

ESTTA Tracking number: **ESTTA223202**

Filing date: **07/09/2008**

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

Proceeding	91180252
Party	Defendant Dream Big Media, Inc.
Correspondence Address	Karen J. Bernstein Law Offices of Karen J. Bernstein, LLC 100 Park Avenue, Suite 1600 New York, NY 10017 UNITED STATES kjb@karenbernsteinlaw.com
Submission	Other Motions/Papers
Filer's Name	Karen J. Bernstein
Filer's e-mail	kjb@karenbernsteinlaw.com
Signature	/kjb/
Date	07/09/2008
Attachments	dbm po executed.pdf ( 9 pages )(273839 bytes )

**LAW OFFICES OF KAREN J. BERNSTEIN, LLC**

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July 9, 2008

**VIA TTABVUE**

Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

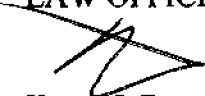
RE: mTLD Top Level Domain Name, Ltd. v. Dream Big Media, Inc.  
Opposition No. 91180252  
Client/Matter: 1254/1

Dear Sir/Madam:

Submitted herewith is a Stipulated Protective Order for the above-referenced opposition proceeding.

Respectfully submitted,

LAW OFFICES OF KAREN J. BERNSTEIN, LLC

  
Karen J. Bernstein  
Attorney for Applicant

KJBjbm  
Enclosure

cc: Susan Neuberger Weller, Esq. (w/encl.)

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

In the Matter of Trademark Application  
Serial No. 77/055,829 for the mark  
**MYMOBI**

_____ X		
<b>MTLD MOBILE TOP LEVEL DOMAIN, LTD.</b>	:	Opposition No.: 91180252
<b>Opposer,</b>	:	
v.	:	
<b>DREAM BIG MEDIA, INC.</b>	:	
<b>Applicant.</b>	:	

**PROVISIONS FOR PROTECTING  
CONFIDENTIALITY OF INFORMATION  
REVEALED DURING BOARD PROCEEDING**

Information disclosed by any party or non-party witness during this proceeding may be considered confidential, a trade secret, or commercially sensitive by a party or witness. To preserve the confidentiality of the information so disclosed, either the parties have agreed to be bound by the terms of this order, in its standard form or as modified by agreement, and by any additional provisions to which they may have agreed and attached to this order, or the Board has ordered that the parties be bound by the provisions within. As used in this order, the term "information" covers both oral testimony and documentary material.

Parties may use this standard form order as the entirety of their agreement or may use it as a template from which they may fashion a modified agreement. If the Board orders that the parties abide by the terms of this order, they may subsequently agree to modifications or additions, subject to Board approval.

Agreement of the parties is indicated by the signatures of the parties' attorneys and/or the parties themselves at the conclusion of the order. Imposition of the terms by the Board is indicated by signature of a Board attorney or Administrative Trademark Judge at the conclusion of the order. If the parties have signed the order, they may have created a contract. The terms are binding from the date the parties or their attorneys sign the order, in standard form or as modified or supplemented, or from the date of imposition by a Board attorney or judge.

## TERMS OF ORDER

### 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 or witness, 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 and information that reflects trade secrets or other confidential financial or commercial information, or information otherwise entitled to protection under Rule 26 of the Federal Rules of Civil Procedure.

“Confidential/Attorneys’ Eyes’ Only” —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.

### 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 document; (b) is acquired 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) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; or (d) is 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 motion filed with and approved by the Board.

Judges, 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 paragraph 4.

**Parties** are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.

**Outside Counsel** for parties are defined as outside counsel who are not employees of either party, including support staff operating under Outside counsel's direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.

**Inside Counsel** is defined as employees of the parties who work in a legal capacity and their support staff.

**Independent experts or consultants** include individuals retained by a party for purposes related to 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 issued by a court of competent jurisdiction over the witness.

**Outside Counsel and Inside Counsel** shall have access to information designated as Confidential.

**Outside Counsel but not Inside Counsel** shall have access to information designated as Confidential/Attorneys' Eyes' Only.

