

ESTTA Tracking number: **ESTTA586623**

Filing date: **02/11/2014**

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

Proceeding	92057946
Party	Plaintiff Precision Pet Products, Inc.
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Date	02/11/2014
Attachments	StipulatedProtectiveOrder.pdf(451093 bytes)

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

In the Matter of Trademark Registration No. 3,513,048

Precision Pet Products, Inc.,)	Cancellation No.: 92057946
)	
Petitioner,)	
)	
vs.)	
)	
Kaytee Products Incorporated,)	
)	
Respondent.)	

STIPULATED PROTECTIVE ORDER

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Parties that the terms and conditions of this Stipulated Protective Order shall govern the handling of physical inspections, documents, answers to interrogatories, depositions, pleadings, exhibits, and other information exchanged by the parties or provided by a third party in this action.

IT IS HEREBY ORDERED as follows:

1. This order shall be applicable to and govern all physical inspections, depositions, documents produced or provided for inspection in response to requests for production of documents, answers to interrogatories, responses to requests for admissions, and all other discovery taken pursuant to the Federal Rules of Civil Procedure and the Trademark Rules of Practice, matters in evidence and other information which the disclosing Party designates as "CONFIDENTIAL" or "ATTORNEYS EYES ONLY" hereafter furnished directly or indirectly,

by or on behalf of any party in connection with this action. The term "Party" or "parties" shall refer to the parties to this action and third parties agreeing to be bound by this Stipulated Protective Order.

2. In designating information as "CONFIDENTIAL", or "ATTORNEYS EYES ONLY", a Party shall make such a designation only as to materials which that Party in good faith believes constitutes such material as matter used by it in, or pertaining to, its business which matter is not generally known and which the Party would normally not reveal to third parties or would cause third parties to maintain in confidence. Material labeled "CONFIDENTIAL" or "ATTORNEYS EYES ONLY" shall be used by any recipient solely for the purpose of conducting this proceeding and not for any other purpose whatsoever.

3. Information designated as "CONFIDENTIAL" may be disclosed only to the following persons:

a. The attorneys working on this action on behalf of any Party, including in-house attorneys, all paralegal assistants, stenographic and clerical employees working under the direct supervision of such counsel, provided that each person described in this paragraph to whom CONFIDENTIAL information has been or will be disclosed, is informed of the provisions and restrictions of this Protective Order and agrees to comply with the same;

b. Any independent expert or any independent third-party consultant not employed by a Party who is expressly retained or sought to be retained by any attorney described in Paragraph 3(a) to assist in preparation of this action for trial, with disclosure only to the extent necessary to perform such work. A Party receiving CONFIDENTIAL material may only provide disclosure to a maximum of four (4) experts for the sole

purposes of assisting counsel in trial preparation and/or for obtaining expert trial testimony. At least seven (7) business days before the disclosure of any CONFIDENTIAL material to an expert, the receiving party must inform the supplying party, in writing and by overnight delivery, of the proposed disclosure, the full identity of the expert, and all of the expert's affiliations. If the supplying party objects, it must inform the receiving Party within seven (7) business days after receipt of such notification, in writing and by overnight delivery. After an objection, the supplying Party shall have ten (10) days in which to file a motion with the TTAB to prevent the disclosure, which shall be served upon the receiving Party by overnight delivery. If the supplying Party fails to timely file its motion with the TTAB, then the disclosure may proceed. The burden of persuasion shall be on the receiving Party to show good cause. Once an objection is made, and the supplying Party timely files its motion with the TTAB, no disclosure shall occur until the objection is resolved. The TTAB, at its discretion, may award reasonable attorney fees to the prevailing party in conjunction with the resolution of any dispute under this paragraph;

c. Any director, officer or employee of a Party who is required by such Party to work directly on this proceeding, with disclosures only to the extent necessary to perform such work;

d. Any percipient and/or expert witness of whom testimony is taken, except that such person may only be shown copies of CONFIDENTIAL Material during his/her testimony, and may not retain any CONFIDENTIAL Material; and

e. The TTAB (“TTAB”) and its officers.

4. Any CONFIDENTIAL Material which a party believes should not be disclosed to a director, officer, or employee of the other Party, including in-house counsel, may be designated by the Party through its counsel at the time of disclosure of such information as "ATTORNEYS EYES ONLY". The Parties contemplate that material designated as ATTORNEYS EYES ONLY shall include, for example, current and future business plans, marketing documents, and sales information.

