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Filing date: **03/11/2005**

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

Proceeding	92042011
Party	Plaintiff PLAYTEX PRODUCTS INC ,
Correspondence Address	D. REEVES CARTER CARTER LEDYARD & MILBURN LLP 2 WALL STREET NEW YORK, NY 10005
Submission	Stipulated Protective Order and cover letter
Filer's Name	Diane Melnick
Filer's e-mail	melnick@clm.com
Signature	/diane melnick/
Date	03/11/2005
Attachments	Protective Order -- Avent.pdf (14 pages) LETTER RE PROTECTIVE ORDER.txt (1 page)

PLA14811

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January 30, 2004

VIA EXPRESS MAIL

United States Patent and Trademark Office
Trademark Trial and Appeals Board
2900 Crystal Drive
Arlington, VA 22202-3514

RE: Playtex Products, Inc. v. Cannon Rubber Limited
Cancellation No. 9204211
Our Ref: PLA14 811

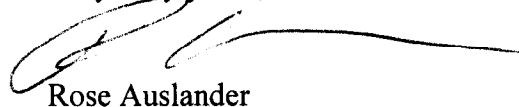
Dear Sir/Madam:

Enclosed for filing on behalf of the parties for the above cancellation are the following:

- (1) A Stipulated Protective Order;
- (2) A self-addressed, stamped postcard for acknowledgment.

Please do not hesitate to contact me at the above number should you have any questions or require further information.

Very truly yours,



Rose Auslander

RA:sam
Enclosures

"Express Mail" mailing label No. <u>ET753609821 US</u>	Date of Deposit <u>January 30, 2004</u>
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3514	
<u>Sarah A. Marciano</u> (Printed name of person mailing paper or fee)	<u>Sarah A. Marciano</u> (Signature)

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

PLAYTEX PRODUCTS, INC.,)	
)	
Petitioner,)	Cancellation No. 9204211
)	
-against-)	
)	
CANNON RUBBER LIMITED,)	
)	
Registrant.)	

STIPULATED PROTECTIVE ORDER

UPON STIPULATION of the parties to this proceeding, it is hereby ORDERED by the Trademark Trial and Appeal Board ("Board"), pursuant to 37 C.P.R. §2.120(f), that:

1. This Stipulated Protective Order (the "Order") shall govern all documents and other discovery materials produced in response to the parties' discovery requests, all information derived therefrom, and all copies, excerpts or summaries thereof, including but not limited to documents produced pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, answers to requests for admissions, answers to interrogatories, documents subpoenaed in connection with depositions, and any deposition transcript, or any portion thereof, as to which confidential status is requested in good faith by either party.

2. For purposes of this Order, "Confidential Information" shall mean trade secrets or other confidential or proprietary research, development or commercial information that is not publicly known, or cannot be compiled from public sources without substantial efforts and/or expenses, and is of technical or commercial advantage to its possessor including, but not limited to, any and all sales-related information (including, but not limited to sales data, pricing data, customer lists, customer names, customer contacts, customer characteristics and customer

services); shipping data (including, but not limited to, shipment size and date); information concerning wholesalers, distributors and retailers; manufacturing costs; quality control measures; profit margins; and marketing and strategic planning information (including, but not limited to, product distribution, product placement, point-of-sale displays, market sales, market surveys, market analysis, statistical, summary and demographic marketing information).

3. Any party may designate as "Confidential Information" any sensitive, proprietary or otherwise confidential information that the party has good faith reason to believe is not known or available to the public, whether it be a document, part of a document, information contained in a document, a thing, information revealed during a deposition, information revealed in an interrogatory answer, or other form of evidence or discovery.

4. All Confidential Information produced or exchanged in the course of this proceeding shall be used by the receiving party solely for the purpose of this action.

5. Information shall be designated as "Confidential Information" in the following manner:

(a) Whenever, in the opinion of one of the parties, a disclosure of information obtained in this action will reveal matters that the producing party deems to constitute confidential information, such party shall have the right to designate such information as "CONFIDENTIAL."

(b) In the case of written information or otherwise recorded information, or tangible things, designation shall be made by marking the documents, recordings, or things containing Confidential Information "CONFIDENTIAL", such marking to be made no later than when such copies of things are produced to the receiving party.

