

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

PERFECT BARRIER, L.L.C.,)	
)	
Plaintiff)	
)	
v.)	Case No.: 3:07-CV-0103 RL-CAN
)	
WOODSMART SOLUTIONS, INC.)	
)	
Defendant.)	
)	
_____)	
)	
WOODSMART SOLUTIONS, INC.,)	
)	
Counter-Plaintiff and)	
Third Party Plaintiff)	
)	
v.)	
)	
PERFECT BARRIER)	
)	
Counter-Defendant)	
)	
And JOHN K. BANKS and)	
WILLIAM P. BANKS,)	
)	
Third Party Defendants)	
_____)	

PROTECTIVE ORDER

It appearing that certain information, documents and things of the parties subject to discovery in this action may be claimed to be confidential, including, by way of example and not limitation, financial, marketing, technical, licensing, research and development or other commercial information (hereinafter collectively referred to as “confidential information”) which the parties reasonably believe to comprise sensitive and valuable information whose disclosure could cause a party competitive harm:

Now, therefore, in the interest of expediting discovery and permitting the same to proceed without delay occasioned by possible disputes regarding such claims of confidential information, the parties have agreed to provide access to and to accept such information, documents and things, subject to certain protective provisions hereinafter set forth.

IT IS HEREBY STIPULATED by the attorneys for the parties, subject to the approval of the Court, that:

I. This Stipulation and Protective Order shall apply to all information, documents and things subject to discovery in this action, including without limitation, testimony adduced at depositions upon oral examination or upon written questions pursuant to Rules 30 and 31, answers to Interrogatories pursuant to Rule 33, documents produced pursuant to Rule 34, information obtained from inspection of premises or things pursuant to Rule 34, and answers to requests for admission pursuant to Rule 36.

II. The parties recognize that, as to documents which will be produced in the course of this litigation, several different categories exist, with varying degrees of sensitivity with respect to proprietary information of the parties. For purposes of this Order, such categories can be generally stated as follows:

(A) Documents not subject to this Protective Order. These are documents produced outside the scope of this Protective Order for which the party producing the documents does not assert any sensitivity with respect to their future dissemination. Such documents so produced will bear no stamp identifying them as subject to this Protective Order, and the party receiving such documents is not in any way restricted in their future dissemination.

(B) Documents subject to Protective Order. Documents which are stamped “CONFIDENTIAL” or with an equivalent statement will be treated as proprietary and shall be

utilized by the party receiving such documents for no other purpose than in connection with this litigation.

(C) Documents subject to Protective Order and are for attorney eyes only. It is recognized by the parties that certain areas of proprietary information may require special handling in addition to that set forth above. Such information shall be designated as “CONFIDENTIAL, ATTORNEY-EYES-ONLY”. It is the intent of the parties that the “CONFIDENTIAL, ATTORNEY-EYES-ONLY” designation shall be minimally used and an effort will be made to limit its use to information which is proprietary technical or business information relating to recent, present or planned activities of the designating party and which has been and is being maintained in confidence by the designating party. Documents containing “confidential information” intended for attorney eyes only will bear a legend “CONFIDENTIAL, ATTORNEY-EYES-ONLY” or a similar legend and will be treated during discovery as follows:

1. During discovery, it shall be the responsibility of counsel for each party specifically to identify those documents or portions of documents being produced which that party asserts to include “confidential information”.

2. Upon the identification of such documents as containing “confidential information”, the party receiving such documents shall make such documents available only to outside counsel, except as provided in Paragraph V hereof. All parties and non-parties shall have the right to object to the designation of paragraph (B) or (C) above by appropriate motion before the Court.

III. The designation of Confidential Material or Confidential Attorney Eyes Only for the purposes of this Order shall be made in the following manner:

(a) In the case of depositions or other pretrial testimony: (i) by a statement on the record, by counsel, at the time of such disclosure; or (ii) by written notice, sent by counsel to all Parties within ten (10) business days after receipt of the final non-draft of copy of the transcript of the deposition to all counsel of record for the Parties to the action. All transcripts shall be considered Confidential and subject to this Order until expiration of such ten-day period. The court reporter shall be instructed to mark each designated page as “Confidential” or “Confidential Attorneys Eyes Only” shall indicate that the transcript contains such Material. Provided, however, that the parties shall have ten business days from the later of (i) the date of this Order; or (ii) the date of receipt of the transcript to designate by written notice portions of the depositions already taken in this Litigation as Confidential or Confidential Attorneys Eyes Only.

IV. All transcripts, depositions, exhibits, answers to interrogatories, and other documents filed with the Court pursuant to the pretrial discovery of any party to this action which have previously been designated by a party as comprised or containing “confidential information”, or any pleading or memorandum purporting to reproduce or paraphrase such information, shall be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption of this litigation, an indication of the nature of the contents, the words “CONFIDENTIAL” and “RESTRICTED ACCESS ACCORDING TO COURT ORDER”, and a statement in substantially the following form:

“This envelope, containing documents which are filed in this case by (name or party), is not to be opened nor are the contents thereof to be displayed or revealed except by order of the Court or consent of the parties.”

