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

Proceeding	92053351
Party	Plaintiff Dealer Specialties International, Inc.
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Submission	Motion to Compel Discovery
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Signature	/Katharine M. Sullivan/
Date	08/02/2011
Attachments	GET AUTO - Motion to Compel and Memo In Support.pdf (93 pages)(1267242 bytes)

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

DEALER SPECIALTIES)	
INTERNATIONAL, INC.,)	
	)	Cancellation No.: 92/053,351
Petitioner,)	
	)	Registration No.: 3,451,994
vs.)	
)	
GETAUTOAPPRAISE, LLC,)	
)	
Registrant.)	
)	
)	

**PETITIONER’S MOTION TO COMPEL RESPONSES TO PETITIONER’S
INTERROGATORIES AND DOCUMENT REQUESTS AND MEMORANDUM IN
SUPPORT**

In accordance with Rule 37 of the Federal Rules of Civil Procedure and Rule 2.120(e) of the Trademark Rules of Practice, Petitioner Dealer Specialties International, Inc. (“Dealer”) hereby moves that the Board enter an order compelling Registrant GetAutoAppraise, LLC (“GetAutoAppraise”), completely and without objections, to answer Petitioner’s First Set of Interrogatories to GetAutoAppraise, LLC (“Dealer’s Interrogatories”) and to produce, at Petitioner’s attorneys’ offices, all documents and things requested in Petitioner’s First Set of Requests for the Production of Documents, Electronically Stored Information, and Things to GetAutoAppraise LLC (“Dealer’s Document Requests”). As described below, Opposer’s counsel has made a good faith effort to resolve with Registrant’s counsel the issues presented in this motion and the parties have been unable to reach agreement with respect to those issues.

Statement of Facts

Dealer filed its Petition for Cancellation on December 12, 2010. The parties held a Rule 26(f) discovery conference on February 8, 2011. See Exhibit 1; Declaration of Katharine M.

Sullivan (“Sullivan Dec.”), ¶ 2. Discovery opened on February 11, 2011, and on April 5, 2011, within the discovery period, Dealer served written discovery, including its Document Requests and Interrogatories. *Id.*, Exs. A and B.

On May 5, 2011, counsel for GetAutoAppraise called counsel for Dealer asking that the parties enter a protective order, and counsel for Dealer responded by email that the Board’s standard order was acceptable to Dealer. *Id.*, Ex. C. GetAutoAppraise counsel then asked that the order be signed, and counsel for Dealer responded that, pursuant to the Board’s rules, the Board’s standard protective order was already in effect. *Id.*, Ex. D. Counsel for GetAutoAppraise disagreed, and counsel for Dealer clarified the Board’s rules again on May 6, 2011, but offered to send a signed copy of the order if counsel for GetAutoAppraise felt it was imperative. *Id.*, Exs. E and F. After receiving neither a response to this correspondence nor responses to the written discovery, counsel for Dealer wrote counsel for GetAutoAppraise on May 27, 2011, noting that the discovery responses were overdue. *Id.*, Ex. G. On June 3, 2011, counsel for GetAutoAppraise responded by requesting a signed copy of the Board’s standard protective order. *Id.*, Ex. H. On June 7, 2011, counsel for Dealer sent a copy of the Board’s protective order signed by Dealer, and requested the outstanding responses by June 10 and the outstanding documents by June 17. *Id.*, Ex. I. By email dated June 14, 2011, counsel sent a clearer signed copy of the Order and again requested the responses. *Id.*, Ex. J. On June 20, 2011, counsel for GetAutoAppraise left counsel for Dealer a voicemail and followed up with correspondence stating that GetAutoAppraise’s responses to the written discovery would be complete on June 21. *Id.*, Ex. K. Counsel for Dealer and GetAutoAppraise subsequently spoke, and counsel for Dealer confirmed that Dealer was looking forward to receiving the discovery responses to be sent June 21, 2011; Dealer’s counsel followed with a confirming email. *Id.* at ¶¶

14-15, Ex. L. On June 23, 2011, counsel for GetAutoAppraise wrote counsel for Dealer again, apologizing for the delay and promising to be in touch by June 28, 2011. *Id.*, Ex. M. Nevertheless, Counsel for GetAutoAppraise has provided no responses to the discovery requests and made no further contact with counsel for Dealer.

The discovery period closes on August 10, 2011.

Argument and Citation of Authority

Registrant's responses to the discovery requests were due on May 10, 2011.¹ It has repeatedly delayed and provided no responses.

A party may file a motion² with the Board to compel answers to interrogatories and the production of documents and things:

If a party . . . fails to answer . . . any interrogatory, or fails to produce and permit the inspection and copying of any document or thing, the party . . . seeking discovery may file a motion before the Trademark Trial and Appeal Board for an order to compel . . . an answer, or production and an opportunity to inspect and copy.

37 C.F.R. § 2.120(e). GetAutoAppraise has utterly failed, without excuse, to respond to properly propounded discovery requests. Therefore, the Board should issue an order compelling it to respond.

Furthermore, it is well established that, “[u]nder the Board’s discovery practice, a party who fails to respond to a request for discovery during the time allowed therefore is deemed to have forfeited his right to object to the request on its merits unless he can show failure to timely respond was the result of excusable neglect.” *Envirotech Corp. v. Compagnie Des Lampes*, 219 U.S.P.Q. 448, 449 (T.T.A.B. 1979); *accord No Fear Inc. v. Rule*, 54 U.S.P.Q.2d 1551, 1554

¹ Even if counsel for GetAutoAppraise had been correct in his assertions that “the time [in which to respond] should not [sic] toll until delivery of the signed [protective] order,” the signed order was delivered to him on June 7, and the time to respond under counsel’s theory would have expired on July 12, 2011.

² This motion to compel is timely because it is filed prior to the first testimony period, which is scheduled to commence on October 9, 2011. 37 C.F.R. § 2.120(e).

(T.T.A.B. 2000). Given that GetAutoAppraise has no excuse for its repeated delay, all objections have been waived. *See* Ex. G.

Counsel for Dealer has attempted to cooperate in the discovery process with counsel for GetAutoAppraise and has been repeatedly promised that the discovery responses were forthcoming. Instead, GetAutoAppraise has simply ignored Dealer's discovery requests even after repeated reminders that responses were outstanding. As a consequence, Dealer has now been prejudiced in its ability to complete discovery before the discovery period expires.

CONCLUSION

Petitioner Dealer Specialties International, Inc. respectfully requests that the Board grant this motion to compel and order Registrant, completely and without objection, promptly to answer Dealer's Interrogatories and produce at Dealer's counsel's offices all the documents and things requested in Dealer's Document Requests.

This 2nd day of August, 2011.

/Katharine M. Sullivan/

Judith A. Powell
Katharine M. Sullivan
KILPATRICK TOWNSEND &
STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4528
404-815-6500 (ph.)
404-815-6555 (fax)

Attorneys for Petitioner

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

DEALER SPECIALTIES)	
INTERNATIONAL, INC.,)	
	)	Cancellation No.: 92/053,351
Petitioner,)	
	)	Registration No.: 3,451,994
vs.)	
)	
GETAUTOAPPRAISE, LLC,)	
)	
Registrant.)	
)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing
PETITIONER’S MOTION TO COMPEL RESPONSES TO PETITIONER’S
INTERROGATORIES AND DOCUMENT REQUESTS AND MEMORANDUM IN
SUPPORT on counsel for Registrant by electronic mail and by depositing same in the United
States mail, properly addressed with sufficient postage affixed thereto to ensure delivery to:

Andrew Lahser
Law Office of Andrew P. Lahser, PLC
16824 E. Avenue of the Fountains
Suite 14
Fountain Hills AZ 85268
andrew@lahserpatent.com

This 2nd day of August, 2011.