(c) Any deposition testimony in this action that concerns any document, material or information designated as "CONFIDENTIAL" shall be subject to the terms of this Order. The

producing party may designate any portion of testimony as "CONFIDENTIAL" at the time of the deposition or by notifying opposing counsel in writing of its "CONFIDENTIAL" designations within fifteen (15) days of receipt of the transcript. During said fifteen-day period, the entire deposition transcript shall be deemed to contain "CONFIDENTIAL" material. The inadvertent failure by any party to designate as "CONFIDENTIAL," portions of any deposition transcript during the course of said deposition shall be without prejudice to the parties' rights under this Order. No person other than those individuals bound by this Order shall be permitted to attend any portion of a deposition or hearing (unless the Board shall order otherwise) during which there is to be disclosure or discussion of information designated as "CONFIDENTIAL."

(d) In the case of responses to interrogatories or other discovery requests, affidavits, briefs, memoranda or other papers filed with the Board, information contained therein may be designated as Confidential Information by prominently marking such paper "CONFIDENTIAL."

6. Information designated as "CONFIDENTIAL" consistent with the procedures of Paragraph 3 hereof shall be disclosed only to (i) outside counsel for the parties; (ii) employees of outside counsel, including legal assistants, secretaries, and clerical personnel; (iii) the judges, attorneys, paralegals and other employees of the Board (the "Staff"); (iv) court reporters or stenographers recording and preparing deposition transcripts; and (v) any person indicated or identified as the author, contributor or recipient of a specific "CONFIDENTIAL" document. In no event shall Confidential Information be disclosed, made available, or otherwise communicated to the parties, or to directors, officers or employees of the parties without leave of the Board.

7. Notwithstanding the previous paragraph, counsel may disclose information designated "CONFIDENTIAL" to expert witnesses and consultants who are directly employed

or retained in connection with this action, to the extent necessary for the preparation of this action for hearing, trial, or appeal, so long as prior to any disclosure to any such person of "CONFIDENTIAL" information, the person to whom disclosure is to be made executes a copy of the agreement to be bound by the terms of this Order attached hereto as "EXHIBIT A." Such signed agreements shall be retained by the party disclosing "CONFIDENTIAL" information to such persons.

8. Documents designated as "CONFIDENTIAL" may be marked and used at depositions so long as they are not disclosed to any person to whom disclosure is prohibited under this Order.

9. In the event that the producing party fails to designate information or documents as "CONFIDENTIAL" at the time of production, said party may retroactively designate such material by giving notice in writing to counsel for the receiving party, together with a properly-designated copy of any such document. Upon receipt of such notice, the receiving party shall return copies of the document that do not bear the "CONFIDENTIAL" designation and shall make a reasonable attempt to retrieve all copies of such documents distributed to any persons not covered by this Order and to advise them of the confidentiality of the information. No party shall be liable under the Order for distribution of such documents, otherwise consistent with the terms of this Order, prior to receipt of notice that the document shall be designated as "CONFIDENTIAL."

10. The inadvertent production of any document or other information during discovery in this action shall be without prejudice to any claim that such material is privileged or protected from discovery as work product within the meaning of Rule 26 of the Federal Rules of Civil Procedure and the producing party shall not be held to have waived any rights by such inadvertent production. Upon receipt of written notice, any material so produced and

reasonably subject to a claim of privilege or a claim of work product shall immediately be returned to the producing party and/or expunged, even in the event that the producing party has failed to make such a claim of privilege due to lack of knowledge that such a production was made. Such material shall not be introduced into evidence in this action or in any other proceeding by any person without the consent of the producing party or an order from the Board.

11. Nothing herein shall preclude any of the parties from making application to the Board at any time for an order modifying any of the terms hereof or contesting the confidential designation of any material, nor shall anything herein preclude (a) the Board from granting such an application; (b) any party from seeking at any time additional protective orders pursuant to the Federal Rules of Civil Procedure; or (c) the parties consenting in writing to disclosure of the Confidential Information.

12. In designating information as Confidential Information, the producing party will make such designation only as to that information that it in good faith believes to be confidential. A party shall not be obligated to challenge the propriety of a confidentiality designation at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. In the event that a party objects at any stage of this proceeding to a confidential designation, the parties shall first try to resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting party may seek appropriate relief from the Board. Upon any motion for such relief, the party asserting that information is confidential shall have the burden of establishing the same. Any information that has been produced and designated "CONFIDENTIAL" and that becomes the subject of a timely motion concerning any designation of confidentiality will be treated as so designated and subject to the terms of this Order until the Board has ruled on the motion.

