

# OPPENHEIMER

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# TTAB

August 1, 2007

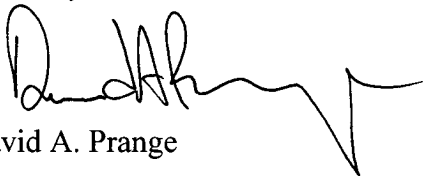
Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451

**Re: Nilfisk Advance, Inc. v. US Jesco International Ltd., Inc.**  
**Cancellation No. 92046822**  
**Mark: EURO CLEAN**  
**Registration No. 2,534,565**

To Whom it May Concern:

Enclosed for filing with your office, please find a Protective Order and Agreement to Maintain Confidentiality, along with a Certificate of Service by US Mail.

Sincerely,




David A. Prange

DAP/kp

Enclosure

cc: R. Bennett Ford, Jr., Esq. (with enclosure)



08-06-2007

U.S. Patent & TMO/TM Mail Rcpt Dt. #01

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

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Nilfisk-Advance, Inc.,

Cancellation No. 92046822

Petitioner,

Mark: EURO CLEAN

v.

Registration No. 2,534,565

US Jesco International Ltd., Inc.

Registrant.

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**PROTECTIVE ORDER AND AGREEMENT**

**TO MAINTAIN CONFIDENTIALITY**

The parties having entered into an agreement to maintain confidentiality of certain documents and information, and having stipulated to the entry of a Protective Order pursuant to Fed. R. Civ. P. 26(c), and it appearing to the Trademark Trial and Appeal Board that such an order is necessary, appropriate and will facilitate discovery,

IT IS HEREBY ORDERED that:

1. This Protective Order governs the use, disclosure, and designation of documents and information produced during all discovery, including third party discovery, in this action, including, without limitation, depositions, entry onto land or premises, inspection and copying of books, records, documents, machine-readable data and tangible things, and responses to interrogatories and requests to admit. Any such documents or information may be designated "Confidential" or "Attorney Eyes Only." Such designation shall be made as provided in paragraph 7. Because of the restrictions available under this Order and Agreement, "Confidential" or "Attorney Eyes Only" documents may only be redacted on the basis of privilege.

2. The term "Attorney Eyes Only" includes only current, highly sensitive competitive information, including, but not limited to, trade secrets, pending, non-public patent applications and documents associated with such applications, strategic marketing or business plans currently implemented or currently considered for implementation by the disclosing party, information and documents concerning programs under development and internal research and development, financial and business information, cost information, customer lists and other current customer information, and any other type of information contemplated by Rule 26(c)(6) of the Federal Rules of Civil Procedure, the disclosure of which to anyone other than outside those permitted herein to view such information, subject to the non-disclosure requirements herein, in this action could in the good faith judgment of the disclosing party seriously prejudice the current or future competitive position of the disclosing party. The term "Confidential" information includes any material which is non-competitive but which would harm the disclosing party if revealed to third parties. The parties are without prejudice to request a change in designation and to challenge a designation, if agreement of its change cannot be reached. The parties pledge to make designations and challenges in good faith.

3. All Confidential information or Attorney Eyes Only information produced or exchange in the course of this Cancellation proceeding shall be used solely for the purpose of preparing for and conducting this proceeding, including trial and appeals, if any, and shall not be used in any other proceeding or for any other purpose except as may be ordered by the TTAB. Either party may use Confidential information or Attorney Eyes Only information to support any additional claims or counterclaims to be brought against the other party in this proceeding.

4. Access to "Confidential" information shall be given to:
  - a. The Trademark Trial and Appeal Board;

b. Attorneys of record in this proceeding for each party; and other attorneys of record in this action or their law firms, and the office personnel of such firms that need access to the documents to facilitate actions by the attorneys.

c. Officers and employees of the parties that are involved in the litigation and have a bona fide need to be exposed to such "Confidential" information for purposes of assisting in litigation activities or making decisions on litigation strategy.

d. Persons independent from any of the parties to this action and consulted solely for the purpose of providing expert or technical services in connection with discovery or preparation for trial of this action, or for the purpose of offering expert testimony at the trial of this action, provided that such persons shall execute an acknowledgment in the form attached as *Exhibit A*.

e. Any person indicated on the face of a document as having been its originator, author, or recipient may be shown that document.