/Katharine M. Sullivan/
Katharine M. Sullivan
Attorney for Petitioner

EXHIBIT 1

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

DEALER SPECIALTIES)	
INTERNATIONAL, INC.,)	
	)	Cancellation No.: 92/053,351
Petitioner,)	
	)	Registration No.: 3,451,994
vs.)	
)	
GETAUTOAPPRAISE, LLC,)	
)	
Registrant.)	
)	
)	

**DECLARATION OF KATHARINE M. SULLIVAN
IN SUPPORT OF PETITIONER DEALER SPECIALTIES
INTERNATIONAL, INC.’S MOTION TO COMPEL**

I, Katharine M. Sullivan, declare as follows:

1. My name is Katharine M. Sullivan. I am an attorney at the law firm of Kilpatrick Townsend & Stockton LLP and am one of the attorneys representing Dealer Specialties International, Inc. (“Dealer”) in this proceeding. I am over the age of twenty-one, I am competent to make this Declaration, and the facts set forth in this Declaration are based on my personal knowledge.

2. Dealer and GetAutoAppraise, LLC (“GetAutoAppraise”) held a Rule 26 discovery conference on February 8, 2011.

3. A true and correct copy of Dealer’s document requests served April 5, 2011, are attached as **Exhibit A**.

4. A true and correct copy of Dealer’s interrogatories served April 5, 2011, are attached as **Exhibit B**.

5. A true and correct copy of the May 5, 2011 correspondence to GetAutoAppraise mentioning the phone call from GetAutoAppraise to Dealer is attached as **Exhibit C**.

6. A true and correct copy of GetAutoAppraise's May 5, 2011 response to GetAutoAppraise and Dealer's subsequent response and its attachment is attached as **Exhibit D**.

7. A true and correct copy of the second May 5, 2011 response from GetAutoAppraise is attached as **Exhibit E**.

8. A true and correct copy of the May 6, 2011 response to GetAutoAppraise is attached as **Exhibit F**.

9. A true and correct copy of the May 27, 2011 correspondence to GetAutoAppraise is attached as **Exhibit G**.

10. A true and correct copy of the June 3, 2011 correspondence from GetAutoAppraise is attached as **Exhibit H**.

11. A true and correct copy of the June 7, 2011 correspondence to GetAutoAppraise and the signed protective order is attached as **Exhibit I**.

12. A true and correct copy of the June 14, 2011 correspondence to GetAutoAppraise and a clearer copy of the signed protective order is attached as **Exhibit J**.

13. A true and correct copy of the June 20, 2011 correspondence from GetAutoAppraise is attached as **Exhibit K**.

14. On June 20, 2011, following the correspondence attached as Exhibit K, I returned a phone call from counsel for GetAutoAppraise, Andrew Lahser, and discussed a question he had about one of the document requests.

15. A true and correct copy of the June 20, 2011 correspondence to GetAutoAppraise following the phone call mentioned above is attached as **Exhibit L**.

16. A true and correct copy of the June 23, 2011 correspondence from GetAutoAppraise is attached as **Exhibit M**.

17. Dealer has received no correspondence or contact from GetAutoAppraise since June 23, 2011.

18. GetAutoAppraise has served no written discovery on Dealer.

19. I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: August 2, 2011.

A handwritten signature in black ink, appearing to read 'Katharine M. Sullivan', with a long horizontal flourish extending to the right.

Katharine M. Sullivan

EXHIBIT A

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

DEALER SPECIALTIES)	
INTERNATIONAL, INC.,)	
	)	Cancellation No.: 92/053,351
Petitioner,)	
	)	Registration No.: 3,451,994
vs.)	
)	
GETAUTOAPPRAISE, LLC,)	
)	
Registrant.)	
)	
)	

**PETITIONER’S FIRST SET OF REQUESTS FOR THE PRODUCTION OF
DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS TO
GETAUTOAPPRAISE LLC**

In accordance with Rules 26 and 34 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the United States Patent and Trademark Office, Petitioner Dealer Specialties International, Inc. requests that Registrant GetAutoAppraise, LLC produce for inspection and copying at the offices of Kilpatrick Townsend & Stockton LLP, Suite 2800, 1100 Peachtree Street, Atlanta, Georgia 30309, or at such other place as may be agreed upon by the parties, within thirty (30) days after service hereof, the documents and things identified below.

DEFINITIONS AND INSTRUCTIONS

A. “Document” or “Documents” shall include electronically stored information and is used in its customary, broad sense under the Federal Rules of Civil Procedure and includes every writing or record of every type and description, including the following: correspondence; memoranda; tapes; stenographic or handwritten notes; email; voice recordings; transcriptions

(including of or in the form of summaries of telephone calls, recordings, “voice mail” or the like); computer or computerized data, records, files, CD-ROMs, DVDs, discs, or tapes; web pages; artwork; advertising; literature; packaging; catalogs; drawings; sketches; graphs; photographs; pictures; films; books; pamphlets; studies; publications; reports; surveys; minutes; statistical computations; and other data compilations from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form; and every copy of every such writing or record where such copy is not an identical copy of an original or where such copy contains any commentary, marking, or notation whatsoever that does not appear on the original.

B. “Interrogatory” and “Interrogatories” as used in these requests refer to Petitioner’s First Set of Interrogatories to GetAutoAppraise, LLC served concurrently upon Registrant.

C. The “Definitions” in the Interrogatories are incorporated by reference as if fully set forth here.

D. “Concerning” shall mean evidencing, referring, relating, or concerning.

E. As to the manner of this production, Petitioner specifies: (i) that the documents, electronically stored information, and things shall be organized for production to correspond with the categories of these requests or in the same order as they are kept or maintained in the ordinary course of business; (ii) that the documents, electronically stored information, and things produced shall be numbered; (iii) that Registrant’s written response to this request shall, by reference to such numbers, accurately show what documents, electronically stored information, and things are being produced in response thereto; and (iv) that the documents, electronically

stored information, and things shall then and there be copied by Petitioner to the extent such copying is desired.

F. If any Document responsive to any Request is withheld on the grounds of privilege, attorney work product, or for any other reason, it shall be identified on a log to be produced along with the Documents produced in response to these Requests. For each Document withheld pursuant to this paragraph, Registrant shall identify on the log: (i) the type of document; (ii) the general subject matter of the document; (iii) the date of the document; (iv) such other information as is sufficient to identify the document for a motion to compel, including, where appropriate, the author of the document, the addressee of the document, and, where not apparent, the relationship of the author and addressee to each other; (v) the specific grounds for withholding the document in sufficient detail for the Board to rule on the merits of the asserted privilege or protection; and (vi) the number of the document request to which the withheld document pertains.

G. If, in response to any Request, there are any documents requested which are not produced because of a claim of privilege or for any other reason, note such a failure to produce as an objection to the Request and comply with the Request to the extent to which it is not subject to the objection.

H. If the original of a document is within Registrant's possession, custody, or control, produce it; if not, produce such copy of it as is in your possession, custody, or control. Any copy of a document on which any notation, addition, alteration, or change has been made is to be treated as constituting an additional original document.

I. Each paragraph and subparagraph hereof and the definitions herein are to be construed independently, and not by or with reference to any other paragraph or subparagraph or definition herein if such construction would limit the scope of any particular Request or the subject matter thereof.

J. If any of these Requests cannot be answered in full, Registrant is to answer to the fullest extent possible, specifying the reason for Registrant's inability to answer the remainder, and stating what information, knowledge or belief Registrant has concerning the unanswered portion.

K. These Requests shall be deemed to be continuing. Registrant is under a duty to supplement, correct, or amend its response to any of these Requests if it learns that any response is in some material respect incomplete or incorrect or if the additional or corrective information has not otherwise been made known to Petitioner during the discovery process or in writing.

REQUESTS FOR PRODUCTION

1. All documents concerning the selection or adoption of Registrant's GETAUTOAPPRAISE Mark, including other marks considered in lieu of Registrant's GETAUTOAPPRAISE Mark.

2. All documents concerning the first use of Registrant's GETAUTOAPPRAISE Mark.

3. All documents concerning Registrant's first use in commerce of Registrant's GETAUTOAPPRAISE Mark.

4. All documents concerning any application to register Registrant's GETAUTOAPPRAISE Mark with the United States Patent and Trademark Office or with any state.

