

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



10-15-2003

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

Dallas Basketball Limited	
	Opposer,
v.	
John Jacob Carlisle	
	Applicant.

Opposition No. 91156064
Serial No. 76/165,865
Mark: **DEEP3 & DESIGN**

STIPULATED PROTECTIVE ORDER

WHEREAS, discovery (including interrogatories, document requests and depositions) in the above-entitled action may involve the production or disclosure of trade secrets or sensitive commercial, financial or proprietary business documents, information, or other materials; and

WHEREAS, the parties to this action, through the entry of this Stipulated Protective Order (the "Order"), wish to ensure that any such trade secrets, documents, information, or other materials shall be used only for the purposes of this action and shall not be disclosed or used in any other way;

IT IS HEREBY STIPULATED, by and between the parties hereto and by their respective counsel that pursuant to Fed. R. Civ. P. 26(c) and subject to the approval of the TTAB, the following Stipulated Protective Order be entered:

IT IS HEREBY ORDERED THAT:

1. This Protective Order shall apply to all information, premises, documents, and things owned or controlled by the parties, or of any parents, subsidiaries, divisions, branches, affiliates, related companies, or licensees of any party, or of any other parties

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added or substituted in this case, that are subject to discovery in this action, including without limitation, testimony adduced at depositions upon oral examination or upon written questions, answers to interrogatories, documents and things produced, information obtained from inspection of premises or things, and answers to requests for admission (hereafter "Information and Materials").

2. As used in this Order, "HIGHLY CONFIDENTIAL" Information and Materials shall include Information and Materials that have not been made public, the disclosure of which the disclosing party contends could cause harm to its business operations or provide improper advantage to others. "HIGHLY CONFIDENTIAL" Information and materials shall include, but shall not be limited to, trade secrets within the meaning of the Uniform Trade Secrets Act and information that concerns or relates to (1) sales, marketing, manufacturing, or research and development, (2) financial information or performance, (3) manufacturing or other costs of doing business, (4) licenses or other confidential agreements, and/or (5) technical details of products or methods of doing business. The parties shall only make use of the HIGHLY CONFIDENTIAL designation under an obligation of good faith.

3. All Information and Materials designated by either party as "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY" (hereinafter "HIGHLY CONFIDENTIAL") shall be labeled as such on each page thereof.

4. All HIGHLY CONFIDENTIAL Information and Materials disclosed or obtained through discovery in this case shall be used solely for the purpose of litigating this action and for no other purpose, including, but without limitation, any business or competitive purpose or any voluntary submission to any governmental or administrative agency.

5. All Information and Materials produced by either party in response to any discovery device in this action, which is designated "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY" pursuant to paragraph 3 herein, shall be retained in confidence by receiving counsel, and shall not be disclosed by receiving counsel to any person or entity including receiving counsel's client and employees of receiving counsel's client except as provided for in paragraph 5 hereof.

6. Solely for the purposes of this action material designated as HIGHLY CONFIDENTIAL pursuant to paragraph 3 may be disclosed to (a) outside counsel for the receiving party and all partners and associates thereof who are performing legal services in connection with this action, together with clerical personnel, law clerks, paralegals and legal assistants employed outside counsel, provided such persons are apprised of this Order and agree to be bound thereby, (b) in-house counsel for the receiving party provided such persons are apprised of this Order and agree to be bound thereby, (c) the TTAB and TTAB personnel; (d) independent experts and consultants who have not been regular consultants of the client and (i) have been retained by a party or its counsel of record in this action for the purpose of the preparation of this action for trial or assisting at trial (such as technical experts, expert consultants, expert witnesses or prospective expert witnesses), (ii) prior to such disclosure, have signed a document in the form of Exhibit A attached hereto, a signed copy of which shall be furnished promptly to counsel for the producing party, and (iii) agree to maintain the Information in separate and identifiable files, access to which is restricted to such persons and their assistants, stenographic, and clerical personnel.

7. All persons receiving HIGHLY CONFIDENTIAL material or information shall not make use of or disseminate said material or information to anyone, except for purposes of this action and as further permitted by this Order or a further order by this TTAB. Notwithstanding the above, such HIGHLY CONFIDENTIAL material or information may be disclosed in testimony given by deposition, or at the trial, or in appears filed in this action, or offered in evidence at the trial of this action, subject to (a) any applicable rules of evidence, and (b) the requirements of this Order.

