

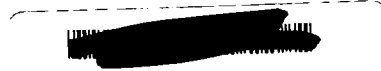
**IN THE  
UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

MONSTER CABLE PRODUCTS, INC., and )	Opposition No. 91154268
MONSTER CABLE INTERNATIONAL, LTD. )	Serial No. 78/046,283
Opposer, )	
v. )	<b>PROTECTIVE ORDER</b>
	<b>AND AGREEMENT TO</b>
	<b>MAINTAIN CONFIDENTIALITY</b>
EMARKMONITOR INC., a Delaware Corporation )	<b>AND ORDER THEREON</b>
and DOES 1 through 10, inclusive. )	
Applicant. )	
_____ )	

WHEREAS, each party believes that some of the discovery and testimony requested or to be requested by the other party in the proceedings between the parties before the Board involving a mark incorporating the term MONSTER (a "Proceeding") will involve disclosure of trade secrets, research, development or other confidential business or commercial information (collectively "Confidential Information") within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure made applicable by 37 C.F.R. § 2.120; and

WHEREAS, each party believes that it will serve the interests of the parties to conduct discovery and take testimony under a Protective Order and Agreement to Maintain Confidentiality (hereinafter "Order and Agreement").

NOW, THEREFORE, upon consideration of the record and promises herein and the stipulation of Opposers and Applicant;



IT IS HEREBY AGREED THAT:

1. For purposes of this Order and Agreement, the expression "disclosing party" means the party to a Proceeding who provides Confidential Information within its possession, custody or control, regardless of whether the Confidential Information relates to the disclosing party's operations or those of any third party; and the expression "receiving party" means the party to a Proceeding whose attorneys receive the Confidential Information provided by the disclosing party.

2. All documents, things, interrogatory answers, depositions, testimony and other items containing the Confidential Information of the disclosing party shall be identified as such by the disclosing party and, wherever it is practical to do so, shall be marked either:

(i) CONFIDENTIAL

or

(ii) CONFIDENTIAL -ATTORNEYS' EYES ONLY

(hereinafter sometimes collectively referred to as "Confidential") by the disclosing party.

3. Information designated "Confidential" or "Confidential- Attorneys' Eyes Only" may be used only in connection with a Proceeding, including any counterclaims raised in a Proceeding, and not for any other purpose. Further, such information may not be disclosed to anyone except as provided in this Order.

4. a. Any party or non-party wishing to come within the provisions of this Order and Agreement may designate in writing the documents, including interrogatory answers, any other written discovery response or disclosure, pleadings, motions, affidavits or declarations, memoranda and/or any other papers or other records in any tangible form filed in a Proceeding, or any portions thereof which it considers confidential at the time the documents, answers, or responses are produced.

Each page of the document must be marked "Confidential" or "Confidential -Attorneys Eyes Only" by the producing party.

b. In the instance of deposition testimony, the witness under deposition and/or his or her counsel shall invoke the provisions of this Order and Agreement in a timely manner and designate the level of confidentiality during the deposition. Parties shall be excluded only from testimony designated "Confidential- Attorneys' Eyes Only" (except parties which fall under paragraph 6 below). The witness under deposition and/or his or her counsel also shall have the right, within fifteen (15) days of receiving a transcript of the deposition, to designate or change the level of confidentiality of the transcript or portion thereof. Until such fifteen (15) days have passed, the deposing party shall deem the entire transcript to be "Confidential- Attorneys' Eyes Only." Nothing herein shall prohibit counsel from communicating the general substance of deposition testimony to the client for purposes of case management, deposition preparation, hearing or settlement, provided that any designation of particular deposition testimony as "Confidential" or "Confidential- Attorneys' Eyes Only" is respected.