5. All documents concerning any communication or correspondence with the United States Patent and Trademark Office or any state agency or office in connection with Registrant's GETAUTOAPPRAISE Mark.

6. All documents concerning Registrant's first awareness of Petitioner's adoption or use of Petitioner's GET AUTO Mark.

7. Documents sufficient to identify each product or service for which Registrant has used or intends to use Registrant's GETAUTOAPPRAISE Mark.

8. Documents sufficient to identify the dates or time periods during which Registrant has provided, sold, or offered for sale products or services under Registrant's GETAUTOAPPRAISE Mark.

9. Documents sufficient to identify and describe the target or intended purchasers of each of Registrant's products or services provided under Registrant's GETAUTOAPPRAISE Mark.

10. Documents sufficient to identify and describe the target or the intended end users of each of Registrant's products or services provided under Registrant's GETAUTOAPPRAISE Mark.

11. All documents concerning the types of purchasers and end users and potential purchasers and end users of products or services provided or intended to be provided under Registrant's GETAUTOAPPRAISE Mark.

12. All documents that constitute or contain marketing or business plans, research, studies, reports, or analyses related to Registrant's products and services, and intended products and services offered or to be offered under Registrant's GETAUTOAPPRAISE mark, or the purchasers or end users of such products and services.

13. Documents sufficient to identify and describe the channels of distribution through which products or services provided under Registrant's GETAUTOAPPRAISE Mark are or are intended to be provided.

14. All documents concerning plans, studies, reports, surveys, or analyses involving the channels of distribution through which products or services are or are intended to be provided under Registrant's GETAUTOAPPRAISE Mark.

15. Document sufficient to identify the prices of each of the products and services provided or intended to be provided under Registrant's GETAUTOAPPRAISE Mark.

16. All documents concerning plans, studies, reports, surveys, or analyses involving prices charged or intended to be charged for any of the products or services that are or are intended to be provided under Registrant's GETAUTOAPPRAISE Mark.

17. Documents sufficient to show Registrant's annual unit and dollar volume of sales, from the date of first use to the present, of each of the products and services provided under Registrant's GETAUTOAPPRAISE Mark.

18. Documents sufficient to identify and describe the geographic areas in which Registrant provides or has provided or offers for sale any products or services under Registrant's GETAUTOAPPRAISE Mark.

19. All documents concerning the materials and means used by Registrant to advertise, market, or promote products or services provided under Registrant's GETAUTOAPPRAISE Mark, including without limitation, all communications with potential customers related to Registrant's products or services to be provided under Registrant's GETAUTOAPPRAISE Mark, sales presentation materials, and all material provided in connection with responses to requests for proposals or requests for quotes, or in connection with bids for providing products or services under Registrant's GETAUTOAPPRAISE Mark.

20. Representative samples of each advertising or promotional item used by Registrant to promote or describe products or services provided or intended to be provided under Registrant's GETAUTOAPPRAISE Mark.

21. All documents concerning press releases or media reports or articles involving Registrant's GETAUTOAPPRAISE Mark or any products or services provided, intended to be provided, or offered for sale under Registrant's GETAUTOAPPRAISE Mark.

22. Documents sufficient to identify Registrant's annual expenditures for each advertising or promotional document, medium, or activity used to advertise or promote products or services provided to intended to be provided under Registrant's GETAUTOAPPRAISE Mark.

23. All documents concerning any instance of which Registrant has actual or hearsay knowledge, directly or indirectly, of any inquiry regarding or suggestion of any connection of any type between Registrant and Petitioner or any of their respective products or services.

24. All documents concerning any sales, marketing, or business plan, public opinion poll, focus group, survey, market research, study, report, or other analysis with respect to

Registrant's GETAUTOAPPRAISE Mark or any of the products or services provided, intended to be provided, or offered for sale under Registrant's GETAUTOAPPRAISE Mark.

25. All documents concerning any sales, marketing, or business plan, public opinion poll, focus group, survey, market research, study, report, or other analysis with respect to Petitioner's GET AUTO Mark or any of the products or services provided or offered for sale under Petitioner's GET AUTO Mark.

26. All documents concerning any trademark or service mark usage guidelines, rules, or instructions created, used, or provided by Registrant in connection with Registrant's GETAUTOAPPRAISE Mark or any other mark used by Registrant.

27. All documents concerning any cease and desist or demand letters written by any Person in connection with the use, promotion, or enforcement of Registrant's GETAUTOAPPRAISE Mark.

28. All documents concerning any license agreement involving Registrant's GETAUTOAPPRAISE Mark.

29. All documents concerning any assignment agreement involving Registrant's GETAUTOAPPRAISE Mark.

30. All documents that allegedly support your contention in paragraph 18 of your Answer that Petitioner's grounds for cancellation "are barred by the equitable doctrines of laches, acquiescence or estoppel."

31. All documents concerning communications Registrant's representatives have had with Petitioner or its representatives regarding the GETAUTOAPPRAISE Mark or the services offered thereunder.

32. All documents that set forth the opinions of any experts engaged by Registrant to testify in this matter, including drafts of same and documents and data relied on by the expert for the opinions.

33. All documents, other than those produced in response to any of the foregoing requests, upon which Registrant intends to rely in connection with this proceeding.

34. All documents, other than those produced in response to any of the foregoing requests, that were identified, referenced, or relied upon by Registrant or any Person acting on Registrant's behalf in connection with responding to the Interrogatories or this Petitioner's First Set of Requests for the Production of Documents, Electronically Stored Information, and Things to GetAutoAppraise LLC.

/Katharine M. Sullivan/

Judith A. Powell
Katharine M. Sullivan
KILPATRICK TOWNSEND &
STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4528
404-815-6500 (ph.)
404-815-6555 (fax)

Attorneys for Petitioner

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DEALER SPECIALTIES)	
INTERNATIONAL, INC.,)	
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Petitioner,)	
)	Registration No.: 3,451,994
vs.)	
)	
GETAUTOAPPRAISE, LLC,)	
)	
Registrant.)	
)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing PETITIONER’S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS TO GETAUTOAPPRAISE LLC on counsel for Registrant by electronic mail and by depositing same in the United States mail, properly addressed with sufficient postage affixed thereto to ensure delivery to:

Andrew Lahser
Law Office of Andrew P. Lahser, PLC
16824 E. Avenue of the Fountains
Suite 14
Fountain Hills AZ 85268
andrew@lahserpatent.com

This 5th day of April, 2011.

/Katharine M. Sullivan/
Katharine M. Sullivan
Attorney for Petitioner

EXHIBIT B

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

DEALER SPECIALTIES)	
INTERNATIONAL, INC.,)	
	)	Cancellation No.: 92/053,351
Petitioner,)	
	)	Registration No.: 3,451,994
vs.)	
)	
GETAUTOAPPRAISE, LLC,)	
)	
Registrant.)	
)	
)	
)	

PETITIONERS' FIRST SET OF INTERROGATORIES TO GETAUTOAPPRAISE, LLC

Dealer Specialties International, Inc. (“Petitioner”), through counsel and pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, hereby requests that GetAutoAppraise, LLC (“Registrant”) answer the following Interrogatories, under oath and in writing, within thirty (30) days after service hereof:

DEFINITIONS

1. “Dealer” or “Petitioner” shall mean Dealer Specialties International, Inc., its affiliated corporations and their officers, directors, employees, agents, attorneys, subsidiaries, predecessors in interest, and any other person or entity acting on its behalf or subject to its control.

2. “GetAutoAppraise” or “Registrant” shall mean GetAutoAppraise, LLC, its affiliated corporations and their officers, directors, employees, agents, and attorneys, subsidiaries, predecessors in interest, and any other person or entity acting on its behalf or subject to its control.

3. “You” and “your” shall refer to GetAutoAppraise, LLC as defined in Paragraph 2 above.

4. The “Registration” shall mean United States Trademark Reg. No. 3,451,994 for the mark GETAUTOAPPRAISE for services in International Class 35.

