

TTAB

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

Wal-Mart Stores, Inc.,)	Opposition No. 91/150,278
)	Opposition No. 91/154,632
v.)	
)	
Franklin Loufrani)	
Franklin Loufrani,)	
)	
v.)	Opposition No. 91/152,145
)	
Wal-Mart Stores, Inc.)	

STIPULATED PROTECTIVE ORDER

Wal-Mart Stores, Inc., by and through its counsel, hereby submits two copies of a Stipulated Protective Order between Wal-Mart Stores and Franklin Loufrani, signed by representatives of parties in the above-referenced Opposition.

Respectfully submitted,

John H. Weber
 Gary J. Rinkerman
 Ari S. Indik
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 Counsel for Wal-Mart Stores, Inc.

April 27, 2005




04-27-2005

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Stipulated Protective Order has been served on Steven L. Baron, counsel for Franklin Loufrani, by mailing said copy on April 27, 2005, via the methods listed below, to:

Steven L. Baron
Mandell, Menkes & Surdyk, LLC
333 W. Wacker Drive, Suite 300
Chicago, Illinois 60606
sbaron@mms-law.net

UPS Express	<input checked="" type="checkbox"/>
First Class Mail	<input type="checkbox"/>
Facsimile	<input type="checkbox"/>
E-Mail	<input type="checkbox"/>



Ari S. Indik

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STIPULATED PROTECTIVE ORDER

Subject to the approval of the Trademark Trial and Appeal Board (the "Board"), Wal-Mart Stores, Inc. ("Wal-Mart") and Franklin Loufrani ("Loufrani") (collectively the "parties"), stipulate to the entry of the following terms governing the exchange of information deemed confidential by the parties pursuant to 37 C.F.R. § 2.120(f). This Stipulated Protective Order (the "Order") supersedes any and all prior agreements between the parties regarding confidentiality of information in these proceedings, and it is the parties' intention that this Order supersede the Provisions for Protecting Confidentiality of Information Revealed During Board Proceeding imposed on the parties by the Board on September 30, 2004, and any other Protective Order in the above-referenced proceedings.

1) Classes of Protected Information

The Rules of Practice in Trademark Cases provide that all *inter partes* proceeding files, as well as the involved registration and application files, are open to public inspection. The

terms of this Order are not to be used to undermine public access to files. When appropriate, however, a party, witness or a third party, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations:

Confidential: Material to be shielded by the Board from public access;

Highly Confidential: Material to be shielded by the Board from public access and, subject to agreed restrictions, on access even as to the parties and/or their attorneys; or

Trade Secret/Commercially Sensitive: Material to be shielded by the Board from public access, restricted from any access by the parties or third parties, and available for review by outside counsel for the parties and, subject to the provisions of Sections 4 and 5, below, by independent experts or consultants for the parties.

2) **Information Not to be Designated as Protected**

Information may not be designated as subject to any form of protection if it: (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this Order; (b) is acquired without restriction by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) is publicly disclosed by a non-designating party, a non-party witness or a third party legally compelled to publicly disclose the information; or (d) is publicly disclosed by a non-designating party with the approval of the designating party.

3) **Access to Protected Information**

The provisions of this Order regarding access to protected information are subject to modification by written agreement of the parties or their attorneys, or by motions filed with and approved by the Board.

Judges, Board attorneys, and other employees of the Board are bound to honor the parties' designations of information as protected but are not required to sign forms

acknowledging the terms and existence of this Order. Court reporters, stenographers, video technicians or others who may be employed by the parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the parties or their attorneys make it a condition of employment or obtain agreements from such individuals, in accordance with the provisions of Section 4, below.

Parties are defined as including individuals, officers of corporations, partners of partnerships and management employees of any type of business organization that is a party to the above-referenced proceeding before the Board.

Attorneys for parties are defined as in-house counsel, outside counsel of record in the above-referenced proceeding, and partners and associate attorneys of outside counsel of record and their support staff operating under counsel's direction, such as paralegals, legal assistants or secretaries and any other employees or independent contractors performing clerical or other non-substantive work under counsel's instruction.

Independent Experts or Consultants include individuals retained by a party or its attorneys to provide either testimonial or non-testimonial expert opinions for purposes related to the prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys.

Non-Party Witnesses include any individuals to be deposed during discovery or trial, whether willingly or under subpoena.

Parties and their attorneys shall have access to information designated as confidential or highly confidential, subject to any agreed exceptions.

Outside counsel, but not parties or in-house counsel, shall have access to information designated as trade secret/commercially sensitive.

Independent experts or consultants, non-party witnesses and any other individual not otherwise specifically covered by the terms of this Order may be afforded access to confidential or highly confidential information in accordance with the terms that follow in Section 4, below. Independent experts or consultants may have access to trade secret/commercially sensitive information if such access is agreed to by the parties or ordered by the Board, in accordance with the terms that follow in Sections 4 and 5, below.