V. Except as required in the conduct of proceedings in this civil action, documents and information designated as containing “confidential information” shall not be disclosed by outside

counsel to any person other than parties, non-employees of the parties hereto directly engaged as experts in the preparation and prosecution of the party's claims or defenses in this action, and the necessary secretarial and clerical personnel of outside counsel, all of whom shall be informed of this Protective Order and orally agree to its provisions. DOCUMENTS AND INFORMATION SO DESIGNATED SHALL BE USED ONLY FOR THE PURPOSE OF PREPARING AND CONDUCTING THIS LITIGATION AND SHALL NOT BE USED BY OR ON BEHALF OF ANY PARTY OR PERSON TO WHOM IT IS DISCLOSED FOR ANY OTHER PURPOSE.

VI. The special restrictions and obligations relating to "confidential information" shall not apply to any information which is not so marked and shall not apply to any information which the parties concerned agree, or the Court rules, is public knowledge, or becomes public knowledge other than as a result of disclosure by the party receiving the same, or which has come or shall come into possession of the party receiving the same other than as a result of disclosure as "confidential information" in this litigation. The special restrictions and obligations shall not be deemed to prohibit the party receiving the same or its outside counsel from discussing with any person any "confidential information" if said person already has possession of the information to be discussed other than as a result of disclosure as "confidential information" in this litigation.

VII. The use of "confidential information" and documents designated "CONFIDENTIAL INFORMATION - Counsel Only" as evidence at the trial in this case shall be subject to such protection as the Court shall determine at the time. No party hereto waives any right it may have to object on any ground to the admission in evidence at the trial of this action of any "confidential information".

VIII. The acceptance by a party of information, a document or thing identified as “confidential information” hereunder shall not constitute a concession that the information, document or thing is confidential. Subsequent to the acceptance of information, documents or things identified as confidential hereunder, a party may challenge the other party’s claim of confidentiality following compliance with Local Rule 37.1.

IX. Any interested member of the public may challenge a party’s designation of information, document, or thing as “Confidential” or “Confidential Attorney – Eyes Only” by filing a motion before the Court showing grounds why disclosure is warranted.

X. In the event that a party shall desire to provide access to information, documents or things identified as “confidential information” hereunder to any person or category of person, who are persons not included in paragraphs II and V hereof, it shall so notify the other party thirty (30) days in advance of such access in writing and if the other party objects thereto, the party desiring to make disclosure shall move this Court for an Order that such person or category of persons may be given access to the “confidential information”. In the event that the motion is granted, such person or category of persons may have access to the “confidential information” provided that such person or category of persons have agreed to in writing before such access is given to be bound by the terms of this Stipulation and Order, and such other terms as the Court may impose.

XI. Besides the right to have this Stipulation and Protective Order enforced by the Court’s contempt power, each party may recover damages for any actual loss caused by a breach of this Stipulation and Protective Order. Each party may also recover any unjust enrichment caused by a breach of this Stipulation and Protective Order, not otherwise taken into account in computing damages. If neither damages nor unjust enrichment are provable, the Court may

order payment of a reasonable royalty for a period of time in which the use of the information could have been prohibited.

XII. No later than thirty (30) days after the final termination of this action, including all appeals, the attorneys for each party shall assemble and return to the opposing party all confidential documents and confidential things produced by the opposing party and shall destroy all copies thereof made by that party which respective parties have in their possession, custody, or control. The attorneys for the parties shall be entitled to retain all litigation documents, including exhibits and their own memoranda, containing confidential information but such litigation documents and memoranda shall be used only for the purpose of preserving a file on this action, and shall not, without the written permission of the opposing party or an Order of this Court, be disclosed to anyone other than to whom such information was actually disclosed, in accordance with this Stipulation and Order during the course of this action.

XIII. Notwithstanding any provision of the contrary herein, a party producing documents may designate a group of documents by category as being “confidential” under category “B” and/or “C” as specified in Section II herein. After allowing the other party to inspect such documents for which such categorical designation has been made, individual documents of the group that are requested for copying by the inspection party shall then be individually marked by the producing party with the appropriate designation specified in Section II hereof.

SO ORDERED this 7th day of February, 2008.

s/Christopher A. Nuechterlein
Christopher A. Nuechterlein
United States Magistrate Judge

The undersigned hereby stipulate to the above Order to be entered by the Court.

Respectfully submitted,

s/ Stefan V. Stein

Stefan V. Stein
Florida Bar No. 300,527
HOLLAND & KNIGHT LLP
100 N. Tampa St., Suite 4100
Tampa, FL 33602
813.227.8500
813.229.0134 (fax)
stefan.stein@hklaw.com
Attorneys for Defendant

and

s/ Paul J. Peralta

Paul J. Peralta
Moore & Van Allen, PLLC
100 N. Tyron Street, Floor 47
Charlotte, North Carolina 28202-4003
Telephone: 704.331.1024
paulperalta@mvalaw.com
Attorneys for Plaintiff and
Third-Party Defendants