5. “Registrant’s GETAUTOAPPRAISE Mark” shall mean any designation of “GETAUTOAPPRAISE,” including the mark that is the subject of the Registration (as defined in Paragraph 4 above), that GetAutoAppraise uses or has used in commerce in connection with any goods or services. Except as explicitly indicated otherwise, references to use, advertising, marketing, distribution, and so forth of goods or services in connection with Registrant’s GETAUTOAPPRAISE Mark shall mean use, advertising, marketing, distribution, and so forth within the United States.

6. “Petitioner’s GET AUTO Mark” shall mean United States Trademark Reg. No. 2,061,540 for the mark GET AUTO for services in Class 25.

7. “PTO” shall mean the United States Patent and Trademark Office.

8. “Document” shall mean writings, drawings, graphs, charts, photographs, phone records, stored and retained electronic communications (including but not limited to electronic mail and instant messaging communications) and other data compilations from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form including, but not limited to, correspondence, memoranda (including internal memoranda), handwritten notes, rough drafts, business records, summaries, calendars, appointment books, expense vouchers, receipts, telephone records, message slips, logs, diaries, time sheets, time records, computer printouts, computer lists, computer diskettes and computer indices that are in your possession, custody or control.

9. “Identify” with respect to a person shall mean, to provide to the extent known, the following information: the name, job title, current or last known home address and home telephone number, last known place of employment, and the address and telephone number of such place of employment.

10. “Identify” with respect to a business entity shall mean the name of such business entity, its last known business address and telephone number, the jurisdiction under whose laws it is organized and the jurisdiction in which it maintains its principal place of business.

11. “Identify” with respect to a document shall mean to provide, to the extent known, the following information: the title and date of the document, if any, its author, addressees and recipients, and a description of its contents.

12. “Describe with particularity” means to give the date and a full and complete narrative account of the information requested without omission of any information, whether or not deemed by you to be admissible or inadmissible at trial, that is reasonably calculated to lead to the discovery of admissible evidence.

13. “Person” shall mean any natural person, group of natural persons, corporation, company, unincorporated association, partnership, joint venture, or other business, legal or governmental entity or association.

14. The conjunctive form “and” and the disjunctive form “or” shall be mutually interchangeable and shall not be construed to limit any discovery request.

15. The terms “any” and “all” shall be mutually interchangeable and shall not be construed to limit any discovery request.

16. The singular and the plural shall be mutually interchangeable, and usage of words either in the singular or plural in discovery requests shall not be construed to limit any such request.

17. The present tense shall be construed to include the past tense, and vice versa, to make the discovery request inclusive rather than exclusive.

INSTRUCTIONS

1. If you refuse to answer any discovery request in whole or in part based on a claim that any privilege applies to the information sought, state the privilege and describe the factual basis for your claim of privilege with such specificity as will permit the Board to determine the legal sufficiency of the claim of privilege.

2. Each paragraph and subparagraph hereof and the definitions herein are to be construed independently, and not by or with reference to any other paragraph or subparagraph or definition herein if such construction would limit the scope of any particular discovery request or the subject matter thereof.

3. If any of these discovery requests cannot be answered in full, you are to answer to the fullest extent possible, specifying the reason for your inability to answer the remainder, and stating what information, knowledge or belief you have concerning the unanswered portion.

4. These discovery requests shall be deemed to be continuing. You are under a duty to supplement, correct or amend your response to any of these discovery requests if you learn that any response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Petitioner during the discovery process or in writing.

INTERROGATORIES

1. Describe the circumstances surrounding Registrant's selection, adoption, and first use of Registrant's GETAUTOAPPRAISE Mark, including without limitation, the month, day, and year of such use and the identities of each Person involved.

ANSWER:

2. State the inclusive dates during which Registrant has sold any products or services in connection with Registrant's GETAUTOAPPRAISE Mark, identifying the specific products or services that were sold during a given period.

ANSWER:

3. Describe with specificity each product or service for which Registrant has used, uses or intends to use Registrant's GETAUTOAPPRAISE Mark, including but not limited to a description of Registrant's services that generate sales leads for automotive dealers and Registrant's services that provide price quotes to consumers.

ANSWER:

4. Describe in detail the target or intended purchasers and the intended end users of each of the products or services provided or intended to be provided under Registrant's GETAUTOAPPRAISE Mark.

ANSWER:

5. Describe in detail the channels of distribution through which products or services provided under Registrant's GETAUTOAPPRAISE Mark are or are intended to be provided to purchasers and to end users.

ANSWER:

6. Identify with specificity the geographic areas in which products or services have been sold under the GETAUTOAPPRAISE Mark, setting forth specifically which goods or services have been sold in which geographic areas.

ANSWER:

7. State the prices of each product or service provided or intended to be provided under Registrant's GETAUTOAPPRAISE Mark.

ANSWER:

8. Identify the annual unit and dollar volume of sales in the United States, from the date of first use to the present, of all products and services provided under Registrant's GETAUTOAPPRAISE Mark.

ANSWER:

9. Identify each Person who is now or has been responsible for or has participated in the creation, preparation, or development of the advertising or promotion of products or services provided or intended to be provided under Registrant's GETAUTOAPPRAISE Mark..

ANSWER:

10. Identify each Person whom you have licensed to use the GETAUTOAPPRAISE Mark.

ANSWER:

11. Describe in detail each type of advertising or promotional medium or activity used to promote products or services provided under Registrant's GETAUTOAPPRAISE Mark..

ANSWER:

12. Identify Registrant's annual expenditures for each advertising or promotional means used to advertise or promote products or services in the United States provided or intended to be provided under Registrant's GETAUTOAPPRAISE Mark.

ANSWER:

13. State the approximate date when Registrant became aware of Petitioner's GET AUTO mark.

ANSWER:

14. Describe in detail the facts and circumstances resulting in Registrant's awareness of Petitioner's GET AUTO Mark, including the identification of all Persons having knowledge thereof.

ANSWER:

15. Set forth all facts and bases for, and identify all documents that support, your contention in paragraph 16 of your Answer that “the grounds for cancellation fail to state a claim.”

ANSWER:

16. Set forth all facts and bases for, and identify all documents that support, your contention in paragraph 18 of your Answer that Petitioner’s grounds for cancellation “are barred by the equitable doctrines of laches, acquiescence or estoppel.”

ANSWER:

17. Describe in detail each instance of which Registrant has actual or hearsay knowledge, directly or indirectly, of any inquiry regarding or suggestion of any connection of any type between Registrant and Petitioner or any of their respective products or services.

ANSWER:

18. Describe with particularity all communications Registrant’s representatives have had with Petitioner or its representatives regarding the GETAUTOAPPRAISE Mark or the services offered thereunder.

ANSWER:

/Katharine M. Sullivan/

Judith A. Powell

Katharine M. Sullivan

KILPATRICK TOWNSEND &
STOCKTON LLP

1100 Peachtree Street, Suite 2800

Atlanta, Georgia 30309-4528

404-815-6500 (ph.)

404-815-6555 (fax)

Attorneys for Petitioner

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

DEALER SPECIALTIES)	
INTERNATIONAL, INC.,)	
	)	Cancellation No.: 92/053,351
Petitioner,)	
	)	Registration No.: 3,451,994
vs.)	
)	
GETAUTOAPPRAISE, LLC,)	
)	
Registrant.)	
)	
)	
)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing PETITIONER’S FIRST SET OF INTERROGATORIES TO GETAUTOAPPRAISE LLC on counsel for Registrant by electronic mail and by depositing same in the United States mail, properly addressed with sufficient postage affixed thereto to ensure delivery to:

Andrew Lahser
Law Office of Andrew P. Lahser, PLC
16824 E. Avenue of the Fountains
Suite 14
Fountain Hills AZ 85268
andrew@lahserpatent.com

This 5th day of April, 2011.