Provided that such person is not an employee of or a consultant to a direct competitor of the disclosing party, 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 and Confidential Attorneys' Eyes' Only information in accordance with the terms that follow in paragraph 4-and only for purposes related to the above-referenced proceedings between the parties.

#### **4) Disclosure to Any Individual**

Prior to 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. A form for such certification is attached to this order as Exhibit A. The party or attorney receiving the completed form shall retain the original.

**5) Responses to Written Discovery.**

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation from paragraph 1. 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. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 11.

**6) 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 from paragraph 1. 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 from paragraph 1. 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. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 11.

**7) 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 transcript of any deposition and all exhibits or attachments shall be considered protected for 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 from paragraph 1. 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.

**8) 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.

### **9) Briefs.**

When filing briefs, memoranda, or 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, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 11 of this order.

### **10) 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.

### **11) 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 can also 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 paragraph 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 affected 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, and 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.**

**12) 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 any right to claim the information as protected upon discovery of the error.

**13) 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, 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.

**14) 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 of any appeal.

The parties agree that archival copies of documents and information provided in discovery, all evidence, memoranda, summaries, briefs, and similar documents which discuss, refer, or relate to the substance of any Confidential/Attorneys' Eyes' Only and/or Confidential information may be retained subject to the following terms. All such archival copies shall retain their original protected status as designated herein and by the parties during the course of this proceeding. All such archival copies shall be maintained in the files of each party's attorneys in the same manner as required by the terms of this protective order for their maintenance during the course of this proceeding. The terms of this protective order shall apply to any individuals who may have access to the archival copies subsequent to the termination of this proceeding, and all such individuals shall be bound by its terms. Archival copies may be used by each party and their attorneys only for purposes related to this proceeding or any proceeding directly related thereto.

**15) 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 any motion with the

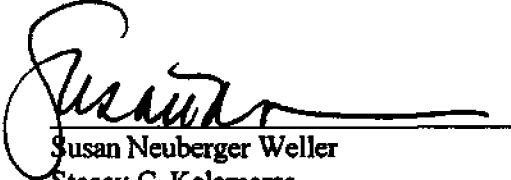


Board for relief from a particular provision of this order or for additional protections not provided by this order.

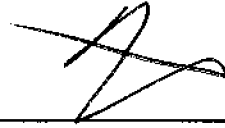
BY AGREEMENT OF THE FOLLOWING, effective this <sup>9th</sup> day of *July, 2008*.

Mintz, Levin, Cohn, LLP  
Ferris, Glovsky, Popeo, P.C.

Law Offices of Karen J. Bernstein, LLC



Susan Neuberger Weller  
Stacey C. Kalamaras  
701 Pennsylvania Avenue, NW  
Washington, DC 20004  
Attorneys for Opposer



Karen J. Bernstein  
100 Park Avenue, Suite 1600  
New York, New York 10017  
Attorney for Applicant

BY ORDER OF THE BOARD, effective this day of \_\_, 2008.

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**EXHIBIT A**

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

In the Matter of Trademark Application  
Serial No. 77/055829 for the mark  
**MYMOBI**

_____	X	
<b>MTLD MOBILE TOP LEVEL DOMAIN, LTD.</b>	:	<b>Opposition No.: 91180252</b>
	:	
<b>Opposer,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>DREAM BIG MEDIA, INC.</b>	:	
	:	
<b>Applicant.</b>	:	
_____	:	

**ACKNOWLEDGMENT OF AGREEMENT OR ORDER  
PROTECTING CONFIDENTIALITY OF INFORMATION  
REVEALED DURING BOARD PROCEEDING**

I, \_\_\_\_\_ [print name], declare that I have been provided with a copy of the Agreement or Order regarding the disclosure of, and protection of, certain types of information and documents during and after the above-captioned opposition proceeding before the Trademark Trial and Appeal Board.

I have read the Agreement or Order and understand its terms and provisions, by which I agree to be bound. Specifically, I agree to hold in confidence any information or documents disclosed to me in conjunction with any part I take in this proceeding.

I declare under the penalty of perjury that these statements are true and correct.

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[print title, if applicable]

\_\_\_\_\_  
[date]