5. Any documents stamped "Confidential," as well as any copies or excerpts thereof or analyses or reports which pertain thereto, may be made available only to:

a. Attorneys of record, in-house counsel and outside counsel for the receiving party and their employees participating in the prosecution or defense of a Proceeding;

b. The United States Patent and Trademark Office Trademark Trial and Appeal Board, including all of its legal and clerical personnel, or any judicial body before which a Proceeding is subsequently pending;

c. Representatives of the parties to a Proceeding who are actively involved in assisting

counsel and who agree in writing to use the information solely for the purposes of a Proceeding;

d. Independent experts or consultants not associated directly or indirectly with a party and who agree in writing to use the information solely for the purposes of a Proceeding;

e. Outside stenographic court reporters and language translators as reasonably necessary;

f. A deponent or other witness who authored, co-authored or is credited with authorship of any document, or who is shown as an addressee or other recipient on the face of the document, or who otherwise indicates familiarity with the document prior to being shown the document.

6. Any documents stamped "Confidential- Attorneys' Eyes Only," as well as any copies or excerpts thereof or analyses or reports which pertain thereto, may be made available only to:

a. Attorneys of record for the receiving party and their employees participating in the prosecution or defense of a Proceeding;

b. The United States Patent and Trademark Office, Trademark Trial and Appeal Board, including all of its legal and clerical personnel, or any judicial body before which a Proceeding is subsequently pending;

c. Outside stenographic court reporters and language translators as reasonably necessary;

d. A deponent or other witness who authored, co-authored or is credited with authorship of any document, or who is shown as an addressee or other recipient on the face of the document, or who otherwise indicates familiarity with the document prior to being shown the document.

7. For the purposes of paragraphs 5 and 6 of this Order and Agreement, the term "attorneys of record" shall refer to any attorneys who are employed or retained by a party and who are assisting in connection with a Proceeding, including any member of the staff (e.g. paralegals, legal secretaries, legal clerks and shorthand reporters) of such attorneys.

8. Each person falling within paragraphs 5.c-f and 6.c-d above shall be notified by the party disclosing confidential materials of the existence and terms of this Order.

9. If discovery is sought of a person not a party to a Proceeding ("third party") requiring disclosure of such third party's "Confidential" or "Confidential-Attorneys' Eyes Only" information, any such information disclosed by the third party and designated "Confidential" or "Confidential-Attorneys' Eyes Only" pursuant to the provisions of this Order and Agreement will be accorded the same protection as the parties' "Confidential" or "Confidential- Attorneys' Eyes Only" information, and will be subject to the same procedures as those governing disclosure of the parties' "Confidential" or "Confidential- Attorneys' Eyes Only" information pursuant to this Order and Agreement.

10. All Confidential Information that is not reduced to documentary, tangible or physical form or that cannot be conveniently designated in the manner set forth above shall be designated by the disclosing party by informing the receiving party in writing.

11. If the "Confidential" identification or label is inadvertently omitted from any document, thing, interrogatory, answer, deposition testimony or other item containing Confidential Information, the disclosing party shall notify the receiving party promptly upon discovery of the omission, and the receiving party will promptly apply the "Confidential" label and thereafter treat the document, thing, interrogatory, answer, deposition testimony or other item in the manner set forth in this Order and Agreement.

12. The receiving party shall strictly limit its use of the Confidential Information received from the disclosing party to a Proceeding, including any counterclaims raised in a Proceeding, shall not use any such Confidential Information for any business purpose or any other purpose whatsoever, and shall not disclose any such Confidential Information to anyone else. Such Confidential

Information may accompany any affidavit, brief, deposition, transcript or other paper filed in a Proceeding; however, the portions of papers containing Confidential Information shall be sealed in an envelope labeled with the case caption, the title of the document to which it is attached and the following notice:

**CONFIDENTIAL [OR CONFIDENTIAL -ATTORNEYS' EYES ONLY] FILED UNDER  
SEAL SUBJECT TO PROTECTIVE ORDER**

The materials contained in this envelope have been designated confidential, pursuant to a protective order, and are not to be disclosed or revealed except to the Trademark Trial and Appeal Board and counsel for the parties, or by order of a court of competent jurisdiction.

The contents of the envelope will not be made available to the public for inspection or copying unless and until ordered by the Trademark Trial and Appeal Board or court of competent jurisdiction.

13. The receiving party shall treat the Confidential Information of the disclosing party with the same security and care that it provides to its own Confidential Information. If either party to a Proceeding has reason to believe that any of the Confidential Information has been or is about to be disclosed or used in a manner inconsistent with this Order and Agreement, the party possessing such belief shall promptly notify the other party of its concerns, and the receiving party shall promptly take proper action to prevent or limit the nonconforming disclosure or use attributable to it.