4) Disclosure to Any Individual

Prior to the disclosure of protected information by any party or its attorney to any individual not already provided access to such information by the terms of this Order, the individual shall be informed of the existence of this Order and provided with a copy to read. The individual will then be required to certify in writing that the Order has been read and understood and that the terms shall be binding on the individual. No individual shall receive any protected information until the party or attorney proposing to disclose the information has received the signed certification from the individual. The party or attorney receiving the completed form shall retain the original.

5) Disclosure to Independent Experts or Consultants

In addition to meeting the requirements of Section 4, above, any party or attorney proposing to share disclosed information with an independent expert or consultant must also notify the party that designated the information as protected. Notification must be personally served or forwarded by certified mail, return receipt requested, and shall provide notice of the name, address, occupation and professional background of the expert or independent consultant.

The party or its attorney receiving the notice shall have ten (10) business days from the receipt of notice to object to disclosure to the expert or independent consultant. If objection is made, then the parties must negotiate the issue before raising the issue before the Board. If the

parties are unable to settle their dispute, then it shall be the obligation of the party or attorney proposing disclosure: to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the parties have made to settle their dispute. The party objecting to disclosure will be expected to respond with its arguments against disclosure or its objections will be deemed waived.

6) Responses to Written Discovery

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, which the responding party reasonably believes to contain protected information, shall be prominently stamped or marked with the appropriate designation from Section 1, above. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error by informing all adverse parties, in writing, of the error.

7) Production of Documents

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation contained in Section 1, above. If the responding party makes documents available for inspection and copying by the inquiring party, all documents shall be considered protected during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation as contained in Section 1, above. Any inadvertent disclosure without an appropriate designation shall be remedied as soon as the disclosing party learns of its error by informing all adverse parties, in writing, of the error.

8) Depositions

Protected documents produced during a discovery deposition, or offered into evidence during a testimony deposition shall be orally noted as such by the producing or offering party at the outset of any discussion of the document or information contained in the document. In addition, the documents must be prominently stamped or marked with the appropriate designation. During discussion of any non-documentary protected information, the interested party shall make oral note of the protected nature of the information. The requirements of this Section 8, with regard to designations made at a deposition, may be fulfilled by the designating party or witness by noting at the beginning of the depositions the documents and information that will be designated.

The transcript of any deposition and all exhibits or attachments shall be considered protected for thirty (30) days following the date of service of the transcript by the party that took the deposition. During that 30-day period, either party may designate the portions of the transcript and any specific exhibits or attachments that are to be treated as protected by electing the appropriate designation contained in Section 1, above. Appropriate stampings or markings should be made during this time. If no such designations are made, then the entire transcript and exhibits will be considered unprotected.

9) Filing Notices of Reliance

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.

10) Briefs

When filing briefs, memoranda, 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, any adverse party or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in Section 12, below, of this Order.

11) Handling of Protected Information

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.

12) Redaction; Filing Material With the Board

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 effected.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but also can 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 section 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, pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. 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.

13) Acceptance of Information; Inadvertent Disclosure

Acceptance by a party or its attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information, which the disclosing party intended to designate as protected, shall not constitute waiver of a party's right to claim the information as protected upon discovery of the error.

14) Challenges to Designations of Information as Protected

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the

designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected is made, the challenging party will be expected to show why it could not have made the challenge at an earlier time.

The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

15) Board's Jurisdiction; Handling of Materials After Termination

The Board's jurisdiction over the parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing any appeal.

The parties may agree that archival copies of evidence and briefs may be retained, subject to compliance with agreed safeguards. Otherwise, within thirty (30) days after the final termination of this proceeding, the parties and their attorneys shall return to each disclosing party, the protected information disclosed during the proceeding, and shall include: any briefs, memoranda, summaries, and the like, which discuss or in any way refer to such information. In the alternative, the disclosing party or its attorney may make a written request that such materials be destroyed rather than returned. However, the receiving party is not required to return to the opposing party any document which may be protected by the attorney-client privilege or work product immunity – parties and their attorneys may retain electronic copies, and at least one paper copy, of such documents.

16) Other Rights of the Parties and Attorneys

This Order shall not preclude the parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the Order preclude the filing of and motion with the Board for relief from a particular provision of this Order or for additional protections not provided by this Order.

By agreement of the following, effective:
March 9, 2005

WAL-MART STORES, INC.

By:

Name:

Title:

John Weber

Baker & Hostetler LLP

Counsel for Wal-Mart Stores, Inc.

FRANKLIN LOUFRANI

Steven L. Baron

Mandell Menkes & Surdyk, LLC

Counsel for Franklin Loufrani