5. Information designated as "ATTORNEYS EYES ONLY" may be disclosed only to the following persons:

a. The attorneys working on this action on behalf of any Party and all paralegal assistants, stenographic and clerical employees working under the direct supervision of such counsel, provided that each person described in this paragraph to whom CONFIDENTIAL information has been or will be disclosed, is informed of the provisions and restrictions of this Protective Order and agrees to comply with the same;

b. Any independent expert or any independent Third-Party consultant not employed by a party who is expressly retained or sought to be retained by any attorney described in Paragraph 5(a) to assist in preparation of this action for trial, with disclosure only to the extent necessary to perform such work. A Party receiving Attorneys Eyes Only Material may only provide disclosure to a maximum of four (4) experts for the sole purposes of assisting counsel in trial preparation and/or for obtaining expert trial testimony. At least seven (7) business days before the disclosure of any CONFIDENTIAL material to an expert, the receiving Party must inform the supplying Party, in writing and by overnight delivery, of the proposed disclosure, the full identity of the expert, and all of the expert's affiliations. If the supplying Party objects, it must

inform the receiving Party within seven (7) business days after receipt of such notification, in writing and by overnight delivery. After an objection, the supplying Party shall have ten (10) days in which to file a motion with the TTAB to prevent the disclosure, which shall be served upon the receiving Party by overnight delivery. If the supplying Party fails to timely file its motion with the TTAB, then the disclosure may proceed. The burden of persuasion shall be on the receiving Party to show good cause. Once an objection is made, and the supplying Party timely files its motion with the TTAB, no disclosure shall occur until the objection is resolved. The TTAB, at its discretion, may award reasonable attorney fees to the prevailing Party in conjunction with the resolution of any dispute under this paragraph;

c. Any percipient and/or expert witness who is not a director, officer or employee of a Party of whom testimony is taken, provided that application shall be made to opposing counsel for permission to disclose information designated as "Attorneys Eyes Only" prior to any such disclosure, which permission will not be unreasonably withheld and any disputes over the withholding of permission will be presented to the TTAB for resolution and provided that such person may only be shown copies of materials marked ATTORNEYS EYES ONLY during his/her testimony and may not retain any such material; and

d. The TTAB and its officers.

6. The persons described in Paragraphs 3(b), (c), and (d) shall have access to the CONFIDENTIAL Material and the persons described in Paragraphs 5(b) and (c) shall have access to the ATTORNEYS EYES ONLY Material only after they have been made aware of the provisions of this Order and have manifested their assent to be bound thereby by signing a copy

of the annexed "ACKNOWLEDGEMENT". A list shall be maintained by counsel of the names of all persons to whom CONFIDENTIAL Material or ATTORNEYS EYES ONLY Material is disclosed, and such list shall be available for inspection by the TTAB upon good cause by opposing counsel. Similar but separate lists shall also be maintained with respect to CONFIDENTIAL Material or ATTORNEYS EYES ONLY Material provided by third parties. At the time of the termination of this lawsuit by settlement, judgment or otherwise, the Parties hereto shall provide other counsel with a copy of the pertinent aforementioned lists. The persons receiving CONFIDENTIAL Material or ATTORNEYS EYES ONLY Material are enjoined from disclosing it to any other person, except in conformance with this Order.

7. Each individual who receives any Confidential or Attorneys Eyes Only Material hereby agrees to subject himself/herself to the jurisdiction of this TTAB for the purpose of any proceedings relating to the performance under, compliance with or violation of this Protective Order.

8. The recipient of any Confidential or Attorneys Eyes Only Material that is provided under this Order shall maintain such information confidential in accordance with the ACKNOWLEDGEMENT attached to this STIPULATED PROTECTIVE ORDER.

9. Parties shall designate Confidential or Attorneys Eyes Only Material as follows:

a. In the case of documents, interrogatory answers, responses to requests to admit, and the information contained therein, designation shall be made by placing the following legend on any such document prior to production: "CONFIDENTIAL" or "ATTORNEYS EYES ONLY". In the event that a party inadvertently fails to stamp or otherwise designate a document or the information as CONFIDENTIAL or ATTORNEYS EYES ONLY at the time of its production, that Party shall have ten (10)

business days after such production to so stamp or otherwise designate the document or other information;