13. Nothing shall be regarded as Confidential Information if it is information that either:

(a) is in the public domain at the time of disclosure, provided, however, that such information and compilations thereof that cannot be compiled from public sources without substantial effort and expense shall be deemed "CONFIDENTIAL";

(b) becomes part of the public domain, through no fault of the receiving party, provided, however that such information and compilations thereof that cannot be compiled from public sources without substantial effort and expense shall be deemed "CONFIDENTIAL"; or

(c) the receiving party can establish that a written document containing the information was in its possession prior to its disclosure by the producing party.

14. The Staff is directed to maintain under seal all documents, things, transcripts of deposition testimony or proceedings, answer to interrogatories and other materials and papers filed with the Board in this action that have been designated, in whole or in part, as Confidential Information by a party to this action. To assist the Staff, any document or object that a party wishes to have placed under seal pursuant to this Order shall be filed in a sealed envelope or other appropriate sealed container, which shall be endorsed with the title and docket number of this action, an identification of the nature of the contents of the sealed container or envelope, the words "CONFIDENTIAL UNDER PROTECTIVE ORDER" or the like and a statement substantially in the following form:

This envelope (or container) containing documents, which are filed in this action by [name of party], is not to be opened nor the contents thereof to be displayed or revealed except by order or under direction of the Board.

15. In the event that a party wishes to use any Confidential Information in any affidavits, briefs, memoranda of law, or other papers filed with the Board in this action, such Confidential Information used therein shall be filed under seal. To the extent that only a portion

of a document filed by counsel quotes or summarizes confidential information, that document will be subject to the terms of this Order, and counsel shall comply with the provisions of paragraph 3(b) herein.

16. Upon request of the producing party, after the conclusion of this proceeding, including all appeals and/or deadlines for appeal, all originals and reproductions of any documents and things produced by a party subject to a confidential designation shall be returned to the producing party, or shall be destroyed, and counsel shall provide written certification of such return or destruction to the producing party. Notwithstanding the foregoing, counsel may retain copies of documents containing information designated as "CONFIDENTIAL" that were submitted to the Board as evidence or as part of other court papers, including motions and memoranda of law. Insofar as the provisions of this Order restrict the communication and use of the documents and things produced thereunder, this Order shall continue to be binding after the conclusion of this action except that there shall be no restriction on the use of information (a) that is in the public domain or that subsequently becomes part of the public domain without fault of the receiving party, provided, however, that such information and compilations thereof cannot be compiled from public sources without substantial effort and expense; (b) that is information known to a party prior to the filing of this action; (c) that the parties agree in writing may be disclosed; (d) the disclosure of which is mandated by law, or by order of any Court of competent jurisdiction, in which case the receiving party shall take all practicable steps to preserve the confidentiality of such documents, such as producing them only pursuant to an order of confidentiality; or (e) if there is an order from the Board with respect to dissolution or modification of this Order.

17. This Order has no effect upon, and shall not apply to, a party's use of its own Confidential Information for any purpose.

18. This Order shall be binding upon the parties, their successors and assigns.

19. Upon execution of this Order, the parties agree to be bound to its terms as if the Board had so ordered it.

SO ORDERED:

TRADEMARK TRIAL AND APPEAL BOARD

ACCEPTED AND AGREED TO:

CARTER LEDYARD & MILBURN LLP

Date: 1/28/04

BY: 

Rose Auslander, Esq.
Two Wall Street
New York, NY 10005
Attorneys for Petitioner

Date: 1/26/04

BY: 

William N. Howard, Esq.
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, IL 60606-6677
(312) 360-6415
Attorneys for Registrant

EXHIBIT A

CONFIDENTIALITY AGREEMENT

1. My name is _____.

2. I work at _____, and my title is _____.

and I have been retained by _____ as an expert witness/consultant for the purpose of this proceeding.

3. I have read and agree to be bound by the terms of the Stipulated Protective Order in this action. More particularly, I agree (1) that any information designated "CONFIDENTIAL" pursuant to the Stipulated Protective Order is confidential; (2) that I shall not disclose any such Confidential Information which is disclosed to me to anyone else; (3) that any such Confidential Information, which is disclosed to me, shall not be used for any purpose other than hearing, trial or appeal, or for preparation for hearing, trial or appeal of this action; and (4) that all originals and copies of any documents designated as "CONFIDENTIAL" or containing Confidential Information shall be returned by me to the counsel for the party on whose behalf I was retained upon the conclusion of my activities in connection with this proceeding.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Stipulated Protective Order was served by prepaid, first-class mail upon Registrant's attorney, William N. Howard, Freeborn & Peters LLP, 311 South Wacker Drive, Suite 3000, Chicago, IL 60606-6677 this 30th day of January, 2004.