5. All of the provisions of this order applicable to Confidential information shall apply to Attorney Eyes Only information, with the exception that access to Attorney Eyes Only information shall be limited to the persons set forth in paragraphs 4(a), 4(b) 4(d) and 4(c) above

6. The persons entitled to have access to Confidential or Attorney Eyes Only information pursuant to the terms of paragraphs 4 and 5 shall not make available such Confidential or Attorney Eyes Only information to any person other than (i) those persons entitled to such access pursuant to the terms of paragraphs 4 or 5 or (ii) the party who produced the information.

7. Documents produced by a party or non-party may be designated as containing Confidential or Attorney Eyes Only information by marking each page of the document with the following legend (or some other comparable notice):

CONFIDENTIAL

or

ATTORNEY EYES ONLY

as appropriate under this Protective Order.

8. Written discovery requests and responses thereto, and all other discovery documents and things which will be produced by any party or non-party to this action, may be designated as containing Confidential information or Attorney Eyes Only information by marking each page of the document or the specified discovery response with the legend quoted in paragraph 7 (or some other comparable notice) or, in the case of a physical specimen or thing with a legend including the words CONFIDENTIAL or ATTORNEY EYES ONLY.

9. If a party or non-party believes that inspection, measuring, testing, sampling or photographing of the party's processes, products, equipment, premises or other property pursuant to Fed. R. Civ. P. 34 will reveal or disclose information that is in good faith deemed Confidential or Attorney Eyes Only information, that party or non-party shall advise in advance the party or parties seeking such discovery that the inspection, measuring, testing, sampling or photographing will be permitted only on a confidential basis, and that the material discovered, and any information derived from the material, shall be treated as Confidential or Attorney Eyes Only information.

10. If a party or non-party through inadvertence produces any Confidential or Attorney Eyes Only information without labeling or marking or otherwise designating it as such

in accordance with the provisions of this Protective Order, the producing party or non-party may, within ten (10) days of production, give written notice to the receiving party that the document or thing produced is deemed Confidential or Attorney Eyes Only information and should be treated as such in accordance with the provisions of this Protective Order. If notice is provided within ten (10) days of production, the receiving party must treat such documents or things as Confidential or Attorney Eyes Only information from the date such notice is received. Disclosure, prior to the receipt of such notice, of such Confidential information or Attorney Eyes Only information shall not be deemed a violation of this Protective Order. In the event that the receiving party has disseminated information that is subsequently and timely designated under this Protective Order to individuals who are otherwise not entitled to view such information under the Protective Order, the receiving party shall make reasonable efforts to retrieve such subsequently designated information.

11. With respect to information disclosed at a deposition or other testimony, such information or testimony shall be deemed and treated automatically as Attorney Eyes Only from the date of the deposition until fifteen (15) days after delivery of a transcript of the deposition or other testimony to counsel for all parties, unless otherwise agreed by the parties, or otherwise ordered by the TTAB. Each Party will have fifteen days from receipt of the deposition transcript to designate specific testimony as Confidential or Attorney Eyes Only. Once designated, the portions of the transcript so designated, and only those portions, shall be handled in the same manner as other Confidential or Attorney Eyes Only designated documents.

11.5 During the course of any deposition proceeding, the examining attorney shall give all counsel present notice prior to presenting any document, previously marked Confidential or Attorneys Eyes Only, to the witness or asking the witness questions about subject matter that has

previously been designated as Confidential or Attorney Eyes Only. Upon the request of the attorney for the party that produced the Confidential or Attorney Eyes Only document or otherwise designated the subject matter as Confidential or Attorneys Eyes Only, any party representative or other person present at the deposition not authorized to receive the protected document or information shall be required to exit the deposition proceeding until questioning about the protected document or information is complete. When the parties recognize that Confidential or Attorneys Eyes Only information is the subject of deposition testimony during the examination, they shall request the court reporter to mark those portions of the deposition as Confidential or Attorneys Eyes Only and to bind such portions of the transcript separately.

