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Filing date: **12/31/2008**

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

Proceeding	92049206
Party	Defendant Facebook, Inc.
Correspondence Address	ANNE PECK COOLEY GODWARD KRONISH LLP 4401 EASTGATE MALL SAN DIEGO, CA 92121 UNITED STATES peckah@cooley.com, trademarks@cooley.com
Submission	Other Motions/Papers
Filer's Name	Anne H. Peck
Filer's e-mail	peckah@cooley.com,negatios@cooley.com,dedwards@cooley.com
Signature	/anne h. peck/
Date	12/31/2008
Attachments	MOTIONPROTECTIVEORDER.pdf (4 pages)(189284 bytes) DECLPROTECTIVEORDER.pdf (3 pages)(101187 bytes) EXHIBITAORDER.pdf (8 pages)(50256 bytes) EXHIBITBEMAIL.pdf (1 page)(13701 bytes) EXHIBITCEMAIL.pdf (1 page)(8466 bytes) EXHIBITDEMAIL.pdf (1 page)(9182 bytes)

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

THINK COMPUTER CORPORATION

Petitioner,

v.

FACEBOOK, INC.,

Respondent.

Cancellation No. 92049206

Mark: FACEBOOK

Reg. No. 3,122,052

Reg. Date: July 25, 2006

RESPONDENT FACEBOOK, INC.'S MOTION FOR ENTRY OF PROTECTIVE ORDER

Pursuant to 37 C.F.R. § 2.120(f) and TBMP §§ 412.02(a) and 526, Respondent Facebook, Inc. ("Facebook"), hereby moves for entry of its proposed protective order with respect to confidential or trade secret information that may be exchanged during this cancellation proceeding.

On December 19, 2008 Facebook approached Petitioner Think Computer Corporation ("Petitioner") regarding its proposed protective order, which is based on the standard TTAB protective order and modified to meet the parties' needs. *See* Declaration of Anne H. Peck In Support Of Motion For Protective Order ("Peck Decl."), Ex. A. By way of example, in light of Petitioner's *pro se* status, the standard TTAB protective order's classification of information that would allow for review by outside counsel but not in-house counsel is inappropriate in the current proceeding. In addition, Facebook believes that its proposed protective order prevents public disclosure of confidential and trade secret information in a more comprehensive manner than the standard TTAB protective order. Pursuant to the proposed protective order, the parties

would be limited to making disclosures of confidential information to non-party witnesses, disclosed potential witnesses, or independent experts or consultants. Further, a party seeking to disclose confidential information to a third party will be required to maintain a file containing each individual's acknowledgement of the protective order. Such amendments to the TTAB standard protective order are necessary to ensure that any confidential and trade secret information that Facebook may produce is protected from misuse by Petitioner or its potential witnesses, experts or consultants.

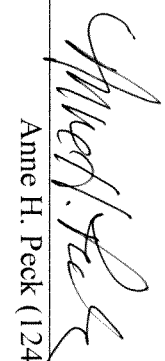
Despite follow up by Facebook, Petitioner has been unwilling to agree to or negotiate in good faith the terms of the proposed protective order. *See* Peck Decl., Exs. B - D. Petitioner's basis for failing to agree to or negotiate a protective order is not clear, but as a result of Petitioner's delay, discovery has been stalled to Facebook's prejudice. Moreover, despite Petitioner's unwillingness to enter into the proposed protective order, Petitioner served its First Set of Interrogatories and Requests for Production of Documents and Things, on December 22, 2008. Petitioner served these discovery requests though it has not yet provided Facebook with its initial disclosures, as is required by both the Federal Rules of Civil Procedure and the rules of this Board governing discovery. Petitioner's discovery requests collectively seek an extensive and broad array of completely irrelevant material as well as highly confidential and sensitive business information. While Facebook will be objecting to such requests, an appropriate protective order is essential.

Petitioner should not be permitted to deny Facebook the ability to protect confidential and trade secret information by withholding consent to a reasonable and appropriate protective order, while at the same requesting Facebook respond to discovery. Accordingly, Facebook

respectfully requests that the Board **GRANT** this motion and enter the protective order submitted by Facebook.

Dated: April 31, 2008

COOLEY GODWARD KRONISH LLP
MICHAEL G. RHODES (116127)
ANNE H. PECK (124790)
NOEL K. EGNATIOS (249142)

By: 
Anne H. Peck (124790)

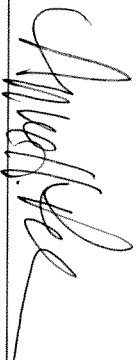
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **RESPONDENT FACEBOOK, INC.'S MOTION FOR ENTRY OF PROTECTIVE ORDER** was mailed, first-class postage prepaid, to Petitioner:

Think Computer Corporation
Attn: Aaron Greenspan
884 College Avenue
Palo Alto, CA 94306-1303

Date: *December 31, 2008*



Anne H. Peck (124790)

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

THINK COMPUTER CORPORATION	
Petitioner,	Cancellation No. 92049206
v.	
FACEBOOK, INC.,	Mark: FACEBOOK
Respondent.	Reg. No. 3,122,052
	Reg. Date: July 25, 2006

**DECLARATION OF ANNE H. PECK IN SUPPORT OF MOTION FOR ENTRY OF PROTECTIVE
ORDER**

I, Anne H. Peck, hereby declare as follows:

1. I am a partner at the law firm of Cooley Godward Kronish LLP, counsel of record for Respondent Facebook, Inc. (“Facebook”) in this matter. Unless otherwise stated, I have personal knowledge of the facts set forth in this declaration and, if called to testify as a witness, could and would testify competently thereto.

