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

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| Proceeding | 91165809 |
| Party | Defendant<br>Nalge Nunc International Corporation<br>Nalge Nunc International Corporation<br>75 Panorama Creek Drive<br>Rochester, NY 146020365 |
| Correspondence Address | DONALD F. FREI<br>WOOD, HERRON & EVANS, L.L.P.<br>2700 CAREW TOWER 441 VINE STREET<br>CINCINNATI, OH 45202-2917 |
| Submission | Other Motions/Papers |
| Filer's Name | Sarah Otte Graber |
| Filer's e-mail | sgraber@whepatent.com |
| Signature | /Sarah O. Graber/ |
| Date | 04/10/2006 |
| Attachments | Stipulated Protective Order.pdf ( 6 pages ) |

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

IN THE MATTER OF:

| | | |
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| TriForest Enterprises, Inc., | ) | |
| | ) | |
| Opposer, | ) | |
| | ) | |
| v. | ) | Opposition No. 91165809 |
| | ) | Application No.:76572253 |
| Nalge Nunc International Corporation, | ) | Mark: plastic water bottle (design only) |
| | ) | |
| Applicant. | ) | |
| | ) | |

**STIPULATED PROTECTIVE ORDER**
**AND CONFIDENTIALITY AGREEMENT**

IT IS HEREBY STIPULATED AND AGREED by and between Opposer and Applicant, subject to the approval of the Trademark Trial and Appeal Board, that if, in the course of this Opposition proceeding, either party has occasion to disclose information deemed by the disclosing party to be sensitive, confidential, personal, proprietary and/or protected by a statutory or other legal privilege, and that is not public knowledge ("Confidential Material"), the following procedures shall be employed and the following restrictions shall govern:

1. Any documents, answers to interrogatories, answers to deposition questions, affidavits, declarations, responses to requests for admission, samples, objects, or any other information, materials or portions thereof (hereinafter "Material") provided by or on behalf of either party (or any of their attorneys or other agents) to the other during the pendency of this proceeding may be clearly designated and marked, in whole or in part, "**Confidential**" by Counsel for Applicant or counsel for Opposer, producing such Material at the time of production thereof unless otherwise agreed by the parties in writing.

To the extent that such Material is so marked "Confidential", such Material together with any copies of such Material, abstracts, summaries, or information derived therefrom, and any notes or other record regarding the contents thereof, is hereinafter referred to as "Confidential Material".

2. Counsel for Applicant or counsel for Opposer may disclose or discuss Confidential Material only to a "Qualified Person" as defined in paragraph 3, who agrees to

maintain such information in confidence and who has need for such information to assist in the preparation and trial of this proceeding and only for the purpose of said preparation and trial; said Qualified Persons shall not disclose or discuss Confidential Material to any other person and shall not use such information for any purpose other than the preparation and trial of this proceeding.

3. As herein used, the term "Qualified Person" means:

(a) The outside trial counsel for the Applicant to this case, including said counsel's partner and associate attorneys and clerical employees for purpose of this Opposition proceeding.

(b) The counsel for the Opposer to this case, including said counsel's partner and associate attorneys and clerical employees for purpose of this Opposition proceeding.

(c) Subject to signing secrecy agreements pursuant to paragraph 4, consulting or testifying experts (exclusive of present and former shareholders, directors, officers, employees, agents or consultants of a party or of any other person, firm or corporation engaged in the provision or sale of the types of goods or services to which this proceeding is related) engaged by counsel for Applicant or counsel for Opposer with respect to the subject matter of Confidential Material for purposes of this case.

(d) U.S. Trademark Trial and Appeal Board personnel.

(e) Present and former shareholders, directors, officers, employees, agents, and consultants of a party to this proceeding are <u>expressly excluded</u> from the definition of "Qualified Person" and shall not be entitled to review or discuss Confidential Material.