/Katharine M. Sullivan/
Katharine M. Sullivan
Attorney for Petitioner

EXHIBIT C

Sullivan, Katie

From: Powell, Judy
Sent: Thursday, May 05, 2011 3:17 PM
To: 'andrew@lahserpatent.com'
Cc: Sullivan, Katie
Subject: Get Auto Appraise

Andrew,

Thank you for your message about a protective order. The TTAB has a standard protective order that the Board considers acceptable and we believe that would be acceptable in this matter. If you wish to propose a different order, if you will send it to us, we will let you know promptly whether it presents any issues.

Regards,
Judy

**Judy Powell****Kilpatrick Townsend & Stockton LLP**

Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528

office 404 815 6433 | cell 404 735 0722 | fax 404 541 3347

jpowell@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

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EXHIBIT D

Sullivan, Katie

From: Sullivan, Katie
Sent: Thursday, May 05, 2011 6:48 PM
To: 'andrew@lahserpatent.com'
Cc: Powell, Judy
Subject: RE: Get Auto Appraise
Attachments: 2010-12-02 - Dkt No. 002 - Notice of Trial Dates.PDF

Dear Andrew,

Under the new Trademark Rule 2.116(g), the Board's standard protective order is automatically in effect in all cases before the Board unless the parties choose to alter it. This is also reflected in the Notice of Trial Dates sent to us by the Board, attached (at p. 4). Because we both agree to the standard protective order, it is already in effect and no signatures or filing are required.

Thanks,
Katie

Katie Sullivan**Kilpatrick Townsend & Stockton LLP**

Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528
office 404 815 6146 | fax 404 541 3184
ksullivan@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

From: Andrew P. Lahser, Patent Attorney [mailto:andrew@lahserpatent.com]
Sent: Thursday, May 05, 2011 4:01 PM
To: Powell, Judy
Subject: Re: Get Auto Appraise

The standard protective order is fine. I assume that you will have your client sign and transmit that to me. Also, I would appreciate your consent to send out the response to your discovery request subsequent to the receipt of the signed protective order, which would be within a week of receipt of the signed protective order.

Sincerely,

~ Andrew P. Lahser, Patent Attorney | lahserpatent.com/contact

On May 5, 2011, at 12:17 PM, Powell, Judy wrote:

Andrew,

Thank you for your message about a protective order. The TTAB has a standard protective order that the Board considers acceptable and we believe that would be acceptable in this matter. If you wish to propose a different order, if you will send it to us, we will let you know promptly whether it presents any issues.

Regards,
Judy



Judy Powell

Kilpatrick Townsend & Stockton LLP

Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528

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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: December 3, 2010

Cancellation No. 92053351
Registration No. 3451994

GETAUTOAPPRAISE, LLC
7900 EAST GREENWAY, SUITE 210
SCOTTSDALE, AZ 85260

Dealer Specialties International,
Inc.

v.

GetAutoAppraise, LLC

KATHARINE M. SULLIVAN
KILPATRICK STOCKTON LLP
1100 PEACHTREE STREET, SUITE 2800
ATLANTA, GA 30309

Millicent Canady, Paralegal Specialist:

A petition to cancel the above-identified registration has been filed.

A service copy of the petition for cancellation was forwarded to registrant by the petitioner. An electronic version of the petition for cancellation is viewable in the electronic file for this proceeding via the Board's TTABVUE system: <http://ttabvue.uspto.gov/ttabvue/>.

The Board acknowledges that petitioner included proof that it forwarded a service copy of its petition to registrant. However, the proof of service indicates that petitioner sent that service copy to an attorney for registrant, rather than to registrant. As provided in amended Trademark Rule 2.111(a), a petitioner must include "proof of service on the owner of record for the registration, or the owner's domestic representative of record, at the correspondence address of record." The rule does not direct a petitioner to serve an attorney, though an attorney should be served if the attorney is the registrant's designated domestic representative. The reference in the rule to correspondence address is a reference to the address for the owner of the registration or the domestic representative, if one has been appointed. While petitioner's proof of service is a reasonable attempt to effect service, petitioner is directed to forward an additional copy of its petition to the owner of record for the registration, at its address of record. In addition, any future filing must be served directly on the owner of the registration. If an attorney files an answer or other paper for registrant, thereby entering an appearance, petitioner may thereafter forward service copies to that attorney rather than registrant.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/trademarks/index.jsp>. The Board's main webpage (<http://www.uspto.gov/trademarks/process/appeal/index.jsp>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) **Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVUE system at the following web address: <http://ttabvue.uspto.gov/ttabvue/>.**

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. **If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies.** See Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. **Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.**

Time to Answer	1/12/2011
Deadline for Discovery Conference	2/11/2011
Discovery Opens	2/11/2011
Initial Disclosures Due	3/13/2011
Expert Disclosures Due	7/11/2011
Discovery Closes	8/10/2011
Plaintiff's Pretrial Disclosures	9/24/2011
Plaintiff's 30-day Trial Period Ends	11/8/2011
Defendant's Pretrial Disclosures	11/23/2011
Defendant's 30-day Trial Period Ends	1/7/2012
Plaintiff's Rebuttal Disclosures	1/22/2012
Plaintiff's 15-day Rebuttal Period Ends	2/21/2012

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case. See Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. See Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVue record for this case at <http://ttabvue.uspto.gov/ttabvue/>. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the

absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at:

<http://www.uspto.gov/trademarks/process/appeal/guidelines/stdnagmnt.jsp>. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. See Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. See TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing

through the **Electronic System for Trademark Trials and Appeals (ESTTA)**. Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.

EXHIBIT E

Sullivan, Katie

From: Andrew P. Lahser, Patent Attorney [andrew@lahserpatent.com]
Sent: Thursday, May 05, 2011 7:15 PM
To: Sullivan, Katie
Subject: Re: Get Auto Appraise

Assuming that I have the correct, most current protective order, the terms of the order itself indicate that it is only effective as of the date of the signature by the parties or by a Board attorney or judge. The following quote is the third full paragraph:

Agreement of the parties is indicated by the signatures of the parties' attorneys and/or the parties themselves at the conclusion of the order. Imposition of the terms by the Board is indicated by signature of a Board attorney or Administrative Trademark Judge at the conclusion of the order. If the parties have signed the order, they may have created a contract. The terms are binding from the date the parties or their attorneys sign the order, in standard form or as modified or supplemented, or from the date of imposition by a Board attorney or judge.

It has been my practice to obtain signatures on the standard protective order. Generally, I take care of this during the discovery conference, however, it appears that we did not discuss this at that time.

Sincerely,
~ Andrew P. Lahser, Patent Attorney | lahserpatent.com/contact

On May 5, 2011, at 3:48 PM, Sullivan, Katie wrote:

Dear Andrew,

Under the new Trademark Rule 2.116(g), the Board's standard protective order is automatically in effect in all cases before the Board unless the parties choose to alter it. This is also reflected in the Notice of Trial Dates sent to us by the Board, attached (at p. 4). Because we both agree to the standard protective order, it is already in effect and no signatures or filing are required.

Thanks,
Katie

Katie Sullivan
Kilpatrick Townsend & Stockton LLP
Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528
office 404 815 6146 | fax 404 541 3184
ksullivan@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

From: Andrew P. Lahser, Patent Attorney [mailto:andrew@lahserpatent.com]
Sent: Thursday, May 05, 2011 4:01 PM
To: Powell, Judy
Subject: Re: Get Auto Appraise

The standard protective order is fine. I assume that you will have your client sign and transmit that to me. Also, I would appreciate your consent to send out the response to your discovery request subsequent to the receipt of the

signed protective order, which would be within a week of receipt of the signed protective order.

Sincerely,

~ Andrew P. Lahser, Patent Attorney | lahserpatent.com/contact

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Andrew,
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Regards,
Judy



Judy Powell

Kilpatrick Townsend & Stockton LLP

Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528

office 404 815 6433 | cell 404 735 0722 | fax 404 541 3347

jpowell@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

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<2010-12-02 - Dkt No. 002 - Notice of Trial Dates.PDF>

EXHIBIT F

Sullivan, Katie

From: Sullivan, Katie
Sent: Friday, May 06, 2011 11:40 AM
To: 'Andrew P. Lahser, Patent Attorney'
Cc: Powell, Judy
Subject: RE: Get Auto Appraise

Dear Andrew,

According to the latest version of the TBMP, section 412.01 (available at http://www.uspto.gov/trademarks/process/appeal/Chapter_400.pdf), “[f]or inter partes proceedings pending or commenced on or after August 31, 2007, the Board’s standard protective order is automatically in place to govern the exchange of information . . . It is not necessary for the parties to sign copies of the Board’s protective order for it to take effect.”

