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Filing date: **10/21/2005**

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

<b>Proceeding</b>	91160810
<b>Party</b>	Plaintiff SMITHKLINE BEECHAM CORPORATION ,
<b>Correspondence Address</b>	GARY D. KRUGMAN SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. WASHINGTON, DC 20037-3202
<b>Submission</b>	Protective Order
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<b>Signature</b>	/Leigh Ann Lindquist/
<b>Date</b>	10/21/2005
<b>Attachments</b>	Protective Order.pdf.PDF ( 7 pages )

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

The Mentholatum Company (by assignment),

Opposer,

v.

Therox, Inc.,

Applicant.

Opposi

**PROTECTIVE ORDER**

**1) Classes of Protected Information.**

The Rules of Practice in Trademark Cases provide that a well as the involved registration and application files, and the terms of this order are not to be used to undermine public confidence. Appropriate, however, a party or witness, on its own or through its counsel, may protect the confidentiality of information by employing 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, subject to agreed restrictions on access even as to the parties.

**Trade Secret/Commercially Sensitive**—Material to be shielded from public access, restricted from any access by the parties, their counsel, outside counsel for the parties and, subject to the provisions of the Rules, independent experts or consultants for the parties.

**2) Information Not to Be Designated as Protected.**

Information may not be designated as subject to any of the above designations if it (a) becomes, public knowledge, as shown by publicly available information; (b) is acquired by a party witness from a third party lawfully possessing such information without any obligation to the owner of the information; (c) was lawfully disclosed to the designating party or non-party witness prior to the opening of the proceeding, and for which there is written evidence of the disclosure.

disclosed by a non-designating party or non-party witness; (d) is disclosed by the information; or (e) is disclosed by a non-designating party or non-party witness.

### 3) Access to Protected Information.

The provisions of this order regarding access to protected information shall be subject to modification by written agreement of the parties or their attorneys, and shall be subject to review with and approved by the Board.

Judges, attorneys, and other employees of the Board are not required to make designations of information as protected but are not required to make designations acknowledging the terms and existence of this order. Court reporters, video technicians or others who may be employed by the parties or their attorneys to perform services incidental to this proceeding will be bound by the terms of this order. The parties or their attorneys make it a condition of employment for such individuals, in accordance with the provisions of paragraph 2.

- **Parties** are defined as including individuals, officers or directors of corporations, partnerships, and management employees of any type of organization.
- **Attorneys** for parties are defined as including **in-house** attorneys, including support staff operating under counsel's direct supervision, assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.
- **Independent experts or consultants** include individuals who are not related to prosecution or defense of the proceeding but who are retained by either the party or its attorneys.
- **Non-party witnesses** include any individuals to be deposed, whether willingly or under subpoena issued by a court of competent jurisdiction, as a witness.

**Parties** and their **attorneys** shall have access to information that is **confidential** or **highly confidential**, subject to any agreed exceptions.

**Outside counsel, but not in-house counsel**, shall have access to information that is **confidential** or **highly confidential**, as **trade secret/commercially sensitive**.

**Independent experts or consultants, non-party witnesses** shall have access to information that is **confidential** or **highly confidential** information in accordance with the provisions of paragraph 4. Further, **independent experts or consultants** shall have access to information that is **confidential** or **highly confidential** information in accordance with the provisions of paragraph 4.

**secret/commercially sensitive** information if such access is ordered by the Board, in accordance with the terms that

**4) Disclosure to Any Individual.**

Prior to disclosure of protected information by any party that has 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 of the order. The individual will then be required to certify in writing that the individual understands and that the terms shall be binding on the individual. The individual shall not receive any protected information until the party or attorney has received the signed certification from the individual. The certification is attached to this order. The party or attorney shall retain the original.

**5) Disclosure to Independent Experts or Consultants.**

In addition to meeting the requirements of paragraph 4, the party shall not disclose or share disclosed information with an independent expert or consultant unless the party which designated the information as protected. The disclosure shall be served or forwarded by certified mail, return receipt requested, and shall include the name, address, occupation and professional background of the independent consultant.

The party or its attorney receiving the notice shall have the right to object to disclosure to the expert or independent consultant. If objection is made, the party must negotiate the issue before raising the issue before the Board. If the party is unable to settle their dispute, then it shall be the obligation of the party proposing disclosure to bring the matter before the Board. The party shall file for disclosure and a report on the efforts the parties have made to resolve the dispute. The party objecting to disclosure will be expected to respond to the disclosure or its objections will be deemed waived.

**6) Responses to Written Discovery.**

Responses to interrogatories under Federal Rule 33 and depositions under Federal Rule 36, and which the responding party reasonably believes contain information shall be prominently stamped or marked with the words "protected" from paragraph 1. Any inadvertent disclosure without a stamp shall be remedied as soon as the disclosing party learns of its error. The disclosing parties, in writing, of the error. The parties should inform the Board because of the filing of protected information not in accordance with paragraph 12.

