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

Proceeding	91207440
Party	Plaintiff Champion Window Manufacturing and Supply Company, LLC
Correspondence Address	WILLIAM S WYLER SCHWARTZ MANES RUBY & SLOVIN 2900 CAREW TOWER, 441 VINE STREET CINCINNATI, OH 45202-3090 UNITED STATES wwyler@smrslaw.com
Submission	Other Motions/Papers
Filer's Name	William S. Wyler
Filer's e-mail	wwyler@smrslaw.com
Signature	/william s. wyler/
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Attachments	2013 Signed Protective agreement.pdf (13 pages)(616185 bytes)

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

In the proceeding of the Application Serial No. 85429267
Filed on the 22nd day of September, 2011
For the mark: COMFORT QUADSHIELD GLASS.
Published in the Official Gazette on October 09, 2012

In the proceeding of the Application Serial No. 85429563
Filed on the 22nd day of September, 2011
For the mark COMFORT QUAD SHIELD GLASS and design
Published in the Official Gazette on August 21, 2012

Champion Window Manufacturing
and Supply Co., LLC

Opposer

v.

Comfort Window Co., Inc.

Applicant

Opposition No. 91207440

**AGREEMENT FOR PROTECTING
CONFIDENTIALITY OF TRADE SECRETS
AND CONFIDENTIAL INFORMATION
DURING A TTAB PROCEEDING**

It is hereby stipulated and agreed by and between Champion Window Manufacturing and Supply Co., LLC ("Champion"), and Comfort Window Co., Inc. ("Comfort") the parties to this proceeding (the "Parties"), through their respective counsel and with the approval of the Trademark Trial and Appeal Board ("TTAB"), that the following Protective Order is agreed to, stipulated, and entered in this proceeding:

1. Definitions:

1.1 "Disclosing Party" shall mean any Party or non-party that is disclosing Discovery Material to a Receiving Party.

1.2 "Receiving Party" shall mean any Party that is receiving Discovery Material from a Disclosing Party.

1.3 "Discovery Material" shall mean any Information that may be made subject to discovery under The Trademark Rules of Practice, (15 USC 1051 et seq.); Parts 3, 7 and 10 of 37 Code of Federal Regulations ("CFR"), the United States Patent and Trademark Rules and the Federal Rules of Civil Procedure, as modified by the Trademark Rules of Procedure and part 37 of the CFR. The Disclosing Party may designate any Discovery Material as PRIVATE or CONFIDENTIAL. For purposes of this Protective Agreement, any Discovery Material produced by a present or former officer, director, employee, partner, member, spouse, or agent of a Disclosing Party, which belongs to or is provided on behalf of the Disclosing Party, shall be deemed to have been produced by that Disclosing Party, who shall have the right to designate such documents as PRIVATE or CONFIDENTIAL.

1.4 "Information" includes, but is not limited to oral or written information, documents, data, or things, whether tangible or intangible; whether in hard copy, stored on magnetic or other media, stored in an electronic storage device or stored in an undefined location, but which is nonetheless capable of being recalled on demand and viewed; whether owned by, under the command or control of, or held for the benefit of a Party, whether in possession of an employee, agent or contractor of a Party; and shall include, but not be limited to internal notes; minutes; corporate resolutions; internal and external memoranda; e-mails; correspondence; public and nonpublic marketing materials; marketing plans; notes and reports pertaining to marketing discussions; market test and polling results; requests for demographic data; demographic data, whether accumulated internally or externally; trademark search parameters and results; instructions, explanations or discussions to or from

third parties pertaining to marketing, demographics or business plans; accounting Information, accounting estimates, and financial plans; business and product plans and reports; calendars; photographs, drawings, and graphs; tax returns; customer and supplier Information; released and unreleased product Information; models and prototypes, or any materials.

1.5 "PRIVATE Information" is Information that a Party in good faith indicates, in whole, in part or in combination with other Information, has been subject to efforts that are reasonable under the circumstances to maintain its privacy and security and is Information that should be shielded by the Parties and TTAB from public access.

