



08-02-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #26

7/3869-140

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

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The B. Manischewitz Company, LLC	:	
	:	
Opposer,	:	Opposition No. 91150421
	:	
v.	:	Serial No.: 76/099,990
	:	
Seaforth Creamery, Inc.	:	
	:	
Applicant,	:	
	:	
-----X		

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TRADEMARK TRIAL AND  
APPEAL BOARD

**PROTECTIVE ORDER**

**WHEREAS**, each party believes that certain of its documents and things, certain answers to interrogatories; certain testimony; and certain other responses that will be required of the parties in these proceedings contain trade secrets or other confidential research, development, or commercial information relevant to issues of this opposition proceeding and within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure; and

**WHEREAS**, each party believes that information in said documents and things and said answers, testimony, and responses may be relevant to the subject matter involved in the pending proceeding within the meaning of Rule 26(b) of the Federal Rules of Civil Procedure; and

**WHEREAS**, each party believes that it would serve the interests of the parties to conduct discovery under a protective order;

**NOW THEREFORE**, pursuant to 37 C.F.R. 2.120(f) and Rule 26(c) of the Federal Rules of Civil Procedure, for the purpose of protecting trade secrets, customer and other

confidential business information which may be disclosed in documents or in testimony given by either party (hereinafter "Confidential Information"), the parties have stipulated and agreed that all such Confidential Information to be disclosed shall be disclosed in connection with discovery and testimony in the above-captioned action pursuant to the terms and conditions of the PROTECTIVE ORDER set forth below:

**IT IS HEREBY ORDERED THAT**, if the disclosing party discloses what it contends is Confidential Information, such information shall be disclosed subject to the following terms, conditions and procedures:

1. Such information or materials deemed Confidential Information shall be marked with the legend "Confidential" and shall be disclosed subject to the following terms, conditions and procedures:

(a) All documents, things, responses, answers, and testimony which are supplied are provided solely for the purposes of this proceeding between the parties, and are subject to the further provisions of this Protective Order;

(b) Such Confidential Information shall be disclosed, solely for the purpose set forth above, only to:

(i) counsel of record and other outside counsel for the parties and said counsel's employees, contractors and agents, and such outside experts and consultants working with said counsel as are required to assist in the conduct of this proceeding and for no other purpose;

(ii) The Trademark Trial and Appeal Board and personnel of the Board.

2. An attorney shall designate documents or other evidence as "Confidential" when he has a reasonable good faith belief that such information is not otherwise known to the other party and that such information is treated by his client as either confidential, proprietary or a trade secret and is not publicly available.

3. Confidential Information or copies, summaries, digests, analyses, reports, etc. thereof shall not be made public by the party to whom they are provided, unless they are made part of the public record in this proceeding by the disclosing party or by order, after motion by the requesting party to the U.S. Patent and Trademark Office Trademark Trial and Appeal Board (hereinafter referred to as "The Board"). To the extent that it is necessary to file such Confidential Information in connection with further proceedings in this matter, such Confidential Information shall be kept by the Patent and Trademark Office in sealed envelopes marked with the caption of this case and the notation:

"Contains Confidential Information To Be Opened  
Only As Directed By The Trademark Trial and  
Appeal Board."

4. All deposition transcripts, briefs, memoranda and other papers filed in accordance with paragraph four (4), supra, with the Board by any party which describe or are concerned with Confidential Information shall be filed with the Board together with a transmittal letter reciting, in substance:

"These documents contain information of an extremely  
confidential nature. Pursuant to the Protective Order, entered by

the Board on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, you are respectfully instructed to place them in a separate file to which access is restricted to the Office of the Clerk of the Board and the Board."

5. The respective outside counsel for each party shall, during the pendency of this action, retain all copies of documents, deposition transcripts (or relevant portions thereof) or other papers bearing Confidential Information pursuant to this Protective Order, together with any reports, analyses, summaries or digests thereof. Upon final termination of this action, all copies of such materials shall, at the request of the disclosing party, be returned to the disclosing party or shall be certified by the receiving attorney as having been destroyed. Nothing herein shall be construed to require an attorney to return or destroy any document submitted to the Board which references or quotes from Confidential Information. Any such documents may be retained, but not disclosed by, counsel upon conclusion of this proceeding.

6. If an attorney for any party believes that questions put to a witness being examined in discovery or testimonial depositions will disclose CONFIDENTIAL MATERIALS of his client, or that the answer to any question or questions requires such disclosure, or if documents to be used as exhibits during the examination contain such Confidential Information, such attorney shall so notify opposing counsel and may direct that the confidential portions of such depositions be taken in the presence of only the attorneys for each party and the reporter.