If you feel that it is imperative that we sign the Protective Order, please let me know and I will execute a copy and send it to you. However, in light of the Rule, since the Order is in effect, we believe your client's documents should be produced without awaiting signatures.

Regards,
Katie

Katie Sullivan
Kilpatrick Townsend & Stockton LLP
Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528
office 404 815 6146 | fax 404 541 3184
ksullivan@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

From: Andrew P. Lahser, Patent Attorney [mailto:andrew@lahserpatent.com]
Sent: Thursday, May 05, 2011 7:15 PM
To: Sullivan, Katie
Subject: Re: Get Auto Appraise

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It has been my practice to obtain signatures on the standard protective order. Generally, I take care of this during the discovery conference, however, it appears that we did not discuss this at that time.

Sincerely,
~ Andrew P. Lahser, Patent Attorney | lahserpatent.com/contact

On May 5, 2011, at 3:48 PM, Sullivan, Katie wrote:

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Thanks,
Katie

Katie Sullivan

Kilpatrick Townsend & Stockton LLP

Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528

office 404 815 6146 | fax 404 541 3184

ksullivan@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

From: Andrew P. Lahser, Patent Attorney [mailto:andrew@lahserpatent.com]
Sent: Thursday, May 05, 2011 4:01 PM
To: Powell, Judy
Subject: Re: Get Auto Appraise

The standard protective order is fine. I assume that you will have your client sign and transmit that to me. Also, I would appreciate your consent to send out the response to your discovery request subsequent to the receipt of the signed protective order, which would be within a week of receipt of the signed protective order.

Sincerely,

~ Andrew P. Lahser, Patent Attorney | lahserpatent.com/contact

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Andrew,

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Regards,
Judy



Judy Powell

Kilpatrick Townsend & Stockton LLP

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jpowell@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

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<2010-12-02 - Dkt No. 002 - Notice of Trial Dates.PDF>

EXHIBIT G



Suite 2800 1100 Peachtree St.
Atlanta GA 30309-4528
t 404 815 6500 f 404 815 6555

direct dial 404 815 6146
direct fax 404 541 3184
ksullivan@kilpatricktownsend.com

May 27, 2011

VIA ELECTRONIC AND FIRST CLASS MAIL

Andrew P. Lahser
Law Office of Andrew P. Lahser, PLC
16824 E. Avenue of the Fountains
Suite 14
Fountain Hills AZ 85268

Re: Dealer Specialties International, Inc. v. GetAutoAppraise, LLC
Cancellation No. 92/053,351 before the Trademark Trial and Appeal Board

Dear Andrew,

We do not have a record of having received any written responses to Petitioner Dealer Specialties International, Inc.'s First Interrogatories and Documents Requests to your client, GetAutoAppraise, LLC, served on April 5, 2011. Your responses were due May 10, 2011; accordingly, under Federal Rules 33 and 34 all objections have been waived, and we will appreciate your sending the responses by June 3, 2011 and producing all responsive documents by June 10, 2011. Otherwise, we will have no choice but to file a motion to compel.

Please do not hesitate to contact me with any questions.

Regards,

A handwritten signature in black ink, appearing to read 'Katharine M. Sullivan'.

Katharine M. Sullivan

Cc: Judith A. Powell, Esq.

EXHIBIT H



LAW OFFICE OF ANDREW P. LAHSER, PLC
PATENT • TRADEMARK • COPYRIGHT

Friday, June 3, 2011

Via Email and First Class Mail

Katharine M. Sullivan
Judith A. Powell
KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 3039-4528
JPowell@KilpatrickStockton.com

**RE: Dealer Specialties International, Inc. v. GetAutoAppraise, LLC
Trademark Trial and Appeal Board Cancellation No. 92/053,351**

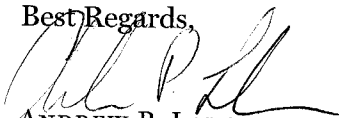
Dear Ms. Sullivan and Ms. Powell:

As I have previously indicated by email, due to the confidential nature of the documents and information that you have requested, we request signing of the protective order.

You previously cited TBMP §412.01, stating “it is not necessary for the parties to sign copies of the Board’s protective order for it to take effect”. On the contrary, the protect order itself states “The terms are binding from the date the parties or their attorneys sign the order, in standard form or as modified or supplemented, or from the date of imposition by a Board attorney or judge.” Imposition by the judge is indicated by a signature. In this case, we have not signed the order and it has not been imposed by a Board attorney or judge.

It is my understanding, when there is a conflict between the rules and an order, the order would be controlling on the parties. Said another way, the TTAB is not bound to follow their own rules, only precedent and statutory law. As such, we believe the simplest path forward is to allow the parties to sign the protective order and continue with discovery.

Best Regards,



ANDREW P. LAHSER

EXHIBIT I

Sullivan, Katie

From: Sullivan, Katie
Sent: Tuesday, June 07, 2011 6:23 PM
To: 'Andrew P. Lahser, Patent Attorney'
Cc: Powell, Judy
Subject: RE: Dealer Specialties v. GetAutoAppraise, Cancellation No. 92/053,351
Follow Up Flag: Follow up
Due By: Friday, June 10, 2011 12:00 AM
Flag Status: Completed
Attachments: GET AUTO Protective Order.pdf

Dear Andrew,

We continue to disagree with your interpretation of whether the Board's standard protective order is automatically in place in all inter partes proceedings before the Board. In light of your continued delay in serving written responses to our April 5, 2011 discovery requests, which were due on May 10, 2011, and for which no protective order was necessary, your objections to those requests remain waived.

In addition, in all cases, signatures of attorneys (as opposed to their clients) is sufficient for protective orders to become effective. However, in order to move this matter along, we have nevertheless obtained the signature of our client on the Board's standard protective order, attached. I realize that her signature on this scan is difficult to read and am working to obtain a better copy. In the meantime, we will appreciate receiving your responses by June 10, 2011 and any responsive documents by June 17, 2011.

Regards,
Katie

Katie Sullivan**Kilpatrick Townsend & Stockton LLP**

Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528
office 404 815 6146 | fax 404 541 3184
ksullivan@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

From: Andrew P. Lahser, Patent Attorney [mailto:andrew@lahserpatent.com]
Sent: Friday, June 03, 2011 10:30 AM
To: Sullivan, Katie
Cc: Powell, Judy
Subject: Re: Dealer Specialties v. GetAutoAppraise, Cancellation No. 92/053,351

Ms. Sullivan,

Please see the attached correspondence. A copy by first class mail will follow.

~ Andrew P. Lahser, Patent Attorney | lahserpatent.com/contact

On May 27, 2011, at 3:21 PM, Sullivan, Katie wrote:

Confidentiality Notice:

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, and any attachments, may contain confidential attorney-client privileged information and attorney work product. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. Please contact us immediately by return e-mail or at 404 815 6500, and destroy the original transmission and its

attachments without reading or saving in any manner.

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

DEALER SPECIALTIES)	
INTERNATIONAL, INC.,)	
	)	Cancellation No.: 92/053,351
Petitioner,)	
	)	Registration No.: 3,451,994
vs.)	
	)	STIPULATED PROTECTIVE
GETAUTOAPPRAISE, LLC,	)	ORDER
)	
Registrant.)	
)	
)	

Petitioner Dealer Specialties International, Inc. and Registrant GetAutoAppraise, LLC (collectively “the parties”), having stipulated pursuant to Federal Rule of Civil Procedure 26(c) and TBMP § 412.02 to the entry of the following Stipulated Protective Order, which is identical to the Board’s standard form, the Board ENTERS this Stipulated Protective Order and ORDERS as follows:

1) Classes of Protected Information.