8. A deposition witness may be shown HIGHLY CONFIDENTIAL material or information by an attorney then conducting the examination of that witness under the following conditions and without any waiver of its HIGHLY CONFIDENTIAL status: (a) any witness may be shown a document identifying the witness as a signatory, author, addressee, or recipient of a copy; (b) an officer, director, general manager, acting general manager, or manager of a party, or other witness designated by a party pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure may be shown any document designated as HIGHLY CONFIDENTIAL by that party; (c) any witness may be shown HIGHLY CONFIDENTIAL material or information after a proper foundation has been laid that the witness has had lawful access to the document; or (d) any witness may be shown HIGHLY CONFIDENTIAL or material information designated by the party whose counsel is then conducting the examination of the witness.

9. All transcripts of depositions, exhibits, answers to interrogatories, briefs and other documents and materials filed with the TTAB which have been designated HIGHLY CONFIDENTIAL or pursuant to paragraph 3, and which have not been deemed non-confidential pursuant to the provisions of this Order, shall be filed in a sealed envelope on

which shall be endorsed the title of this action, an indication of the nature of the contents of such sealed envelope, the word(s) "HIGHLY CONFIDENTIAL" and a statement substantially in the following form:

THIS DOCUMENT IS FILED UNDER SEAL PURSUANT TO THE PROTECTIVE ORDER OF THE TTAB AND SHALL NOT BE OPENED EXCEPT BY THE TTAB OR UPON ORDER OF THE TTAB OR BY STIPULATION OF THE PARTIES TO THIS ACTION.

10. Any court reporter who transcribes testimony in this action shall agree, before transcribing any such testimony, to abide by the terms of ft Order, and to seal and stamp all portions of the deposition transcript so designated by a party with the words:

HIGHLY CONFIDENTIAL — FILED UNDER SEAL. THIS TRANSCRIPT CONTAINS INFORMATION AND MATERIALS SUBJECT TO A PROTECTIVE ORDER AND SHALL BE USED ONLY IN ACCORDANCE THEREWITH.

If any HIGHLY CONFIDENTIAL Information and Materials is used or disclosed during the course of a deposition herein, in the form of exhibits, testimony, or otherwise, that portion of the deposition record reflecting such HIGHLY CONFIDENTIAL Information and Materials shall be sealed and stamped accordingly. Counsel may also designate any deposition testimony as HIGHLY CONFIDENTIAL by giving written notice thereof to the court reporter and to all parties within thirty (30) days after receipt of the deposition transcript by the party asserting the confidentiality or by making an appropriate statement on the record. Until expiration of this thirty (30) day period, all deposition transcripts shall be treated as HIGHLY CONFIDENTIAL.

11. Redacted versions of HIGHLY CONFIDENTIAL materials that no longer contain any HIGHLY CONFIDENTIAL information, and that are not subject to this Order, may be used for any proper purpose.

12. The restrictions set forth in this Order shall not apply to Information and Materials which prior to disclosure either is in the possession or knowledge of the party to whom such disclosure is made or is public knowledge, and the restrictions contained in this Order shall not apply to Information and Materials which, after disclosure, becomes public knowledge other than by act or omission of the party to whom such disclosure is made or which is independently developed or which is legitimately acquired from an independent source, provided however, if receiving counsel believes any Information and Materials should not be deemed HIGHLY CONFIDENTIAL because of the circumstances set forth in this paragraph, receiving counsel shall first notify opposing counsel of the same, providing producing counsel with seven (7) days to object. If a timely objection is made, the information shall be considered confidential and subject to the restrictions of this Stipulated Protective Order until permission of the TTAB is given to treat it otherwise. Any HIGHLY CONFIDENTIAL Information and Materials disclosed to opposing counsel in good faith prior to the commencement of this proceeding shall be subject to the terms of this order.

13. All HIGHLY CONFIDENTIAL Information and Materials supplied to receiving counsel, and copies thereof, shall be returned to producing counsel within sixty (60) days of the termination of this action, or shall be otherwise disposed of in a manner agreeable to all parties. All summaries and condensations, and copies thereof, shall be destroyed at such time, with confirmation sent to opposing counsel.

14. This Order shall be without prejudice to the right of either party to bring before the TTAB by motion at any time the question of whether any particular Information and Materials that has been designated HIGHLY CONFIDENTIAL is properly so

designated under the terms of this Order. Upon such a motion the party challenging any designation shall demonstrate a good faith basis for the challenge. Once the challenging party has met its burden, the designating party shall demonstrate, by a preponderance of the evidence, that the challenged designation was proper under the terms of Order.

15. Neither party concedes, by stipulation to the provisions herein, that any Information and Materials designated as HIGHLY CONFIDENTIAL is properly so designated under the terms of this Order. Either party may at any time, on reasonably notice, move the TTAB for (a) an order modifying or removing the HIGHLY CONFIDENTIAL designation from any Information and Materials (pursuant to the provisions of paragraph 14, above); or (b) modification of any of the terms of this Order. The parties may, moreover, agree in writing to necessary modifications of this Order without approval of the TTAB.