14. Upon termination of all Proceedings and any appeals thereof, the receiving party shall, at the request of the disclosing party, destroy or return to the disclosing party all originals and all copies of the Confidential Information received from the disclosing party.

15. Nothing in this Order and Agreement constitutes a finding or an admission that any of the Confidential Information is relevant or material to any issue or is otherwise admissible in

evidence in a Proceeding, or that the Confidential Information is in fact confidential, nor does the receiving party waive any right to later contend or seek a further order from this Board that any specific Confidential Information or portion thereof received from the disclosing party is not confidential because it is (1) public knowledge or generally known to the trade; (2) rightfully communicated to the receiving party by a third party who did not obligate the receiving party to keep it confidential; (3) rightfully known to the receiving party prior to disclosure; or (4) disclosed without reservation to a third party or to third parties by the disclosing party; or (5) permitted to be disclosed or used by the receiving party, said permission being in the form of a written release signed by the disclosing party.

16. The production of any Confidential Information pursuant to this 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.

17. Nothing in this Order and Agreement shall prevent either party from raising objections on any ground (except confidentiality) to the production of documents or responses or the admission of evidence in a Proceeding.

18. The obligations expressed in this Order and Agreement will survive the conclusion of this proceeding and will continue to be binding upon the parties, their officers, directors, successors and assigns.

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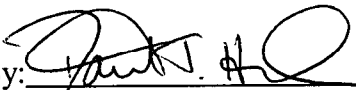
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**SO AGREED.**

eMarkmonitor, Inc.

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

Date: 10/28/03

David J. Haenel, Esq.  
12438 W. Bridger Street, Suite 100  
Boise, Idaho, 83713  
Attorneys for Applicant, eMarkmonitor, Inc.

LARIVIERE, GRUBMAN & PAYNE, LLP

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

Date: 9/10/03

Matthew A. Powelson  
1 Lower Ragsdale Drive  
Building 1, Suite 130  
Monterey, California 93940  
Attorneys for Opposer, Monster Cable Products, Inc.

**ORDER**

Pursuant to the stipulation of the parties hereto, and good cause appearing therefor,

**IT IS SO ORDERED.**

\_\_\_\_\_  
TRADEMARK TRIAL AND APPEAL BOARD



TTAB

"Express Mail" mailing label number: EL985921885US

Date of Deposit: November 4, 2003

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post office to Addressee" services under 37 C.F.R. 1.10 on the date indicated above and is addressed to: BOX TTAB - NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514.

Typed or Printed Name of Person Mailing Paper or Fee: LINDA CARRELL

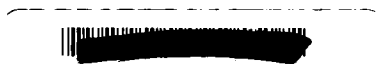
Signature: Linda Carrell

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

In the matter of Trademark Registration Application Serial No. 78/046,283  
Published in the Official Gazette (Trademarks) on June 25, 2002

MONSTER CABLE PRODUCTS, INC., and )  
MONSTER CABLE INTERNATIONAL, LTD., )  
Opposers, )  
v. )  
EMARKMONITOR, INC., )  
Applicant. )

Opposition No. 91154268



11-04-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #22

**BOX TTAB NO FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514**

**TRANSMITTAL LETTER**

Dear Madam:

In connection with the above-referenced trademark application, transmitted herewith are the following:

1. Protective Order and Agreement to Maintain Confidentiality Thereon (8 pages);

and

2. Postcard in acknowledgment of all transmitted materials.

Please date-stamp the enclosed post card and return same to the undersigned in acknowledgment of receipt of all transmitted materials.

Respectfully submitted,

LARIVIERE, GRUBMAN & PAYNE, LLP



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Matthew A. Powelson  
Attorneys for Opposers

MAP/aw  
Date: November 4, 2003  
LARIVIERE, GRUBMAN & PAYNE, LLP  
P.O. Box 3140  
19 Upper Ragsdale Drive, Suite 200  
Monterey, CA 93942-3140  
(831) 649-8800