1.1 The 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 witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations.

1.2 Confidential -Material to be shielded by the Board from public access.

1.3 Highly Confidential -Material to be shielded by the Board from public access and subject to agreed restrictions on access even as to the parties and/or their attorneys.

1.4 Trade Secret/Commercially Sensitive -Material to be shielded by the Board from public access, restricted from any access by the parties, and available for review by outside counsel for the parties and, subject to the provisions of paragraph 4 and 5, by independent experts or consultants for the parties.

2) Information Not to Be Designated as Protected.

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

3.1 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.

3.2 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.

3.3 Parties are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.

3.4 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.

3.5 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.

3.6 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.

3.7 Parties and their attorneys shall have access to information designated as **confidential or highly confidential** , subject to any agreed exceptions.

3.8 Outside counsel, but not in-house counsel, shall have access to information designated as **trade secret/commercially sensitive** .

3.9 Independent experts or consultants , non-party witnesses , and any other individual not otherwise specifically covered by the terms of this order may be afforded access to **confidential or highly confidential** information in accordance with the terms that follow in paragraph 4. Further, **independent experts or consultants** may have access to **trade secret/commercially sensitive** 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 Any Individual.

Prior to disclosure of protected information by any party or its attorney to any individual not already provided access to such information by the terms of this order, 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 form shall retain the original.

5) Disclosure to Independent Experts or Consultants.

5.1 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 also 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 notice of the name, address, occupation and professional background of the expert or independent consultant.

5.2 The party or its attorney receiving the notice shall have ten (10) business days to object to disclosure to the expert or independent consultant. 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. The party objecting to disclosure will be expected to respond with its arguments against disclosure or its objections will be deemed waived.

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. 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.

- 8.1** 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.
- 8.2** During discussion of any non-documentary protected information, the interested party shall make oral note of the protected nature of the information.
- 8.3** 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, 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.

12.1 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.

12.2 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 .**

12.3 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 upon discovery of the error.

14) Challenges to Designations of Information as Protected.

14.1 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.

14.2 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.

14.3 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.

15.1 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.

15.2 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.

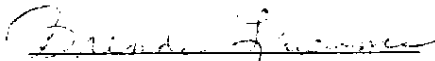
SO ORDERED, this ____ day of _____, 2011.

Jennifer Krisp
Interlocutory Attorney
Trademark Trial and Appeal Board

By Agreement of the Following, effective

Date: Jun 7, 2011

Date:


Brenda Lawrence

Name:

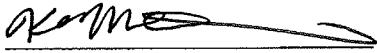
Title: Intellectual Property Administrator

Title:

Dealer Specialties International, Inc.

GetAutoAppraise, LLC

Date: 6/7/2011



Judith A. Powell
Katharine M. Sullivan
KILPATRICK TOWNSEND &
STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4528

Attorneys for Petitioner
Dealer Specialties International, Inc.

Date:

Andrew Lahser
Law Office of Andrew P. Lahser, PLC
16824 E. Avenue of the Fountains
Suite 14
Fountain Hills AZ 85268
andrew@lahserpatent.com

Attorneys for Registrant
GetAutoAppraise, LLC

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

DEALER SPECIALTIES)	
INTERNATIONAL, INC.,)	
	)	Cancellation No.: 92/053,351
Petitioner,)	
	)	Registration No.: 3,451,994
vs.)	
)	
GETAUTOAPPRAISE, LLC,)	
)	
Registrant.)	
)	

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

I, _____ [print name], 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.

[signature]

[print title, if applicable]

[date]

EXHIBIT J

Sullivan, Katie

From: Sullivan, Katie
Sent: Tuesday, June 14, 2011 3:14 PM
To: 'Andrew P. Lahser, Patent Attorney'
Cc: Powell, Judy
Subject: RE: Dealer Specialties v. GetAutoAppraise, Cancellation No. 92/053,351
Attachments: Get Auto_ Protective Order.PDF

Dear Andrew,

As promised, attached please find a clearer scan of the Board's standard protective order, as executed by our client. We have yet to receive your client's past-due responses. Please send your responses promptly or we will have no choice but to file the Motion to Compel.

Regards,
Katie

Katie Sullivan**Kilpatrick Townsend & Stockton LLP**

Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528
office 404 815 6146 | fax 404 541 3184
ksullivan@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

From: Sullivan, Katie
Sent: Tuesday, June 07, 2011 6:23 PM
To: 'Andrew P. Lahser, Patent Attorney'
Cc: Powell, Judy
Subject: RE: Dealer Specialties v. GetAutoAppraise, Cancellation No. 92/053,351

Dear Andrew,

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In addition, in all cases, signatures of attorneys (as opposed to their clients) is sufficient for protective orders to become effective. However, in order to move this matter along, we have nevertheless obtained the signature of our client on the Board's standard protective order, attached. I realize that her signature on this scan is difficult to read and am working to obtain a better copy. In the meantime, we will appreciate receiving your responses by June 10, 2011 and any responsive documents by June 17, 2011.

Regards,
Katie

Katie Sullivan**Kilpatrick Townsend & Stockton LLP**

Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528
office 404 815 6146 | fax 404 541 3184
ksullivan@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

From: Andrew P. Lahser, Patent Attorney [mailto:andrew@lahserpatent.com]
Sent: Friday, June 03, 2011 10:30 AM
To: Sullivan, Katie
Cc: Powell, Judy
Subject: Re: Dealer Specialties v. GetAutoAppraise, Cancellation No. 92/053,351

Ms. Sullivan,

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~ Andrew P. Lahser, Patent Attorney | lahserpatent.com/contact

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

DEALER SPECIALTIES)	
INTERNATIONAL, INC.,)	
	)	Cancellation No.: 92/053,351
Petitioner,)	
	)	Registration No.: 3,451,994
vs.)	
	)	STIPULATED PROTECTIVE
GETAUTOAPPRAISE, LLC,	)	ORDER
)	
Registrant.)	
)	
)	

Petitioner Dealer Specialties International, Inc. and Registrant GetAutoAppraise, LLC (collectively “the parties”), having stipulated pursuant to Federal Rule of Civil Procedure 26(c) and TBMP § 412.02 to the entry of the following Stipulated Protective Order, which is identical to the Board’s standard form, the Board ENTERS this Stipulated Protective Order and ORDERS as follows:

1) Classes of Protected Information.

1.1 The 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 witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations.

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1.4 Trade Secret/Commercially Sensitive -Material to be shielded by the Board from public access, restricted from any access by the parties, and available for review by outside counsel for the parties and, subject to the provisions of paragraph 4 and 5, by independent experts or consultants for the parties.

2) Information Not to Be Designated as Protected.

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

3.1 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.

3.2 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.

- 3.3 Parties** are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.
- 3.4 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.
- 3.5 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.
- 3.6 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.
- 3.7 Parties** and their **attorneys** shall have access to information designated as **confidential** or **highly confidential** , subject to any agreed exceptions.
- 3.8 Outside counsel, but not in-house counsel,** shall have access to information designated as **trade secret/commercially sensitive** .

3.9 Independent experts or consultants , non-party witnesses , and any other individual not otherwise specifically covered by the terms of this order may be afforded access to **confidential or highly confidential** information in accordance with the terms that follow in paragraph 4. Further, **independent experts or consultants** may have access to **trade secret/commercially sensitive** 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 Any Individual.

Prior to disclosure of protected information by any party or its attorney to any individual not already provided access to such information by the terms of this order, 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 form shall retain the original.

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5.1 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 also 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 notice of the name, address, occupation and professional background of the expert or independent consultant.

5.2 The party or its attorney receiving the notice shall have ten (10) business days to object to disclosure to the expert or independent consultant. 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. The party objecting to disclosure will be expected to respond with its arguments against disclosure or its objections will be deemed waived.

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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. 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.

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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.

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12.1 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.

12.2 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 .**

- 12.3** 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 upon discovery of the error.

14) Challenges to Designations of Information as Protected.

14.1 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.

14.2 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.

14.3 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.

15.1 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.

15.2 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.