12. Any portion of correspondence, legal memoranda, motion papers, pleadings and other written materials which quote or otherwise disclose the substance of any Confidential or Attorney Eyes Only information shall also be treated as Confidential or Attorney Eyes Only information in accordance with the provision of this Protective Order, and at least the first page of such documents shall be marked with the legend of paragraph 7 (or some other comparable notice).

13. The parties and any non-parties will use reasonable care to avoid designating as Confidential or Attorney Eyes Only information any material or information which has been published or can otherwise be shown to be in the public domain. In the event of a dispute with respect to the designation of any discovery material as Confidential or Attorney Eyes Only information, counsel shall attempt in good faith to resolve their dispute on an informal basis before presenting the matter to the TTAB for resolution.

14. All pages or parts of TTAB papers, discovery responses, production documents or things, or deposition transcripts filed with the TTAB in this action which have been designated

as containing Confidential or Attorney Eyes Only information by any party hereto, or any TTAB papers purporting to reproduce or paraphrase such Confidential or Attorney Eyes Only information, shall be maintained *in camera* by filing the same, by mail and not electronically, with the TTAB in a sealed envelope or other appropriate sealed container on which shall be endorsed with the title and Cancellation number of this action, an indication of the nature of the contents of such sealed envelope or other container, the words "CONFIDENTIAL PURSUANT TO TTAB ORDER" or "ATTORNEY EYES ONLY PURSUANT TO TTAB ORDER," and a statement substantially in the following form:

**This envelope contains Confidential [or Attorney Eyes Only] Information filed in this case by [name of party] and is not to be opened nor the contents thereof to be displayed or revealed, except by order of the TTAB.**

**NOT FOR ELECTRONIC FILING**

15. Nothing in this Protective Order shall prevent a party or non-party from using any Confidential or Attorney Eyes Only information (i) at a deposition or hearing in this action, (ii) to prepare for and conduct discovery in this action, (iii) to support or oppose any motion made in this action, (iv) to prepare for trial or (v) during trial except as expressly provided herein.

16. Documents and things designated as containing Confidential or Attorney Eyes Only information and any copies or extracts thereof shall be retained in the custody of the trial attorneys of record during the pendency of this action, except as reasonably necessary to provide access to a person authorized under the provisions of this Protective Order.

17. Within sixty (60) days after final termination of this action, each party shall assemble all documents and things furnished and designated by any other party or non-party as containing Confidential or Attorney Eyes Only information and shall either (i) return any



original documents and things to the producing party or non-party or (ii) destroy the remaining documents and things or return them to the producing party or non-party, such election to be made by the producing party or producing non-party. The trial attorneys of record for each party shall be entitled to retain all pleadings, motion papers, legal memoranda, correspondence and work product, subject to the non-disclosure restrictions herein. The counsel who is returning or destroying documents subject to this Order, shall execute a Declaration in the form attached hereto as *Exhibit B*, which shall be mailed to counsel for the party who produced the materials so destroyed or returned.

18. If information that has been timely designated as Confidential or Attorney Eyes Only information is disclosed to or comes into the possession of any person not authorized to receive the same under the terms of this Protective Order, the party responsible for the disclosure shall immediately inform the designating party of all pertinent facts relating to such disclosure and shall make every effort to retrieve all copies of any improperly disclosed documents and things, and to bind each such unauthorized recipient to this Protective Order by having the unauthorized recipient execute an agreement in the form annexed hereto as Exhibit C. The designating party is not prohibited from seeking any other remedies based upon the improper disclosure of its Confidential or Attorney Eyes Only information.

19. It is not the intention of this Protective Order to fully address discovery objections to produce, answer or respond on the grounds of attorney-client privilege or work product nor to preclude a party or a non-party from seeking further relief or protective orders from the TTAB as may be appropriate under the Federal Rules of Civil Procedure. Nothing in this Protective Order and Agreement shall prevent either party from raising objections on any ground (except

confidentiality) to the production of documents or responses to written discovery or the admission of evidence in this Opposition proceeding.