Sarah A. Marciano

Sarah A. Marciano

Cancellation No. 9204211 Docket No. PLA14 811

Petitioner Playtex Product, Inc.
 Registrant Cannon Rubber Limited

The following documents were received in the Patent and Trademark Office Mail Room on the date stamped hereon.

- | | |
|--|---|
| <input checked="" type="checkbox"/> Transmittal Letter | <input type="checkbox"/> Declaration of Use
Sec. 8 ___ Sec. 8/15 ___ |
| <input type="checkbox"/> Application for Reg. of {TM} or {SM} | <input type="checkbox"/> Renewal Application |
| <input type="checkbox"/> Specimen(s) | <input type="checkbox"/> Assignment, Merger, Change of Name |
| <input type="checkbox"/> Response to Office Action | <input type="checkbox"/> Power of Attorney |
| <input type="checkbox"/> Request for Extension of Time to File | <input type="checkbox"/> Express Abandonment |
| <input type="checkbox"/> Statement of Use | <input type="checkbox"/> Request for Extension of Time to
File Notice of Opposition |
| <input type="checkbox"/> Statement of Use | <input type="checkbox"/> Certificate of Mailing |
| <input type="checkbox"/> Amendment to Allege Use | <input checked="" type="checkbox"/> Certificate of Mailing by Express
Mail, Label No. <u>ET 753609821 US</u> |
| <input type="checkbox"/> Check in the amount of \$ _____ | |
| <input type="checkbox"/> Authorization to Charge Deposit Account | |
| <input type="checkbox"/> Domestic Representative | |
| <input checked="" type="checkbox"/> Other _____ | |

Stipulated Protective Order Jan 30, 2004
 (Original) Mailed: _____
ET 753609821 US



POST OFFICE TO ADDRESSEE



ORIGIN (POSTAL USE ONLY)		
PO ZIP Code	Day of Delivery <input type="checkbox"/> Next <input type="checkbox"/> Second	Flat Rate Envelope <input type="checkbox"/>
Mo. Day Year	<input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM	Postage \$
Time In <input type="checkbox"/> AM <input type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee
Weight lbs. ozs.	Int'l Alpha Country Code	COD Fee Insurance Fee
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials	Total Postage & Fees \$

DELIVERY (POSTAL USE ONLY)		
Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
Delivery Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
<input type="checkbox"/> WAVES OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.		
NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday		
Customer Signature _____		

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FROM: (PLEASE PRINT) PHONE () Rose Auslander, Esq. Carter Ledyard & Milburn LLP 2 Wall Street New York, New York 10005 PLA14 811	

Federal Agency Acct. No. or Postal Service Acct. No.	
TO: (PLEASE PRINT) PHONE () Playtex NO FEE - TTAB Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3514 ZIP + 4	

Mailing Label Label 11-B May 2001

Rose Auslander, Esq.
Carter Ledyard & Milburn LLP
2 Wall Street
New York, NY 10005



Carlsbad Caverns National Park, NM

March 11, 2005

VIA ELECTRONIC MAIL

United States Patent and Trademark Office
Trademark Trial and Appeals Board
P.O. Box 1451

Arlington, VA 22313-1451

RE: Playtex Products, Inc. v. Cannon Rubber Limited

Cancellation No. 92042011

Our Ref: PLA14 811

Dear Sir/Madam:

Enclosed please find the following materials: (1) a cover letter, dated January 30, 2004, requesting a filing on behalf of the parties; (2) a Stipulated Protective Order; and (3) a self-addressed, stamped postcard for acknowledgment.

I understand that the Stipulated Protective Order was not filed because the proceeding was misidentified as Cancellation No. 9204211, rather than Cancellation No. 92042011.

Please file the Stipulated Protective Order on behalf of the parties for the above Cancellation No. 92042011.

Please do not hesitate to contact me at the above number should you have any questions or require further information.

Very truly yours,

D. Reeves Carter

DRC:pf

Enclosures

Michael Denison, Esq.

-1-

1296195.1