SO ORDERED, this ____ day of _____, 2011.

Jennifer Krisp
Interlocutory Attorney
Trademark Trial and Appeal Board

By Agreement of the Following, effective

Date: *June 7, 2011*

Date:

Brenda Lawrence
Brenda Lawrence

Name:

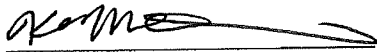
Title: Intellectual Property Administrator

Title:

Dealer Specialties International, Inc.

GetAutoAppraise, LLC

Date: 6/7/2011



Judith A. Powell
Katharine M. Sullivan
KILPATRICK TOWNSEND &
STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4528

Attorneys for Petitioner
Dealer Specialties International, Inc.

Date:

Andrew Lahser
Law Office of Andrew P. Lahser, PLC
16824 E. Avenue of the Fountains
Suite 14
Fountain Hills AZ 85268
andrew@lahserpatent.com

Attorneys for Registrant
GetAutoAppraise, LLC

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

DEALER SPECIALTIES)	
INTERNATIONAL, INC.,)	
	)	Cancellation No.: 92/053,351
Petitioner,)	
	)	Registration No.: 3,451,994
vs.)	
)	
GETAUTOAPPRAISE, LLC,)	
)	
Registrant.)	
)	

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

I, _____ [print name], 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.

[signature]

[print title, if applicable]

[date]

EXHIBIT K

Sullivan, Katie

From: Andrew P. Lahser, Patent Attorney [andrew@lahserpatent.com]
Sent: Monday, June 20, 2011 11:06 AM
To: Sullivan, Katie
Cc: Powell, Judy
Subject: Re: Dealer Specialties v. GetAutoAppraise, Cancellation No. 92/053,351
Ms. Sullivan,

I called you today to clarify the nature and scope of one of the discovery requests.

Tomorrow, I will have completed the responses to your discovery requests. At the same time, I'll deliver the signed copy of the protective order.

Of course, I disagree with your interpretation that these responses are late and objects are waived, as, I could be under no obligation to comply with the request when a protective agreement was not in place. Necessarily, the time should not toll until delivery of the signed order.

~ Andrew P. Lahser, Patent Attorney | lahserpatent.com/contact

On Jun 14, 2011, at 12:13 PM, Sullivan, Katie wrote:

Dear Andrew,

As promised, attached please find a clearer scan of the Board's standard protective order, as executed by our client. We have yet to receive your client's past-due responses. Please send your responses promptly or we will have no choice but to file the Motion to Compel.

Regards,
Katie

Katie Sullivan**Kilpatrick Townsend & Stockton LLP**

Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528
office 404 815 6146 | fax 404 541 3184
ksullivan@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

From: Sullivan, Katie
Sent: Tuesday, June 07, 2011 6:23 PM
To: 'Andrew P. Lahser, Patent Attorney'
Cc: Powell, Judy
Subject: RE: Dealer Specialties v. GetAutoAppraise, Cancellation No. 92/053,351

Dear Andrew,

We continue to disagree with your interpretation of whether the Board's standard protective order is automatically in place in all inter partes proceedings before the Board. In light of your continued delay in serving written responses to our April 5, 2011 discovery requests, which were due on May 10, 2011, and for which no protective order was

necessary, your objections to those requests remain waived.

In addition, in all cases, signatures of attorneys (as opposed to their clients) is sufficient for protective orders to become effective. However, in order to move this matter along, we have nevertheless obtained the signature of our client on the Board's standard protective order, attached. I realize that her signature on this scan is difficult to read and am working to obtain a better copy. In the meantime, we will appreciate receiving your responses by June 10, 2011 and any responsive documents by June 17, 2011.

Regards,
Katie

Katie Sullivan

Kilpatrick Townsend & Stockton LLP

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office 404 815 6146 | fax 404 541 3184
ksullivan@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

From: Andrew P. Lahser, Patent Attorney [mailto:andrew@lahserpatent.com]
Sent: Friday, June 03, 2011 10:30 AM
To: Sullivan, Katie
Cc: Powell, Judy
Subject: Re: Dealer Specialties v. GetAutoAppraise, Cancellation No. 92/053,351

Ms. Sullivan,

Please see the attached correspondence. A copy by first class mail will follow.

~ Andrew P. Lahser, Patent Attorney | lahserpatent.com/contact

On May 27, 2011, at 3:21 PM, Sullivan, Katie wrote:

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EXHIBIT L

Sullivan, Katie

From: Sullivan, Katie
Sent: Monday, June 20, 2011 5:37 PM
To: 'Andrew P. Lahser, Patent Attorney'
Cc: Powell, Judy
Subject: RE: Dealer Specialties v. GetAutoAppraise, Cancellation No. 92/053,351

Mr. Lahser,

Following on our earlier phone conversation, we look forward to receiving the discovery responses and responsive documents you will send tomorrow.

Our position remains that these responses are late and your objections are waived. Any concerns you had regarding the status of the protective order should have been addressed through timely-served objections and responses.

Regards,
Katie Sullivan

Katie Sullivan**Kilpatrick Townsend & Stockton LLP**

Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528
office 404 815 6146 | fax 404 541 3184
ksullivan@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

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Sent: Monday, June 20, 2011 11:06 AM
To: Sullivan, Katie
Cc: Powell, Judy
Subject: Re: Dealer Specialties v. GetAutoAppraise, Cancellation No. 92/053,351

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~ Andrew P. Lahser, Patent Attorney | lahserpatent.com/contact

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Katie

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ksullivan@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

From: Sullivan, Katie
Sent: Tuesday, June 07, 2011 6:23 PM
To: 'Andrew P. Lahser, Patent Attorney'
Cc: Powell, Judy
Subject: RE: Dealer Specialties v. GetAutoAppraise, Cancellation No. 92/053,351

Dear Andrew,

We continue to disagree with your interpretation of whether the Board's standard protective order is automatically in place in all inter partes proceedings before the Board. In light of your continued delay in serving written responses to our April 5, 2011 discovery requests, which were due on May 10, 2011, and for which no protective order was necessary, your objections to those requests remain waived.

In addition, in all cases, signatures of attorneys (as opposed to their clients) is sufficient for protective orders to become effective. However, in order to move this matter along, we have nevertheless obtained the signature of our client on the Board's standard protective order, attached. I realize that her signature on this scan is difficult to read and am working to obtain a better copy. In the meantime, we will appreciate receiving your responses by June 10, 2011 and any responsive documents by June 17, 2011.

Regards,
Katie

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ksullivan@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

From: Andrew P. Lahser, Patent Attorney [<mailto:andrew@lahserpatent.com>]
Sent: Friday, June 03, 2011 10:30 AM
To: Sullivan, Katie
Cc: Powell, Judy
Subject: Re: Dealer Specialties v. GetAutoAppraise, Cancellation No. 92/053,351

Ms. Sullivan,

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~ Andrew P. Lahser, Patent Attorney | lahserpatent.com/contact

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EXHIBIT M

Sullivan, Katie

From: Andrew Lahser, Patent Attorney [andrew@lahserpatent.com]
Sent: Thursday, June 23, 2011 5:37 PM
To: Andrew P. Lahser, Patent Attorney
Cc: Sullivan, Katie; Powell, Judy
Subject: Re: Dealer Specialties v. GetAutoAppraise, Cancellation No. 92/053,351
Ms Sullivan,

I apologize for the further delay in getting the discovery responses to you. I have had another pressing matter that has come up. I'll be in touch again no later than Tuesday.

Sincerely,
~ Andrew P. Lahser, Patent Attorney | lahserpatent.com/contact

On Jun 20, 2011, at 8:05 AM, Andrew P. Lahser, Patent Attorney wrote:

Ms. Sullivan,

I called you today to clarify the nature and scope of one of the discovery requests.

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Katie

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From: Sullivan, Katie

Sent: Tuesday, June 07, 2011 6:23 PM
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Cc: Powell, Judy
Subject: RE: Dealer Specialties v. GetAutoAppraise, Cancellation No. 92/053,351

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Cc: Powell, Judy
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