1.6 "CONFIDENTIAL Information" is Information that a Party in good faith indicates, in whole, in part or in combination with other Information, is a) considered a trade secret or b) has been subject to efforts that are reasonable under the circumstances to maintain its privacy, security or secrecy, even if such Information does not meet the definition of a trade secret, and is Information that should be shielded by the TTAB from 1) public access and 2) be subject to restrictions on access, disclosure, use or distribution by the Parties; their attorneys, other Qualified Persons and the TTAB.

1. "RESTRICTED Information" is any Information that is designated as either PRIVATE or CONFIDENTIAL Information.

1.10 Any RESTRICTED Information disclosed orally may be designated as PRIVATE or CONFIDENTIAL Information at the time such oral statement is disclosed or within five (5) days after the Disclosing Party becomes aware of such disclosure. Any RESTRICTED Information disclosed orally, at a time when a recording of such disclosure was being made, may be designated as PRIVATE or CONFIDENTIAL

Information at the time such oral statement is made or at any time thereafter. Any RESTRICTED Information disclosed orally, during a deposition, meeting or phone conference at which a transcript is being made, may be designated as PRIVATE or CONFIDENTIAL Information before the transcribing officer, at the time such RESTRICTED Information is disclosed or at the time the written transcript is received by the Disclosing Party for review and signature. The transcribing officer shall be instructed by the Disclosing Party as to how to stamp or mark the transcript, in compliance with the requirements set forth hereafter.

2. RESTRICTED Information may be included in responses in any formal or informal requests made pursuant to the TTAB Rules or the Federal Rules of Civil Procedure ("FRCP"), as follows: i) documents produced under the TTAB Rules and FRCP 34 and all Information derived therefrom, and all copies, excerpts, summaries or notes thereof; ii) documents produced pursuant to subpoenas under TTAB Rules and FRCP 45 and all Information derived therefrom, and all copies, excerpts, or summaries thereof; iii) responses to Requests to Admit made pursuant to TTAB Rules and FRCP 36 of the Federal Rules of Civil Procedure and all Information derived there from, and all copies, excerpts, or summaries thereof; iv) responses to Interrogatories made pursuant to TTAB Rules and FRCP 33 and all Information derived therefrom, and all copies, excerpts, or summaries thereof; and v) transcripts of depositions taken under TTAB Rules and FRCP 30 or FRCP 31 and all Information derived therefrom, and all copies, excerpts, summaries or notes thereof; vi) Information provided as the result of the Discovery Conference, vii) all other Information, testimony and documents produced pursuant to the TTAB Rules and FRCP 26 through 37; viii) Information discovered or obtained by Receiving Party, through informal

means, even if the opposing party was initially unaware the Information had been provided and ix) all Information obtained from any computer disks, computer memory, or electronic storage, not limited to computers or electronic storage devices owned or controlled by the Providing Party, which Information a) does not pertain to the proceedings at issue in this Opposition or b) fit within the either form of RESTRICTED Information, as defined in this Agreement.

2.1 RESTRICTED Information may not be used, modified, enhanced, reverse engineered, shared, distributed, published, disclosed or disseminated by any Receiving Party or any other Qualified Person (as defined hereafter), or any person, firm, company or entity receiving RESTRICTED Information subject to this Agreement, for any business or competitive purpose; in any legal proceeding, other than the within proceeding; for the purpose of causing embarrassment, humiliation, emotional distress or financial distress; or for any other purpose, not solely in connection with this Opposition, including any appeals of this proceeding.

2.2 Any requested Information that is deemed by the Disclosing Party to be privileged, shall not be provided to the Requesting Party. In its place, Disclosing Party shall prepare and submit to Requesting Party a Privilege Log, in which the nature of the Information is identified with sufficient clarity to permit Requesting Party to challenge the claim of privilege, should it choose to do so.