The confidential portions of the transcripts of such depositions shall be treated in accordance with this Protective Order.

No copy of the confidential portion of any transcript of any discovery or testimonial deposition taken by any party which is designated as containing Confidential Information shall be prepared or furnished by the reporter to any person other than to the outside attorneys of record for the parties. The original of the transcript shall be forwarded by the reporter to the outside attorney of record for the party conducting the examination who will seek to obtain the signature of the witness, and if given a Confidentiality classification, the transcript shall be retained by said attorney or filed under seal in accordance with paragraphs 4 and 5, supra, unless otherwise agreed upon by the parties.

Other responses to discovery demands or otherwise, to the extent such responses are identified as containing Confidential Information, shall be subject to the provisions of this Protective Order and shall be filed under seal in accordance with paragraphs 4 and 5, supra.

7. If either party should conclude that for the purpose of this Action, it needs to disclose any Confidential Information or the information contained therein or derived therefrom, to any person not specifically specified in paragraph 1(b) herein, it may request the disclosing counsel to grant permission to do so for specified documents and information. To be effective, such consent must be granted in writing with respect to specified documents or information by disclosing counsel, and the provisions of this stipulated Protective Order shall thereby be modified as to such specific documents or information. If counsel cannot agree as to the disposition of such a request, requesting counsel, within 15 days of said written notice to disclosing counsel, may make application to The Trademark Trial and Appeal Board seeking to modify this protective order as to such specified documents or information. If requesting counsel fails to make such application to The Trademark Trial and Appeal Board within said 15-day

period, such documents or information may not be disclosed in a manner inconsistent with the terms of the Protective Order herein to any person not respectively specified in paragraphs 1(b).

8. The outside attorneys for the parties may disclose Confidential Information to persons who are not affiliated with a party and who are consulted for the purpose of expert services or retained to give testimony with respect to the subject matter thereof for the trial of this proceeding, provided that each such person to whom disclosure is to be made shall first acknowledge that he (or she) is fully familiar with the terms of this Protective Order and of any amended or further order as the Board may enter in furtherance of the Protective Order and agrees in writing to comply with and be bound by such order, except by further order of the Board. The form of such written assurance shall be as set forth in Attachment "A" hereof.

9. This Protective Order, insofar as it restricts the communication and use of "Confidential" materials, shall continue to be binding throughout and after the conclusion of this proceeding, including any appeals, so long as said materials are not rightfully in the public domain.

**THE PARTIES HEREBY CONSENT TO THE FORM  
AND ENTRY OF THE FOREGOING PROTECTIVE ORDER**


**FOR THE OPPOSER**

**FOR THE APPLICANT**

\_\_\_\_\_  
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By: \_\_\_\_\_



By: \_\_\_\_\_



**SO ORDERED**

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

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

**ATTACHMENT "A"**

**WRITTEN ASSURANCE**

\_\_\_\_\_, being duly sworn, states:

That (s)he resides at \_\_\_\_\_ in the city of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.

That (s)he has read the Protective Order dated \_\_\_\_\_ and is \_\_\_\_\_ on behalf of \_\_\_\_\_ in the prosecution of Opposition No. 117,143 (Trademark Trial and Appeal Board).

That (s)he is fully familiar with and agrees to comply with and be bound by the provisions of said Order; and that (s)he will not divulge to persons other than those specifically authorized by said Order, and will not copy or use except solely for the purposes of this proceeding, any designated "Confidential" information obtained pursuant to said Order.

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Subscribed and sworn to before me  
this    day of           , 2002.

\_\_\_\_\_  
Notary Public in and for the  
County of \_\_\_\_\_,  
State of \_\_\_\_\_.



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July 30, 2002

Assistant Commissioner for Trademarks  
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**ATTN: BOX TTAB FEE**

Re: OFGS File No. 7/3869-140  
U.S. Trademark/Service Mark Appln. No. 76/099,990  
Opposition No.: 91150421  
Opposer: The B. Manischewitz Company, LLC  
Applicant: Seaforth Creamery, Inc.  
Mark: ALL SEASONS

S I R:

We enclose herewith a Protective Order in the above proceeding for approval by the Trademark Trial and Appeal Board in order to facilitate the completion of discovery by the parties.

## CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Asst. Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on July 30, 2002

Martin J. Beran

Name of applicant, assignee or  
Registered Representative

  
Signature

July 30, 2002

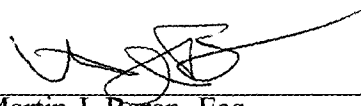
Date of Signature

MJB:nb

cc: George R. McGuire (w/o enclosure)

00576079.1

Respectfully submitted,

  
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