b. In the case of depositions, designation of the portion of the transcript (including exhibits) which contains CONFIDENTIAL Material or ATTORNEYS EYES ONLY Material shall be made by a statement to such effect on the record in the course of the deposition or upon review of such transcript by counsel for the Party to whose CONFIDENTIAL Material or ATTORNEYS EYES ONLY Material the deponent has had access. Said review by counsel shall occur within fourteen (14) days after counsel's receipt of the transcript. Counsel shall list on a separate piece of paper the number of each page of the transcript containing CONFIDENTIAL Material or ATTORNEYS EYES ONLY Material, inserting the list at the end of the transcript, and mailing copies of the list to counsel for all Parties so that it may be affixed to the face of the transcript and each copy thereof. Pending such designation by counsel, the entire deposition transcript, including exhibits, shall be deemed CONFIDENTIAL Material, unless counsel during the deposition states that the information is ATTORNEYS EYES ONLY Material; if no designation is made within fourteen (14) days after receipt of the transcript, the transcript shall be considered not to contain any CONFIDENTIAL Material or ATTORNEYS EYES ONLY Material. Any court reporter who transcribes "CONFIDENTIAL" or "ATTORNEYS EYES ONLY" testimony in this action at a deposition shall agree, before transcribing any such testimony, that all "CONFIDENTIAL" or "ATTORNEYS EYES ONLY" testimony is and shall remain CONFIDENTIAL and shall not be disclosed except as provided in this Order. Further, any such court reporter shall agree that copies of any such transcripts, including exhibits, will be marked "CONFIDENTIAL" or

"ATTORNEYS EYES ONLY", separately bound, and will be retained in absolute confidentiality and safe keeping by such reporter. The court reporter must also agree that any reporter's notes, or other transcription records of any testimony designated as CONFIDENTIAL or ATTORNEYS EYES ONLY (including computer files, disks, shorthand notes and computer generated printouts of testimony) will be retained in absolute confidentiality and safe keeping by such reporter, or delivered to the attorneys of record in this action or filed under seal with the TTAB;

c. All CONFIDENTIAL and ATTORNEYS EYES ONLY material which is filed with the TTAB, including any pleadings, motions or other papers disclosing CONFIDENTIAL material, or ATTORNEYS EYES ONLY material shall be filed with the TTAB under seal and kept under seal until further order of the TTAB. All such material filed with the TTAB shall be sealed in an envelope bearing the following statement:

CONFIDENTIAL

THIS ENVELOPE CONTAINS DOCUMENTS AND INFORMATION SUBJECT TO A PROTECTIVE ORDER ISSUED BY THE TTAB AND IS NOT TO BE OPENED NOR ITS CONTENTS REVEALED OR DISPLAYED, EXCEPT IN STRICT COMPLIANCE AND ACCORD WITH THE TERMS AND CONDITIONS OF SUCH PROTECTIVE ORDER.

d. Transcripts of depositions will not be filed with the TTAB unless it is necessary to do so for purposes of trial, motions for summary judgment, or other matters. If a deposition transcript is filed and if it contains CONFIDENTIAL Material or ATTORNEYS EYES ONLY Material, the transcript shall bear the appropriate legend on the caption page and shall be filed under seal;

e. In the case of physical inspections or on site visits which occur by court order or through the stipulation of counsel, the Party allowing the inspection may designate in advance items and areas of the plant, office, or warehouse which contain CONFIDENTIAL or ATTORNEYS EYES ONLY materials. In such areas, the Party who is conducting the inspections shall not film, video tape, photograph, record or in any other manner contemporaneously document items or areas designated as CONFIDENTIAL or ATTORNEYS EYES ONLY by the Party allowing the inspection. Additionally, the party viewing said information shall not make use in any manner of such information except in this proceeding without the consent of the Party allowing the inspection.

10. A Party shall not be obligated to challenge the propriety of a CONFIDENTIAL or ATTORNEYS EYES ONLY designation at the time made, and failure to do so shall not preclude a subsequent challenge thereto. In the event that any party to this proceeding disagrees at any stage of these proceedings with such designation, such party shall provide to the producing party ten (10) days prior written notice of its disagreement with the designation. The parties shall first try to dispose of such dispute in good faith on an informal basis. If the dispute cannot be resolved, the party challenging the designation may request appropriate relief from the TTAB following the specified ten (10) day period. The burden of proving that information has been properly designated as CONFIDENTIAL or ATTORNEYS EYES ONLY is on the party making such designation.

11. The TTAB is directed to maintain under seal all documents and all transcripts of deposition testimony filed with the TTAB in this proceeding by any party which are, in whole or in part, designated as CONFIDENTIAL or ATTORNEYS EYES ONLY, including all pleadings,

deposition transcripts, exhibits, discovery responses or memoranda purporting to reproduce or paraphrase such information. The person filing such material shall designate to the TTAB that all or a designated portion thereof is subject to this Order and is to be kept under seal, except that upon the default of the filing party to so designate, any party may do so.

12. In the event that any CONFIDENTIAL Material or ATTORNEYS EYES ONLY Material is used in any proceeding in connection with this proceeding, it shall not lose its CONFIDENTIAL or ATTORNEYS EYES ONLY status through such use and the parties shall take all steps reasonably required to protect its confidentiality during such use.