16. Inadvertent production of a document protected by the attorney-client privilege, any other privilege, or work product immunity shall not result in waiver of that privilege or immunity. If a party, through inadvertence, produces any information, in any form, which it believes is subject to a claim of privilege or immunity, the producing party may give written notice to the receiving party that the document is subject to a claim or privilege or immunity and request that the information be returned to the producing party. The receiving party shall return to the producing party such information in its original form, without retaining any copies thereof. Return of the information by the receiving party shall not constitute an admission or concession, or permit any inference, that the returned information is, in fact, properly subject to a claim of privilege or immunity, nor shall it foreclose any party from moving the TTAB for an order that such document or thing has

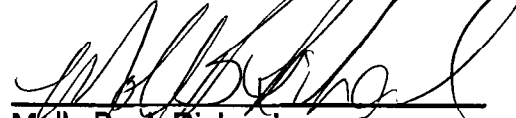
been improperly designated or should be discoverable for reasons other than a waiver caused by the inadvertent production.

17. If a producing party inadvertently fails to designate Information and Materials as HIGHLY CONFIDENTIAL in accordance with the provisions of this Order, or misdesignates such documents such failure shall not constitute a waiver of such confidentiality. The producing party shall notify the receiving party in writing within ten (10) days of the discovery of such inadvertent failure or misdesignation, and shall set forth the correct designation. Within ten (10) days after receipt of such notice, the receiving party shall notify the producing party in writing whether it will or will not treat the subject document or information as requested by the producing party. If the parties fail to resolve the dispute within ten (10) days from the date of the receiving party's notification, the receiving party shall have the right to move the TTAB to remove HIGHLY CONFIDENTIAL protection from the subject document under the terms of this Order. During that ten (10) day period, the receiving party shall treat the subject document as requested by the producing party, if the receiving party files such a motion, then the receiving party shall treat the subject document as requested by the producing party pending the TTAB's resolution of the motion. Inadvertent failure to designate a document as HIGHLY CONFIDENTIAL, or misdesignation of such document, shall not, in any way, affect the TTAB's determination as to whether or not the document is entitled to the requested status.

18. The TTAB retains jurisdiction of the parties hereto respecting any dispute between the parties regarding the improper use of Information and Materials disclosed under protection of this Order and shall indefinitely retain such authority.

Dated: Oct 14 2003

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Date: October 14, 2003

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

<p>Dallas Basketball Limited</p> <p style="text-align: right;">Opposer,</p> <p style="text-align: center;">v.</p> <p>John Jacob Carlisle</p> <p style="text-align: right;">Applicant.</p>

Opposition No. 91156064

Serial No. 76/165,865

Mark: **DEEP3 & DESIGN**

UNDERTAKING OF _____

I, _____, hereby declare:

1. My address is _____.
2. My present employer is _____ and the address of my present employer is _____.
3. My present occupation of job description is _____.
4. I have received a copy of the Stipulated Protective Order in the above-captioned proceeding.
5. I have carefully read and understood the provisions of the Stipulated Protective Order.
6. I will comply with all of the provisions of the Stipulated Protective Order.
7. I will hold in confidence, will not disclose to any one not qualified under the Stipulated Protective Order, and will use only for purposes of this proceeding documents or information designed by a party to the above-captioned proceeding as "HIGHLY CONFIDENTIAL" that are disclosed to me.
8. I will return all "HIGHLY CONFIDENTIAL" documents or information that come into my possession, to counsel for the party by whom I am employed or retained.

9. I, _____ hereby declare under penalty of perjury under the laws of the United States of America this ____ day of _____, 200____, in the State of _____, County of _____ that the foregoing is true and correct.

(Signature)

State of _____)

County of _____)

ss.

Sworn to and subscribed before me this ____ day of _____, 200____.

Notary Public

TTAB

THOMPSON & KNIGHT LLP

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October 15, 2003

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10-15-2003

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

Assistant Commissioner for Trademarks
TTAB
2900 Crystal Drive
Arlington, Virginia 22202-3514

Re: Opposition No. 91156064
Dallas Basketball Limited
v. John Jacob Carlisle
Our File: 502498.000001

Sir:

Enclosed for filing in the above-identified Opposition, is a Stipulated Protective Order.

Sincerely,

Molly Buck Richard

MBR:dvc
Enclosure
502498 000001 DALLAS 1654726.1

Express Mail Label EV 284 925 516 US
Date of Deposit: October 15, 2003

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above, addressed to the Assistant Commissioner for Trademarks, TTAB, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

Dale V. Cann