3. "Qualified Persons" include a) the TTAB and its personnel; (b) the law firms representing each Party and their support personnel (including photocopy operators and any independent contractors hired by any party to make photocopies of documents containing RESTRICTED Information); (c) Opposer(s); (d) Applicant(s); (e) authors,

composers, drafters, or creators of the RESTRICTED Information; (f) any expert witnesses or consultants hired by any Party (hereafter jointly "Expert") for purposes of this proceeding. With regard to any Party that is not an individual, "Qualified Persons" shall include a single individual selected by that Party to represent its interests, and such additional individuals who have "a need to know" of such RESTRICTED Information in connection with the prosecution or defense of the within proceeding. Such "additional individuals" shall view only that portion of the RESTRICTED Information that is necessary based upon the purpose for which the RESTRICTED Information is provided.

3.1 Before RESTRICTED Information is provided to any Expert or other individual not a party to this proceeding, each such person shall endorse this Agreement, acknowledging his/her/their/its understanding of this Agreement and the duty to maintain such material as required by the appropriate category of RESTRICTED Information.

3.2 A Party seeking to disclose RESTRICTED Information to a non-party shall, prior to disclosure and in sufficient time to permit Disclosing Party to oppose the disclosure, submit a Notice of the Intent to Disclose to counsel for the Disclosing Party. If disclosure of the RESTRICTED Information to such non-party creates a reasonable likelihood that such disclosure may cause harm to the Disclosing Party, in any manner in which this Agreement attempts to prevent, counsel may file a Motion Objecting to Disclosure with the TTAB within fifteen (15) days after receiving such notice, with an attached Memorandum stating the grounds for such objection. In the event of such an objection, the TTAB shall determine whether there is a reasonable likelihood that disclosure may harm the Disclosing Party in any manner in which this Agreement attempts to prevent. If the TTAB finds there is such a danger, the TTAB may a) refuse permission to disclose the RESTRICTED Information; b)

permit limited disclosure of RESTRICTED Information, or c) permit disclosure upon such terms and limitations as the TTAB may determine. In the event of such a Motion, the RESTRICTED Information will not be disclosed until the TTAB has ruled.

3.3 Nothing in this Agreement shall prohibit the transmission or communication of RESTRICTED Information between or among Qualified Persons by: (a) hand delivery, face-to-face conference or in sealed envelopes or containers via the mails or an established freight, delivery or messenger service or (b) by telephone, facsimile, e-mail or other electronic transmission systems (if, under the circumstances, there is no reasonable likelihood that the transmission will be intercepted or misused).

3.4 Counsel for the Qualified Persons to whom RESTRICTED Information has been produced shall employ reasonable safeguards to control access and duplication of all such RESTRICTED Information. Counsel for each Party shall maintain all documents, transcripts and materials containing RESTRICTED Information and copies thereof in controlled access locations.

4. RESTRICTED Information, if in written form, shall be stamped on the face or cover of the writing, or shall otherwise be clearly marked: "PRIVATE" or "CONFIDENTIAL" as the case may be. The stamps shall be affixed in such a manner that the written material is not obliterated or obscured, to the extent possible.

4.1 Any Party may move that any RESTRICTED Information designation for particular materials be set aside by showing that the Party's prosecution or defense of the proceeding would be substantially harmed by such limitation. Any Party may move that a claim that material is privileged may be set aside by showing that such material does not meet the qualifications for a claim of privilege. Such Motions shall be served on each Party

and, in a challenge to the designation of Information as RESTRICTED Information, upon the Designating Party, if the Designating Party is not a Party to the proceeding. Any other Party or the Designating Party in a challenge to the designation of Information as RESTRICTED Information may oppose such Motion. Upon receiving such a Motion, the TTAB shall review the written arguments for and against removal of the designation or claim of privilege and hold an *in camera* inspection of the materials if it deems it necessary. If the TTAB finds the Motion to be well taken, the TTAB shall establish to what extent and how such material shall be provided, so as to best maintain its confidentiality. Such material shall continue to be considered within its designated category of RESTRICTED Information or privileged Information under this Agreement, for all other purposes.

4.2 Any Party wishing to use CONFIDENTIAL Information as an exhibit to a Motion, may file the exhibit under seal. Any Party wishing to obtain testimony regarding CONFIDENTIAL Information shall first have the testifying witness(es) sign and become bound to this Agreement. Any Party wishing to use CONFIDENTIAL Information before the TTAB, shall submit the CONFIDENTIAL Information under seal.

