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Filing date: **03/08/2016**

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

Proceeding	91224476
Party	Plaintiff McKee Foods Kingman, Inc.
Correspondence Address	Sandra Edelman Dorsey & Whitney LLP 51 West 52nd Street New York, NY 10019-6119 UNITED STATES ny.trademark@dorsey.com, edelman.sandra@dorsey.com, sun- derji.fara@dorsey.com
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Signature	/se/
Date	03/08/2016
Attachments	91224476 STIPULATED PROTECTIVE ORDER.pdf(450566 bytes)

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; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the approval of the designating party.

4. 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 are also 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.

- a. **Parties** are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.
 - b. **Attorneys** for parties are defined as including **in-house counsel** and **outside counsel**, including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.
 - c. **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.
 - d. **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.
- **Parties** and their **attorneys** shall have access to information designated as **confidential** or **highly confidential**, subject to any agreed exceptions.
 - The following designated business representatives of the parties shall have access to information designated as **highly confidential**:
 - For Opposer:
 - Jeff Badger, Director of Granola, Cereal, and Specialty Brands, McKee Foods Corporation

- Kenny Hammontree, Product Manager – Sunbelt Bakery, McKee Foods Corporation
- For Applicant:
 - Ross Foca, President – Coastal Sunbelt Produce, LLC
 - Jessica Amodeo, Marketing Associate – Coastal Sunbelt Produce, LLC
- **Independent experts, consultants and non-party witnesses** may be afforded access to **confidential or highly confidential** information in accordance with the terms that follow in Paragraph 5.

5. Disclosure to Independent Experts, Consultants and Non-Party Witnesses.

Prior to disclosure of protected information by any party or its attorney to an independent expert, consultant or non-party witness in accordance with the terms of Paragraph 4, 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. Further, the independent expert, consultant or non-party witness shall certify that he or she is not a direct competitor or employee of a direct competitor of the disclosing party. 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. The party or attorney receiving the completed form shall retain a copy of the certification.

6. 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 on each page 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 12.

7. 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 on each page, as necessary, with the appropriate designation from Paragraph 1. Any inadvertent disclosure of any privileged or otherwise protected materials shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error and the appropriate designation. The information shall thereafter be treated, disclosed to, and/or copies retained by authorized persons according to such designation. Such inadvertent disclosure shall not be deemed a waiver or impairment of any claim of privilege or protection including, but not limited to, the subject matter thereof. Upon receiving written notice from the disclosing party that materials asserted to be privileged have been inadvertently produced, the

receiving party shall promptly return to the disclosing party or destroy all such materials within five (5) business days of receipt of such notice. The same shall apply to any non-party who voluntarily or under subpoena produces documents in this proceeding. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of Paragraph 12.

8. 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 on each page 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, and no extension of the 30-day period has been mutually agreed to, then 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 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.

10. 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 12 of this order.

11. 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.

12. 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 effected 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.

13. 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 or privileged, including but not limited to the attorney-client privilege and the protection afforded to work product materials, upon discovery of the error.

14. 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.

15. 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 may agree that archival copies of evidence and briefs may be retained, subject to compliance with agreed safeguards. Otherwise, within 30 days after the final termination of this proceeding, the parties and their attorneys shall return to each disclosing party the protected information disclosed during the proceeding, and shall include any briefs, memoranda, summaries, and the like, which discuss or in any way refer to such information. In the alternative, the disclosing party or its attorney may make a written request that such materials be destroyed rather than returned.

16. 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:

March 7, 2016

By: 

Sandra Edelman, Esq.
Eara S. Sunderji, Esq.
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New York, New York 10019
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By: 

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Attorneys for Opposer
McKee Foods Kingman, Inc.

Attorneys for Applicant
Coastal Sunbelt Produce, LLC

By Order of the Board, effective _____.

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

MCKEE FOODS KINGMAN, INC.,	X	
	:	
Opposer,	:	Opposition No. 91224476
	:	
v.	:	
	:	
COASTAL SUNBELT PRODUCE, LLC,	:	
	:	
Applicant.	:	
	X	

**ACKNOWLEDGEMENT OF
ORDER PROTECTING CONFIDENTIALITY OF
INFORMATION REVEALED DURING BOARD PROCEEDING**

I, _____, declare that I have been provided with a copy of the 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 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 also hereby certify that I am not a direct competitor or an employee of a direct competitor of the party disclosing the confidential information.

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

Name: _____

Signature: _____

Date: _____