2. Attached hereto as Exhibit A is the protective order proposed by Facebook for use during this cancellation proceeding with respect to confidential or trade secret information that may be exchanged by the parties.

3. Attached hereto as Exhibit B is a true and correct copy of an e-mail (with attachment) I sent to Mr. Aaron Greenspan on December 19, 2008 attaching Facebook’s proposed protective order.

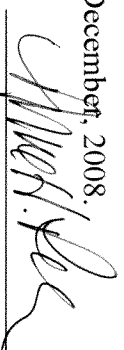
4. Attached hereto as Exhibit C is a true and correct copy of an email I received from Mr. Greenspan on December 19, 2008.

5. Attached hereto as Exhibit D is a true and correct copy of an e-mail I sent to Mr. Greenspan on December 20, 2008.

6. I have not received any further response, to date, from Mr. Greenspan regarding Facebook's proposed protective order.

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

Executed at Palo Alto, California, this 31th day of December, 2008.



Anne H. Peck

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DECLARATION OF ANNE F. PECK IN SUPPORT OF MOTION FOR ENTRY OF PROTECTIVE ORDER** was mailed, first-class postage prepaid, to Petitioner:

Think Computer Corporation
Attn: Aaron Greenspan
884 College Avenue
Palo Alto, CA 94306-1303

Date: December 31, 2008



Anne H. Peck (124790)

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

In the Matter of

THINK COMPUTER CORPORATION)	
)	
Petitioner,)	
)	CANCELLATION No. 92049206
v.)	
)	Mark: FACEBOOK
FACEBOOK, INC.)	Reg. No.: 3,122,052
)	Reg. Date: July 25, 2006
Respondent.)	
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**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, the parties have agreed to be bound by the terms of this order. As used in this order, the term "information" covers both oral testimony and documentary material.

TERMS OF ORDER

1) Definitions

- **Parties** are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.
- **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.
- **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 that are to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness.

2) Classes of Protected Information.

The United States Patent and Trademark Office 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 non-party 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. Information classified as Confidential may not be used by the parties and/or their attorneys for any purpose other than for this proceeding.

Highly Confidential—Material to be shielded by the Board from public access, available for review by the parties and/or their attorneys subject to agreed restrictions on access, and available for review by independent experts or consultants for the parties, subject to the provisions of paragraph 4 and 5. Information classified as Highly Confidential may not be used by the parties and/or their attorneys for any purpose other than for this proceeding. All information that a party reasonably believes to constitute a trade secret or to be of a commercially sensitive nature shall be classified as Highly Confidential.

2) Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is 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; (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.

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.

Non-party witnesses, and any disclosed potential witnesses not otherwise specifically covered by the terms of this order may be afforded access to Confidential information in accordance with the terms that follow in paragraph 4. Further, independent experts or consultants may have access to Confidential or Highly Confidential information if such access is agreed to by the parties or ordered by the Board, in accordance with the terms that follow in paragraph 4 and 5.

4) Disclosure to Non-Party Witnesses, Disclosed Potential Witnesses, Independent Experts or Consultants

Prior to disclosure of protected information by any party or its attorney to any non-party witnesses, disclosed potential witnesses, independent experts or consultants, 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. The party or attorney receiving the completed forms shall create a file for such forms and maintain that file for the duration of the proceeding.

5) Additional Requirements Prior to Disclosure to Independent Experts or Consultants.

In addition to meeting the requirements of paragraph 4, any party or attorney proposing to share disclosed information with an independent expert or consultant must first notify the party which designated the information as protected. Notification must be personally served or forwarded by certified mail, return receipt requested, and shall provide an explanation of the need for disclosure, as well as the type of information to be disclosed, and shall provide notice of the name, address, occupation and professional background of the expert or independent consultant.

The party or its attorney receiving the notice shall have ten (10) business days to object to disclosure to the independent expert or consultant before disclosure should be made. The party objecting to disclosure will be expected to respond with its arguments against disclosure. If objection is made, then the parties must negotiate the issue before raising the issue before the Board. If the parties are unable to settle their dispute, then it shall be the obligation of the party or attorney proposing disclosure to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the parties have made to settle their dispute.

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 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, 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 as Highly Confidential. 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 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 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.

During the first 30 days following the date of service of a transcript of any deposition by the party that took the deposition, the entire transcript and all exhibits or attachments to any deposition shall be designated as Highly Confidential. Within this time period, the defending party shall designate the portions of the transcript, and any specific exhibits or attachments, that shall remain Highly Confidential. After the 30 day period, any portions of the transcript of any deposition and all exhibits or attachments to any deposition not otherwise designated shall be designated as Confidential.