20. Each party reserves the right to request that any hearing or other proceeding before the TTAB be held *in camera* and to request that the transcript of any hearing or other proceeding before the TTAB be sealed from electronic filing and public view.

21. The terms of this Protective Order shall survive the final termination of this action to the extent that any Confidential or Attorney Eyes Only information is not or does not become known to the public.

22. The production of any Confidential or Attorneys' or Experts' Eyes Only information pursuant to this Protective Order and Agreement will not constitute a waiver, either in whole or in part, of any attorney-client privilege or attorney work product or fifth amendment privilege which may be applicable to any material not so produced.

23. The inadvertent production of any document, information or material during discovery in this action that the disclosing party contends to be privileged or protected from disclosure as trial preparation material shall be governed by the terms of Federal Rule of Civil Procedure Rule 26(b)(5)(B).

24. The parties represent that this Protective Order and Agreement is executed by a duly authorized representative and officer of Petitioner and Registrant and their respective counsel. To expedite the discovery in this proceeding, counsels' and the parties' signatures on this Protective Order and Agreement acts as an undertaking on their part to comply with the terms of this Protective Order and Agreement as if it were entered by the Board, and to comply with this Protective Order and Agreement as if it were entered by the Board with respect to all discovery received prior to the time that notice is received that the Board will not enter this

proposed Protective Order and Agreement in the form in which it is being presented, and maintain the confidentiality designation until a form of Protective Order is accepted and entered by the Board.

25. A third party may be added to this Stipulated Protective Order in order to protect, under the terms of this Order, its proprietary and confidential information, within the meaning of F.R.C.P. 26, sought to be produced under F.R.C.P. 45 by any party to this action.

26. The parties recognize and agree that this document acts as Agreement between the parties, separate and apart from the Protective Order, and the terms can be enforced in any court of competent jurisdiction.

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**SO AGREED**

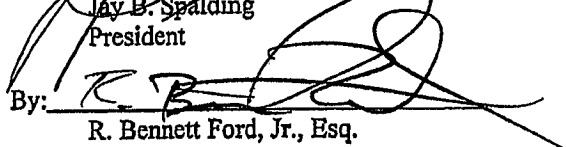
**FOR REGISTRANT:**

Dated: 7-26-07

Dated: 7-31-07

US Jesco International Inc. Ltd.

By:   
Jay B. Spalding  
President

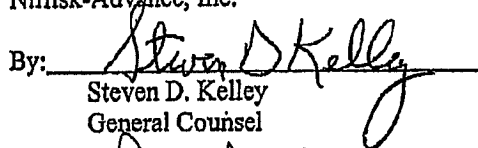
By:   
R. Bennett Ford, Jr., Esq.  
Roy Kiesel Keegan & DeNicola, P.L.C.  
Attorney for Registrant

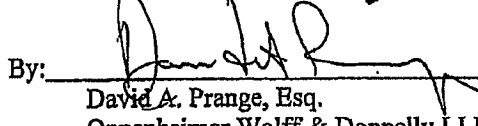
**FOR PETITIONER**

Dated: 7-16-07

Dated: 7/18/2007

Nilfisk-Advance, Inc.

By:   
Steven D. Kelley  
General Counsel

By:   
David A. Prange, Esq.  
Oppenheimer Wolff & Donnelly LLP  
Attorney for Petitioner

**SO ORDERED:**

**UNITED STATES TRADEMARK TRIAL AND APPEAL BOARD**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

**EXHIBIT A**

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

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Nilfisk-Advance, Inc.,

Cancellation No. 92046822

Petitioner,

Mark: EURO CLEAN

v.

Registration No. 2,534,565

US Jesco International Ltd., Inc.

Registrant.

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I hereby acknowledge that I have read, and am fully familiar with, the terms of the Stipulated Protective Order and Agreement entered in this action on \_\_\_\_\_. I agree to be bound by, and to comply fully with, the terms of the Stipulated Protective Order. I agree not to disclose, use or disseminate any Confidential or Attorney Eyes Only information, as defined by the Stipulated Protective Order except as permitted therein.