4. Counsel for Applicant or counsel for Opposer in possession of Confidential Material received from other party shall notify counsel for Applicant or counsel for Opposer of the name of any person to whom disclosure of such Confidential Material is made pursuant to subsections (a), (b), and (c) of paragraph 3 of this Stipulation. Each person designated in paragraphs 3(a), 3(b), 3(c) shall, in turn, be informed of this Stipulation and Protective Order, hold such Confidential Material in confidence and in a secure and safe place, shall not use it for any purpose other than the purposes of this Opposition proceeding, and, prior to disclosure to such person of such Confidential Material, shall be required to sign the affidavit of confidentiality annexed hereto as Exhibit A indicating that in the form as follows:

"The undersigned has read the Stipulated Order between TriForest Enterprises, Inc., and Nalge Nunc International Corporation issued or signed by the Trademark Trial and Appeal Board on _____, 2006 agrees:

(1) that he/she is not a present or former shareholder, director, officer, employee, agent or consultant of a party or of any other person, firm or corporation engaged in the provision or sale of the types of goods or services to which this proceeding is related;

(2) that he/she shall fully abide by the terms of said Stipulated Protective Order and Confidentiality Agreement;

(3) that upon threat of penalty of contempt, he/she shall not disclose Confidential Material to or discuss Confidential material with any person who is not authorized pursuant to the terms of said Stipulated Protective Order to receive the disclosure thereof and who has not signed an affidavit of confidentiality as therein provided; and

(4) that he/she shall not use such Confidential Material for any purposes other than for the purpose of this proceeding.

(5) that he/she submits to the jurisdiction of the Trademark Trial and Appeal Board for the enforcement of this Order."

A copy of each signed affidavit shall be furnished to the other party within ten (10) days after execution thereof.

5. In the event that the receiving party disagrees with the designation and marking by any producing party of Material as "Confidential," as described in Paragraph 2 above, then the parties shall try first to resolve such dispute on an informal basis before presenting the dispute to the Trademark Trial and Appeal Board by motion or otherwise. The party that disagrees Material should be designated and marked as Confidential shall specifically identify the designation of material being challenged. The party seeking to uphold the "Confidential" designation shall have the burden of proof.

6. The subject matter of any deposition given by any present or former officer, employee, agent, or consultant of a party and the original and all copies of the transcript of any such deposition shall be deemed to come within the term "Confidential Material" referred to in paragraph 1 of this Stipulation for a period ending thirty (30) days after the transcript becomes available to counsel for Applicant or counsel for Opposer. On or before the thirtieth day after any such transcript becomes available to counsel for Applicant or counsel for Opposer, such transcript may be designated and marked, in whole or in part, "Confidential" by the party whose

present or former officer, employee, agent or consultant gave such deposition, and the portions of the transcript of the deposition so marked shall be subject to the provisions of this Stipulation. A party designating a portion of a deposition transcript shall use reasonable good faith efforts to identify only information that is truly Confidential Material under the terms of this Stipulation.

7. Where only a part of the material furnished ore produced by a party or a part of the transcript of any deposition given by any present or former officer, employee, agent, or consultant of a party is Confidential Material, counsel for Applicant or counsel for Opposer receiving such material or transcript shall delete therefrom Confidential Material before disclosing such Material or transcript to any person other than Qualified Persons designated in paragraph 3.

8. Deletions made from any Material or transcript in accordance with the terms of this Stipulation shall not affect the admissibility of any such material or transcript in evidence in this action.

9. If any Confidential Material is summarized, discussed or quoted any deposition or hearing, or at the trial of this proceeding, all person other than those otherwise to whom disclosure is permitted hereunder and outside counsel and Board personnel, shall be excluded from such portion of the deposition, hearing, or trial.

10. Any transcripts, exhibits or documents that are filed with the Board and that comprise, embody, summarize, discuss, or quote from Confidential Material shall be filed with the Trademark Trial and Appeal Board in a sealed envelope bearing the caption "Confidential Material" with the following notation: "This envelope contains Confidential Material to be opened only by or as ordered by the Trademark Trial and Appeal Board.