13. Nothing in this Order shall preclude any party to this lawsuit, their attorneys or any other person from disclosing or using, in any manner or for any purpose, any information (a) which, at the time of or prior to disclosure by the supplying party, was known or independently developed by the receiving party, (b) which has become public knowledge or available to the public without violation of this Protective Order (either before or after the supplying party produced such information), or (c) which becomes available to the public as a result of publication by one having the unrestricted right to do so.

14. Nothing in this Order shall preclude any party to the lawsuit or their attorneys or any other person described in Paragraphs 3 or 5 from disclosing or using, in any manner or for any purpose, any information or documents not obtained in discovery in this proceeding, even though the same information or documents may have been produced in discovery in this proceeding and designated as CONFIDENTIAL or ATTORNEYS EYES ONLY material, provided that the receiving party lawfully obtains such information or documents from a third party who lawfully possesses such information or documents and has the unrestricted right to disclose such information or documents.

15. Nothing in this Order shall preclude any person described in Paragraphs 3 or 5 above (a) from showing a document designated as CONFIDENTIAL or ATTORNEYS EYES ONLY to an individual who either prepared or reviewed the document prior to the filing of this lawsuit or (b) from disclosing or using, in any manner or for any purpose, any information or documents from the party's own file which the party itself has designated as CONFIDENTIAL or ATTORNEYS EYES ONLY.

16. Within sixty (60) days of the termination of proceedings between the parties, all CONFIDENTIAL Material, all ATTORNEYS EYES ONLY Material, and all copies thereof shall be returned to the party which produced it or destroyed; except that counsel of record may retain one copy of all pleadings filed with the TTAB that contain CONFIDENTIAL Information and/or ATTORNEYS EYES ONLY Information.

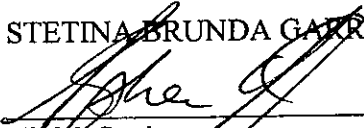
17. The Stipulated Protective Order shall be without prejudice to the right of any party to oppose production of any information on any grounds other than confidentiality.

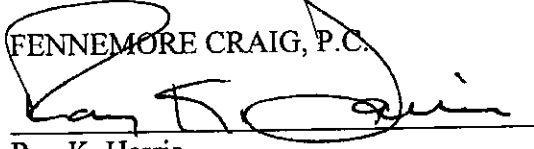
18. Acceptance by a party or its attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to designate as protected shall not constitute waiver of any right to claim the information as protected upon discovery of the error to the full extent permitted by Fed. R. Civ. P. 26(b)(5)(B).

19. The parties specifically agree that the terms of this Stipulated Protective Order shall survive the final termination of the above-captioned proceeding, including any and all appeals therefrom.

20. The Stipulated Protective Order is without prejudice to the right of either party to seek relief from the TTAB, upon good cause shown, from any of the provisions contained in Paragraphs 1 through 19, inclusive, hereof.

STIPULATED AND AGREED:

Dated: 2-10-14 By: 
STETINA BRUNDA GARRED & BRUCKER
Kif M. Stetina
Stephen Z. Vegh
75 Enterprise, Suite 250
Aliso Viejo, CA 92656
Attorney for Petitioner
Precision Pet Products, Inc.

Dated: 2-7-14 By: 
FENNEMORE CRAIG, P.C.
Ray K. Harris
2394 East Camelback Road
Suite 600
Phoenix, AZ 85016
Attorney for Respondent
Kaytee Products Incorporated

IT IS SO ORDERED:

Dated: _____

UNITED STATES PATENT AND TRADEMARK OFFICE

ACKNOWLEDGMENT

I, the undersigned, do hereby acknowledge that I have read the STIPULATED PROTECTIVE ORDER entered by the TTAB for the United States Patent and Trademark Office in the action of *Precision Pet Products, Inc. v. Kaytee Products Incorporated* Cancellation No. 92057946.

I certify that I am one of the persons defined in Paragraph _____ of the Protective Order as being authorized to receive disclosure of material designated as "CONFIDENTIAL" and/or "ATTORNEYS EYES ONLY" in this proceeding.

I fully understand and personally agree to abide by all obligations and conditions set forth in the STIPULATED PROTECTIVE ORDER.

Dated: _____

Name (Printed)

Signature

Title/Employer

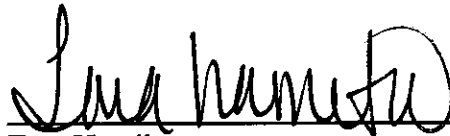
PROOF OF SERVICE

State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **February 11, 2014**, the attached **STIPULATED PROTECTIVE ORDER** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

RAY K HARRIS
FENNEMORE CRAIG
2394 East Camelback Road, Suite 600
Phoenix, AZ 85012

Executed on **February 11, 2014** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.


Tara Hamilton