**7) Production of Documents.**

If a party responds to requests for production under Federal Rule 34 and forwarding the copies to the inquiring party, then the copies shall be stamped or marked, as necessary, with the appropriate designation. If the responding party makes documents available for inspection, the inquiring party, all documents shall be considered protected for inspection. After the inquiring party informs the responding party that copies be copied, the responding party will be responsible for providing the copies with the appropriate designation from paragraph 1. Any copies without appropriate designation shall be remedied as soon as possible of its error, by informing all adverse parties, in writing, and to inform the Board only if necessary because of the filing requirements in accordance with the provisions of paragraph 12.

**8) Depositions.**

Protected documents produced during a discovery deposition or during a testimony deposition shall be orally noted as such by the party at the outset of any discussion of the document or the contents of the document. In addition, the documents must be prominently marked with appropriate designation.

During discussion of any non-documentary protected information, the party shall make oral note of the protected nature of the information.

The transcript of any deposition and all exhibits or attachments shall be protected for 30 days following the date of service of the transcript of the deposition. During that 30-day period, either party may request the transcript, and any specific exhibits or attachments, that are protected by electing the appropriate designation from paragraph 1. Appropriate markings should be made during this time. If no such designation is made, 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 a deposition, the party or attorney is bound to honor designations made by the attorney, or non-party witness, who disclosed the information and its protected status of the information.

**10) Briefs.**

When filing briefs, memoranda, or declarations in support of a motion for a hearing, the portions of these filings that discuss protected information shall be

information of the filing party, or any adverse party, or a redacted. The rule of reasonableness for redaction is dis order.

**11) Handling of Protected Information.**

Disclosure of information protected under the terms of th facilitate the prosecution or defense of this case. The red information disclosed in accordance with the terms of th the confidentiality of the information and shall exercise storing, using or disseminating the information.

**12) Redaction; Filing Material With the Board.**

When a party or attorney must file protected information discusses such information, the protected information on the same should be redacted from the remainder. A rule how redaction is effected.

Redaction can entail merely covering a portion of a page anticipation of filing but can also entail the more extreme entire page under seal as one that contains primarily confidential sentence or short paragraph of a page of material is confidential when the page is copied would be appropriate. In contrast, if a page is confidential, then filing the entire page under seal even if some small quantity of non-confidential material is in record. Likewise, when a multi-page document is in issue, that redaction of the portions or pages containing confidential only some small number of pages contain such material. If of the document contains some confidential material, it must simply submit the entire document under seal. **Occasionally, a brief must be submitted under seal should be very rare.**

Protected information, and pleadings, briefs or memoranda paraphrase such information, shall be filed with the Board. Containers shall be prominently stamped or marked with the following form:

**CONFIDENTIAL**

*This envelope contains documents or information that are subject to a confidentiality agreement. The confidentiality of the material is to be maintained, and the contents revealed to any individual, except by order of the court.*

**13) Acceptance of Information; Inadvertent Disclosure.**

Acceptance by a party or its attorney of information disclosed as protected shall not constitute an admission that the information was not protected. Inadvertent disclosure of information which was designated as protected shall not constitute waiver of any protection afforded upon discovery of the error.

**14) Challenges to Designations of Information as Protected.**

If the parties or their attorneys disagree as to whether information designated as protected, they are obligated to negotiate in good faith resolution with the disclosing party. If the parties are unable to resolve their disagreement, the party challenging the designation may make a motion before the court to determine the status of the information.

A challenge to the designation of information as protected must be made contemporaneous with the designation, or as soon as practicable after the challenge is known. When a challenge is made long after the information is designated as protected, the challenging party will be expected to show good cause for challenge at an earlier time.

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

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

The Board's jurisdiction over the parties and their attorneys terminates when the proceeding is terminated. A proceeding is terminated only after a final appellate proceeding has been resolved or the time for filing an appeal has expired without filing of any appeal.

The parties may agree that archival copies of evidence disclosed during the proceeding, to compliance with agreed safeguards. Otherwise, within 30 days of the termination of this proceeding, the parties and their attorneys must identify to the disclosing party the protected information disclosed during the proceeding, including any briefs, memoranda, summaries, and the like. The disclosing party may refer to such information. In the alternative, the disclosing party may make a written request that such materials be destroyed.

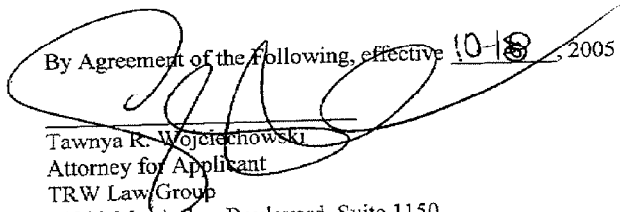
**16) Other Rights of the Parties and Attorneys.**

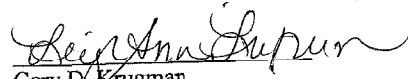
This order shall not preclude the parties or their attorneys from asserting claims of privilege during discovery or at trial. Nor shall this order be construed to

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any motion with the Board for relief from a particular provision or  
additional protections not provided by this order.

By Agreement of the following, effective ~~10-18~~ 2005

  
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By Order of the Board, effective \_\_\_\_\_