11. Nothing herein shall impose any restriction on the use or disclosure by a party of its own documents or information. Nor shall this Stipulation and Protective Order be construed to prevent any party or its counsel from making use of documents or information which were lawfully available to the public or lawfully in the party's possession prior to another party providing it. Nothing in this Stipulation and Protective Order shall be construed to alter any confidentiality agreements relating to any information involved in this matter.

12. This Protective Order shall not constitute a waiver of either party's rights to object to any discovery request as provided under the Trademark Rules of Practice and federal law.

13. The inadvertent production of any Material without being designated and marked as "Confidential" will not be deemed a waiver of any claim that the Material is "Confidential

Material." If Material believed by a party to be entitled to protection as Confidential Material is inadvertently produced, the producing party may notify the receiving party, and the receiving party shall thereafter treat the information as Confidential Material. If, prior to receiving such notice, the receiving party has disseminated the Confidential Material to individuals not authorized to receive it under this Stipulation, the receiving party shall make a reasonable effort to retrieve the Confidential Material or otherwise assure that the recipient(s) maintain the confidentiality of the Confidential Material. Disclosure of the Confidential Material prior to the producing party's notice will not be deemed a violation of this Stipulation.

14. Nothing in this Protective Order shall prejudice a party from seeking amendment of this Order, broadening or restricting the rights of access to and use of Confidential Material, subject to Order by the Board.

15. The provisions of this Stipulation and Protective Order shall survive the termination of this proceeding. After the conclusion of this proceeding, including all appeals, counsel for Application or counsel for Opposer shall return all Confidential Material to the producing party, within thirty (30) days after a final judgment herein or settlement of this action.

TriForest Enterprises, Inc.,

Clement Cheng, Esq.
Law Offices of Clement Cheng
17220 Newhope Street, Suite 127
Fountain Valley, California 92703

Attorney for Opposer
TriForest Enterprises, Inc.,

Nalge Nunc International Corporation

Sarah Otte Graber, Esq.
Theodore R. Remaklus
Wood, Herron and Evans
2700 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202-2917

Attorneys for Applicant
Nalge Nunc International Corporation

So Ordered this _____ day of _____, 2006

_____
Administrative Trademark Judge

## EXHIBIT A

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

IN THE MATTER OF:

| | | |
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| TriForest Enterprises, Inc., | ) | |
| | ) | |
| Opposer, | ) | |
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| v. | ) | Opposition No. 91165809 |
| | ) | Application No.:76572253 |
| Nalge Nunc International Corporation, | ) | Mark: plastic water bottle (design only) |
| | ) | |
| Applicant. | ) | |
| | ) | |

## ACKNOWLEDGMENT OF PROTECTIVE ORDER AND AGREEMENT TO BE BOUND

I, _____ state as follows:

1. I reside at _____ in the city and county of _____ ___ and state of _____;

2. I am not a present or former shareholder, director, officer, employee, agent or consultant of a party or of any other person, firm or corporation engaged in the provision or sale of the types of goods or services to which this proceeding is related;

3. I have read and understand the Protective Order and Confidentiality Agreement entered in this opposition proceeding and agree to abide by the terms of and be bound by the provisions of the Protective Order and Confidentiality Agreement;

4. I consent to the exercise of personal jurisdiction by the trademark Trial and Appeal Board for purposes of enforcing the terms of the Protective Order;

5. I will not disclose Confidential Material to or discuss Confidential Material with any person who is not authorized pursuant to the terms of said Stipulated Protective Order and Confidentiality Agreement to receive the disclosure thereof and who has not signed an affidavit of confidentiality as therein provided, except solely for purposes of this opposition proceeding, any information designated as Confidential Information defined by the Protective Order and Confidentiality Agreement, except as provided therein.

_____ Dated

_____ Name and Signature