utilizing CONFIDENTIAL or ATTORNEYS EYES ONLY information in the examination of any person who is reasonably alleged to be the author, source, or recipient of the information, or who is an employee or agent thereof.

11. Nothing in this Order shall bar or otherwise restrict any attorney from rendering advice to his/her client with respect to this litigation and, in the course thereof, referring to or relying generally upon his/her examination of documents or information designated CONFIDENTIAL or ATTORNEYS EYES ONLY provided, however, that in rendering such advice and in otherwise communicating with his/her client, the attorney shall not disclose the content or the source of such information or documents contrary to the terms of this Protective Order.

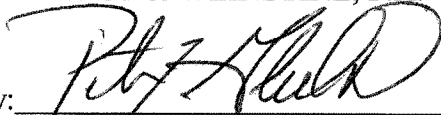
12. The obligations of this Order, to the extent applicable, shall survive the termination of the action and continue to bind the parties.

13. Each of the firms signing below and the parties named above, by executing a copy of this Protective Order, undertake to abide by and be bound by its provisions and to use reasonable and appropriate care to see that its provisions are known and adhered to by those under its supervision or control.

FOR APPLICANT GRACO INC.:

Dated: 1/12, 2006

WINTHROP & WEINSTINE, P.A.

By: 
Peter J. Gleekel, #149834
Stephen R. Baird, #0214024
Samuel T. Lockner, #0341095

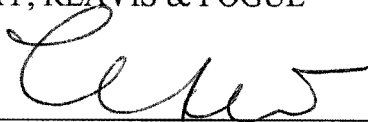
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Attorneys for Applicant Graco, Inc.

FOR OPPOSER CAMPBELL HAUSFELD/SCOTT FETZER CO.:

Dated: _____, 2006

JONES, DAY, REAVIS & POGUE

By: 
Robert P. Ducatman
Meredith M. Wilkes

Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Phone: (216) 586-3939

Attorneys for Opposer
Campbell Hausfeld/Scott Fetzer Co.

IT IS SO ORDERED this ____ day of _____, 2006:

Administrative Law Judge
Trademark Trial and Appeal Board

my possession and documents or things which I have prepared relating thereto and containing such Confidential or Attorneys Eyes Only information, to counsel for the party by whom I am retained or employed, or to counsel by whom I am retained or employed, when my services in this matter have been concluded.

8. I understand that if I violate the provisions of this Protective Order that I may be subject to, among other things, sanctions by the Board.

9. I hereby submit to the jurisdiction of this Board for the purpose of this Protective Order against me.

Dated: _____

[AFFIANT]