5 Any document not designated within one of the categories of RESTRICTED Information at the time it was originally disclosed, may be so designated at a later time. The document shall from that time on be designated as under the claimed category of RESTRICTED Information and shall be treated as such from that date forward. No Party shall be responsible for any disclosure of material made prior to its designation as RESTRICTED Information.

6. Each item of RESTRICTED Information shall remain classified under its category of RESTRICTED Information for the purposes of this Agreement until such time

as it is declassified by agreement of the Parties and/or the Designating Party, including after this proceeding and all appeals are concluded. All Qualified Persons shall remain bound by this Agreement to protect such Information after this proceeding and all appeals are concluded.

6.1 RESTRICTED Information may be used by the Qualified Persons solely for the purposes of this proceeding, including any appeals. RESTRICTED Information shall not be used or disclosed for any other purpose and shall not be revealed, disclosed or made available for inspection and copying to any person except for Qualified Persons, without the express written consent of the Disclosing Party or by TTAB order. If, however, a person with access to such RESTRICTED Information in any legal or regulatory proceeding is required or ordered to disclose any RESTRICTED Information, then notice shall be provided to the Disclosing Party to afford the Disclosing Party the opportunity to seek relief.

6.2 Nothing in this Protective Agreement shall be construed in any way to deprive any Party or non-party of any rights he/she/it may otherwise have under the TTAB Rules, FRCP or the Federal Rules of Evidence including, but not limited to: a) the right to object to any discovery request on any ground; b) the right to issue subpoenas and/or seek an order compelling discovery with respect to any discovery requests; c) the right to seek a contested Protective Order to prevent discovery with respect to any discovery requests; d) the right to object to the admission of any evidence on any ground; e) the right to assert the attorney-client privilege or the work-product doctrine; f) the right to assert any other privilege, claim, or defense, to the use or non-use of such RESTRICTED Information; g) the right to use its own documents with complete discretion.

6.3 Nothing in this Protective Order shall be construed to preclude a Disclosing Party from seeking further protective orders for any RESTRICTED Information that is or becomes particularly sensitive, including a Disclosing Party's right to request that RESTRICTED Information be filed with the TTAB under seal.

7. The Parties acknowledge that it may be impractical to immediately assess the confidentiality or the level of confidentiality of all or any part of such documents or testimony.

7.1 Receipt of RESTRICTED Information shall not be construed as an agreement or waiver that such Information meets the definitions of any of the categories of RESTRICTED Information provided in Paragraph 1. Further, neither the providing of RESTRICTED Information nor the receipt of RESTRICTED Information constitutes an agreement that the Information is either relevant or admissible in evidence for any purpose.

7.2 In order to facilitate discovery, the Parties acknowledge that inadvertent production of Information that is not properly designated as RESTRICTED Information or privileged information shall not be deemed to be: (a) a waiver of the attorney-client privilege; (b) a waiver of the work product privilege; (c) a waiver of any other privilege or objection; or (d) a waiver of the right to designate the Information as some form of RESTRICTED Information thereafter.

8. RESTRICTED Information shall be maintained at all times in the custody of counsel for the Receiving Party or a Qualified Person and shall be labeled and secured in a manner designed to prevent any disclosure to persons who are not Qualified Persons under this Agreement. Subject to other provisions of this Agreement, this paragraph does not prohibit counsel from providing copies of relevant Information to expert witnesses or

consultants who have agreed to be bound to this Agreement. Nor does it prohibit the filing of documents or exhibits in the TTAB, so long as such documents are filed under the provisions hereof.

9.1 To the extent that a deposition involves some form of RESTRICTED Information, the court reporter shall mark those portions of such deposition transcript(s) that concern the RESTRICTED Information with the legends "PRIVATE Information" or "CONFIDENTIAL Information", as the case may be, and shall place on the cover of the transcript the following legend:

THIS TRANSCRIPT CONTAINS INFORMATION DESIGNATED RESTRICTED INFORMATION AND SUBJECT TO A PROTECTIVE AGREEMENT APPROVED BY THE TTAB. IF THIS TRANSCRIPT IS FILED WITH THE TTAB, IT MUST BE FILED UNDER SEAL.

