

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GEMAK TRUST,

Plaintiff,

v.

CHURCH & DWIGHT CO., INC.,

Defendant.

C.A. No. 18-1854-RGA

JURY TRIAL DEMANDED

~~PROPOSED~~ STIPULATED PROTECTIVE ORDER

WHEREAS Plaintiff GEMAK Trust (“GEMAK” or “Plaintiff”) and Defendant Church & Dwight Co., Inc. (“Church & Dwight” or “Defendant” and together with GEMAK, “Parties”) may seek in this action discovery of documents, information or other materials that may constitute or contain confidential or proprietary information or trade secrets, including secret, confidential or sensitive research, development, commercial, or business information, of the Parties or non-parties;

WHEREAS such confidential or proprietary information and trade secrets must be protected in order to preserve the legitimate business interests of the Parties or non-parties;

WHEREAS Plaintiff and Defendant believe it would facilitate discovery to produce such information under a protective order pursuant to Federal Rule of Civil Procedure 26(c), and have therefore, through counsel, stipulated to the entry of this Stipulated Protective Order (“Order”);

WHEREAS the Parties recognize that CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY, and PROPRIETARY – OUTSIDE COUNSELS’ EYES ONLY information are being produced only for use in *GEMAK Trust v. Church & Dwight Co., Inc.*, No. 18-1854-RGA (D. Del.) (“this Action”) and any appeals arising from this Action; and

WHEREAS the Parties have established good cause for entry of this Order;

NOW THEREFORE, pursuant to Federal Rule of Civil Procedure 26(c), upon the stipulation and consent of the Parties and for good cause shown, the Court hereby ORDERS that:

I. SCOPE

This Order shall govern the disclosure, production and use of Discovery Material (as defined below) produced in connection with this Action. The protections conferred by this Order cover not only Protected Material (as defined herein), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, notes, memoranda, analysis, or compilations thereof, plus testimony, conversations, or presentations by the Parties or counsel to the Parties in court or in other settings that might reveal Protected Material. This Order shall apply to Discovery Material produced in connection with this Action regardless of whether such Discovery Material was produced prior to or after entry of this Order.

II. DEFINITIONS

A. “CONFIDENTIAL” information shall mean any information (including documents, things, and oral testimony, regardless of how it is generated, stored, or maintained) or tangible thing that constitutes or pertains to confidential or proprietary information or trade secrets, including secret, confidential or sensitive research, development, commercial, or business information, including information received from a non-party, that qualifies for protection under standards developed under Fed. R. Civ. P. 26(c) and other applicable law.

B. “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information shall mean any highly sensitive CONFIDENTIAL information, the disclosure of which to another Party or non-party would create a substantial risk of serious harm that could not be avoided by less restrictive means. The term “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION” may include the Designating Party’s commercial information (including, for

example, business plans, business strategies, negotiations, and license agreements), technical information (including, for example, confidential product specifications, production information, research and development information, and product testing), sensitive financial information (including, for example, detailed profit and loss statements), and personnel information (including, for example, compensation, evaluations and other employment information).

C. “PROPRIETARY – OUTSIDE COUNSELS’ EYES ONLY” information shall mean information the Designating Party regards as or has a good faith basis to believe is a proprietary trade secret.

D. The term “disclose” means to show, give, make available or communicate, in any fashion, to any Person (as defined herein), any Discovery Material (as defined herein), information concerning the content of any Discovery Material, or any portion of the information contained in any Discovery Material, furnished by any Party or non-party in this Action.

E. The term “Discovery Material” means all items or information, regardless of the medium or manner generated, stored, or maintained, and includes, without limitation, any writings, video or audio tapes, computer-generated or recorded information in any form, materials, oral or written testimony, interrogatories, answers to interrogatories, requests for admission, responses to requests for admission, document requests, responses to document requests, deposition testimony, subpoenas, declarations, affidavits, transcripts and exhibits, other responses to requests for information, and any tangible thing, produced or generated in disclosures or responses to discovery in this Action by a Party or non-party.

F. The term “Outside Counsel” means outside litigation counsel of record for the Parties in this Action, including their associated partners, associates, attorneys, and personnel necessary to assist outside counsel in this Action, such as legal assistants, paralegals, analysts,

secretarial, stenographic, information technology and clerical employees actually assisting such counsel.

G. The term “In-House Counsel” means attorneys who are employees of a Party.

H. The term “Counsel” (without qualifier) shall mean Outside Counsel and In-House Counsel.

I. The term “Party” means Plaintiff GEMAK Trust and/or Defendant Church & Dwight Co., Inc.

J. The term “Person” means any natural person or any business, legal or governmental entity or association.

K. The term “Producing Party” means a Party, Person, or non-party, including its counsel, retained experts, directors, officers, employees, or agents, that produces Discovery Material in this Action.

L. The term “Professional Vendors” means any Person that provides litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, or retrieving data in any form or medium; etc.) and their employees and subcontractors.

M. The term “Protected Material” means any Discovery Material that is designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “PROPRIETARY – OUTSIDE COUNSELS’ EYES ONLY.”

N. The term “Protected Material” shall not include:

1. Discovery Material that is publicly available at the time of disclosure, not in violation of this Order;

2. Discovery Material which after disclosure becomes publicly available, through no fault of a Receiving Party, but only after it becomes publicly available, not in violation of this Order;
3. Discovery Material that was in the possession of a Receiving Party without any confidentiality obligations prior to the time of disclosure by the Producing Party, where such information was received from a source that possessed the right to disclose it without any confidentiality obligations;
4. Discovery Material disclosed by a non-party that is not subject to any confidentiality obligations at the time of the disclosure;
5. Discovery Material that is discovered independently by the Receiving Party by means that do not constitute a violation of this Order; or
6. Discovery Material that was, is, or becomes expressly released from being designated as Protected Material, by the Designating Party or by order of the Court.

O. The term “Receiving Party” means a Party, including its counsel, retained experts, directors, officers, employees, or agents, that receives Discovery Material from a Producing Party in this Action.

P. The term “Designating Party” means a Party, Person, or non-party that designates Discovery Material in this Action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –

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