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. Alternatively, memoranda, or declarations in support of a motion, or briefs at final hearing may be filed under seal, according to the criteria discussed in paragraph 12.

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) Filing Material With the Board.

Protected information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board (1) in redacted form, or (2) under seal. The Board shall fully consider all materials that are redacted or filed under seal.

All materials filed in redacted form pursuant to this protective order shall not be made available for public inspection or copying in an unredacted form unless otherwise ordered by the Board, or unless the party protected by the order voluntarily discloses the matter subject thereto. A rule of reasonableness should dictate how redaction is effected.

All materials filed under seal pursuant to this protective order shall not be made available for public inspection or copying unless otherwise ordered by the Board, or unless the party protected by the order voluntarily discloses the matter subject thereto. The envelopes or containers of documents filed under seal 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 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 within ten (10) days of the designation. When a challenge is made more than ten (10) days after a designation of information as protected, the Board will presume the designation is correct, and the challenging party will be required to rebut this presumption by presenting affirmative evidence showing that the designation is improper. Otherwise, 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.

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, except that Facebook, Inc.'s outside counsel may retain for their records copies of work product, such as correspondence, briefs, memoranda, summaries, and the like, that 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**

_____ Date

Aaron Greenspan
Think Computer, Inc.

Michael Richter
Deputy General Counsel,
IP & Product
Facebook, Inc.

Michael G. Rhodes
Cooley Godward Kronish LLP

By Order of the Board, effective _____.

Trademark Trial and Appeal Board

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

In the Matter of

THINK COMPUTER CORPORATION)	
)	
Petitioner,)	
)	CANCELLATION No. 92049206
v.)	
)	Mark: FACEBOOK
FACEBOOK, INC.)	Reg. No.: 3,122,052
)	Reg. Date: July 25, 2006
Respondent.)	
_____)	

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

I, _____, 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 or cancellation 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.

Date: _____, 2008 By: _____

Peck, Anne

From: Peck, Anne
Sent: Friday, December 19, 2008 4:30 PM
To: 'aarong@thinkcomputer.com'
Cc: Edwards, Delma
Subject: TTAB Matter - Protective Order

Attachments: Think_v__Facebook__Protective_Order.pdf



Think_v__Facebook
__Protective_...

Dear Mr. Greenspan:

Following up on earlier discussions regarding discovery matters, I've attached a Protective Order for use in connection with the pending TTAB proceeding. This is a standard TTAB protective order adapted to be suitable for this matter. Assuming that this is acceptable to you, please sign and return the executed document to my attention via email at your earliest convenience.

Very truly yours,

Anne Peck

Anne Peck
Cooley Godward Kronish LLP
5 Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
peckah@cooley.com
(650) 843-5096 (phone)
(650) 857-0663 (fax)

Peck, Anne

From: Aaron Greenspan [aarong@thinkcomputer.com]
Sent: Friday, December 19, 2008 5:50 PM
To: Peck, Anne
Subject: Re: TTAB Matter - Protective Order

Ms. Peck:

I may have asked this before, but if I did, I don't feel that I received a substantive response. Why does Facebook feel that the TTAB's standard protective order is insufficient for these proceedings, and how exactly has this document been modified from the standard terms?

Aaron

Aaron Greenspan
President & CEO
Think Computer Corporation

<http://www.thinkcomputer.com>

Peck, Anne

From: Peck, Anne
Sent: Saturday, December 20, 2008 2:03 PM
To: 'Aaron Greenspan'
Cc: Edwards, Delma
Subject: RE: TTAB Matter - Protective Order

Dear Mr. Greenspan,

The protective order that I sent to you yesterday is based on the TTAB's form protective order, which is publicly available on the TTAB website. We made certain adjustments, as do most parties, to further clarify the terms of the order, to tailor the order to the needs of the parties, and to address privacy concerns. For instance, there would be no point for us to include the highest classification level for documents (i.e. for outside counsel's eyes only), because you are a pro se petitioner. Please review the attached order and let us know if it is acceptable to you on or before Tuesday, December 22, 2008. If we cannot reach agreement on the terms of the protective order, we will submit the order for Board approval, consistent with TTAB rules.

Very truly yours,

Anne Peck

Anne Peck
Cooley Godward Kronish LLP
5 Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
peckah@cooley.com
(650) 843-5096 (phone)
(650) 857-0663 (fax)

-----Original Message-----

From: Aaron Greenspan [mailto:aarong@thinkcomputer.com]
Sent: Friday, December 19, 2008 5:50 PM
To: Peck, Anne
Subject: Re: TTAB Matter - Protective Order

Ms. Peck:

I may have asked this before, but if I did, I don't feel that I received a substantive response. Why does Facebook feel that the TTAB's standard protective order is insufficient for these proceedings, and how exactly has this document been modified from the standard terms?

Aaron

Aaron Greenspan
President & CEO
Think Computer Corporation

<http://www.thinkcomputer.com>