1. I acknowledge that I have conducted a thorough investigation for any possible conflict of interest with regard to the Disclosing Party and that I have no conflicts of interests.

2. I will not disclose any of the Confidential or Attorney Eyes Only information (hereinafter collectively "Confidential Information") of the other party to anyone unless that person needs to be exposed to it for the purpose of my engagement in the Opposition and that person is covered by paragraph four (4) and five (5) of the Agreement, is a staff member, or is an expert who has signed the Acknowledgment and Agreement substantially identical to this one.

3. I will not use the Confidential Information of the other party for any purpose other than engaging in the Cancellation.

4. Upon request, I will promptly return to the attorney for the party by whom I am employed or engaged all documents and other items (originals and copies) that are labeled CONFIDENTIAL or ATTORNEY EYES ONLY and that were provided to me in connection with the Cancellation.

5. My obligations expressed in Sections 1 through 3 above are binding upon me even after the Cancellation is complete.

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Occupation

Executed On: \_\_\_\_\_ (Date)

**EXHIBIT B**

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

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Nilfisk-Advance, Inc.,

Cancellation No. 92046822

Petitioner,

Mark: EURO CLEAN

v.

Registration No. 2,534,565

US Jesco International Ltd., Inc.

Registrant.

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**DECLARATON**

1. My name is \_\_\_\_\_. I am over the age of 18 years and am a resident of \_\_\_\_\_ County, \_\_\_\_\_. I made this Affidavit based upon my personal knowledge, and I am competent to testify to the matters stated herein.

2. I have either destroyed or caused to be destroyed or attached hereto all of the materials, transcripts, and other things required by the Protective Order which was entered by the TTAB in Cancellation No. 92046822.

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Occupation

Executed On: \_\_\_\_\_(Date)

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Occupation

Executed On: \_\_\_\_\_(Date)



**EXHIBIT C**

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

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Nilfisk-Advance, Inc.,

Cancellation No. 92046822

Petitioner,

Mark: EURO CLEAN

v.

Registration No. 2,534,565

US Jesco International Ltd., Inc.

Registrant.

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**UNDERTAKING**

I, \_\_\_\_\_, have received Confidential and/or Attorney Eyes Only information (hereinafter collectively referred to as "Confidential Information") subject to a Protective Order entered in Cancellation proceeding No. 92046822 before the Trademark Trial and Appeal Board. I understand that I was not intended to receive such information, and I have returned any and all Confidential Information documents and things to the party that disclosed them to me.

I hereby acknowledge that I have read, and am fully familiar with, the terms of the Stipulated Protective Order and Agreement entered in this action on \_\_\_\_\_. I agree to be bound by, and to comply fully with, the terms of the Stipulated Protective Order and Agreement. I agree not to disclose, use or disseminate any Confidential Information, as defined by the Stipulated Protective Order and Agreement except as permitted therein.

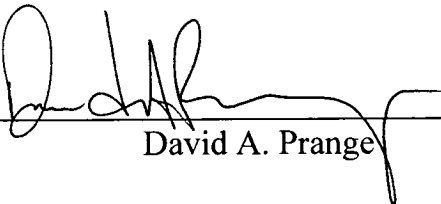
**CERTIFICATE OF SERVICE BY UNITED STATES MAIL**

I hereby certify that on the **1st** day of **August, 2007**, I caused to be served the attached **PROTECTIVE ORDER AND AGREEMENT TO MAINTAIN CONFIDENTIALITY** upon the within named counsel, by placing a true and correct copy in an envelope addressed as follows:

R. Bennett Ford, Jr., Esq.  
Roy, Kiesel, Keegan & DeNicola  
2355 Drusilla Lane  
Baton Rouge, LA 70895-5928

Counsel for Registrant

and depositing the same, with postage prepaid, in the United States Mail at Minneapolis, Minnesota.

  
\_\_\_\_\_  
David A. Prange