9.2 Any RESTRICTED Information which is filed with the TTAB, and any pleading, deposition, discovery, motion, memorandum or other filing with the TTAB, disclosing any RESTRICTED Information or in which RESTRICTED Information is included or attached, shall be filed under seal, in a sealed envelope on which will be endorsed with the title of the proceeding, the TTAB proceeding number, an indication of the nature of the contents of the sealed envelope (i.e. Plaintiff's Motion for Summary Judgment, Affidavit of Defendant), and a statement substantially in the following form:

THIS ENVELOPE CONTAINS DOCUMENTS AND/OR TESTIMONY WHICH HAVE BEEN FILED BY [NAME AND PARTY] AND DESIGNATED AS RESTRICTED INFORMATION AND SUBJECT TO THE TERMS OF A PROTECTIVE AGREEMENT APPROVED BY THE TTAB. IT IS NOT TO BE OPENED NOR THE CONTENTS DISPLAYED OR REVEALED EXCEPT BY ORDER OF THE TTAB OR AT THE REQUEST OF THE FILING PARTY.

To the extent RESTRICTED Information has already been filed, such Information shall be deemed to have been filed under seal if it was filed in a sealed envelope and marked "Filed Under Seal." In the event that it is necessary to take any action to protect RESTRICTED Information, the parties are directed to coordinate such proceedings with the TTAB clerk and, if necessary, to seek assistance from the TTAB.

9.3 Subject to the TTAB Rules and the Federal Rules of Evidence, RESTRICTED Information of a Party may be used in the TTAB as follows:

9.3.1 The Parties shall refrain from referring to any RESTRICTED Information, except under such conditions and safeguards as agreed, in any Notice of Reliance. The Party designating the Information as RESTRICTED Information may not object to the Notice of Reliance as inadequate merely for the reason that RESTRICTED Information was protected therein.

9.3.2 In the event that a Party wishes to use any RESTRICTED Information in any affidavits, documents or other Information filed with the TTAB in this proceeding, any such document containing RESTRICTED Information shall be filed under seal and maintained under seal by the TTAB. A rule of reasonableness should dictate how to proceed with the least interference with the Information provided.


9.3.3 RESTRICTED Information used in pleadings, briefs or memoranda that reproduce, discuss or paraphrase such Information shall be filed with the TTAB under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

**THIS ENVELOPE CONTAINS BRIEFS, MEMORANDA
AND/OR TESTIMONY WHICH HAVE BEEN FILED BY
[NAME AND PARTY] AND DESIGNATED AS
RESTRICTED Information AND SUBJECT TO THE**


13th day FEBRUARY, 2013

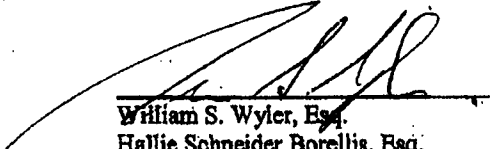
Agreed this 14 day of February, 2012.

Champion Window Manufacturing
and Supply Co., LLC.

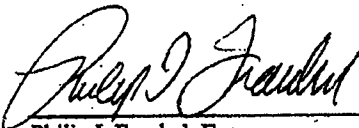
By: 
(Signature)
DONALD R. JONES
(Print Name)
PRESIDENT
(Title)

Comfort Window Co., Inc.

By: 
(Signature)
Alfred T. Gentile
(Print Name)
G.M.
(Title)


William S. Wyler, Esq.
Hallie Schneider Borellis, Esq.
SCHWARTZ, MANES, RUBY & SLOVIN
2900 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202
Telephone: (513) 579-1413
Facsimile: (513) 579-1418
E-mail: wwyler@smrslaw.com
hborellis@smrslaw.com

Attorneys for Opposer
Champion Window Manufacturing and
Supply Co., LLC


Philip I. Frankel, Esq.
BOND, SCHOENECK & KING,
PLLC
One Lincoln Center
Syracuse, NY 13202-1355
Telephone: 315.218.8127
Facsimile: 315.218.8427
Email: frankel@bsk.com

Attorneys for Applicant
Comfort Window Co., Inc.