

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARGET CORPORATION
Petitioner

v.

DESTINATION MATERNITY CORPORATION
Patent Owner

Case No. IPR2013-00533
(U.S. Patent No. RE43,531)

Dated: September 26, 2014

Before JENNIFER S. BISK, MICHAEL J. FITZPATRICK, and
MITCHELL G. WEATHERLY *Administrative Patent Judges*.

**JOINT MOTION FOR ENTRY TO SEAL
UNDER 37 C.F.R. §42.54**

Pursuant to the Board's September 12, 2014 Order and 37 C.F.R. § 42.14, Patent Owner Destination Maternity Corporation ("Patent Owner") and Petitioner Target Corporation ("Petitioner") jointly move to seal the following: (1) Belly Panel Notes, Ex. 1068; (2) Transcript of 7-16-2014 Brookstein Deposition, Ex. 1078; (3) Transcript of 7-8-2014 Green Deposition, Ex. 1079; (4) 3/16/2011 Letter from Taufer to Hinrichs, Ex. 1080; (5) Claim Chart: DMC-Target Liz Lange Pants, Ex. 1081; (6) 3/10/2011 Email from Taufer to Budow re Salsa Jeans, Ex. 1082; (7) Claim Chart: DMC-Salsa Jeans, Ex. 1083; (8) 4/6/2009 Email from K. Scarduzio to L. Hendrickson, Ex. 1089; (9) 1/16/2007 Email from L. Hendrickson re Belly Panel Notes, Ex. 1092; (10) Rebecca Piccone Deposition Transcript (10-18-13), Ex. 1093; (11) Motherhood Weekly ABT, Ex. 1095; (12) DMC Strategic Planning 5-15-2009, Ex. 1096; (13) DMAT ParallelPath, Ex. 1097; (14) Macy's Pea In The Pod Promotion, Ex. 1098; (15) Babies R Us Checklist 10-10-12, Ex. 1099; (16) Babies R Us Checklist 5-2-12, Ex. 1100; (17) Macy's Re-branding package, Ex. 1101; (18) Promotion Sign List 10-17-12, Ex. 1102; (19) Promotion Sign List 10-24-12, Ex. 1103; (20) Maternity bottoms spreadsheet, Ex. 1104; (21) Sales spreadsheet, Ex. 1105; (22) Confidential Information Memorandum, Ex. 1106; (23) Traffic Analysis, Ex. 1107; (24) Weekly Visual Update 7/23 - 7/27, Ex. 1108; (25) A Pea In The Pod Floorset 1109; (26) Declaration of Vincent A. Thomas, Ex. 1110; (27) Sales and profits

exhibit, Ex. 1113; (28) Brookstein SKUs, Ex. 1114; (29) Additional SKUs, Ex. 1115; (30) Petitioner's Reply to Patent Owner's Response; and (31) Petitioner's Motion to Exclude Evidence (collectively, the "Proposed Sealed Documents"). The Proposed Sealed Documents were filed on July 25, 2014 (items 1-30, above) and September 2, 2014 (item 31, above).

Pursuant to the Board's September 12, 2014 Order, at 4, the Proposed Sealed Documents are cited in Petitioner's papers filed in this proceeding as follows:

Exhibit No.	Cited In
1068	• Ex. 1110, Thomas Decl. p. 38 fn. 127, p. 39 fn. 128
1070	• Paper 37, Reply, p. 7
1071	• Ex. 1078, Brookstein Dep., at 272:9-281:12 (dep. exhibit)
1072	• Paper 37, Reply, p. 7
1078	• Paper 37, Reply, pp. 3, 5-9, 12-14 • Ex. 1110, Thomas Decl. p.17 fn. 43, 44; p. 18 fn. 45
1079	• Paper 37, Reply, p. 13 • Ex. 1110, Thomas Decl. p.16 fn. 37-38; p. 17 fn. 43; p. 18 fn. 46-49; p. 19, fn. 50-55; p. 26 fn. 71, 73; p. 27 fn. 74, 78, 79; p. 28 fn. 80, 82; p. 29 fn. 87, 88; p. 30 fn. 89, 92, 93; p. 31 fn. 95; p. 32-33 fn. 97-107; p. 34 fn. 109; p. 36, fn. 120; p. 37, fn. 121, 122; p. 39 fn. 129
1080	• Paper 37, Reply, p. 7
1081	• Paper 37, Reply, p. 7
1082	• Paper 37, Reply, p. 7
1083	• Paper 37, Reply, p. 7
1092	• Ex. 1110, Thomas Decl. p.38 fn. 127; p. 39 fn. 128
1093	• Ex. 1110, Thomas Decl. p. 12 fn. 31; p. 26 fn. 72; p. 34 fn. 110-111; p. 35 fn. 112, 114; p. 36 fn. 117; p. 37

Exhibit No.	Cited In
	fn. 123; p. 38 fn. 127
1095	• Ex. 1110, Thomas Decl. p. 38 fn. 126
1096	• Ex. 1110, Thomas Decl. p. 36 fn. 117
1097	• Ex. 1110, Thomas Decl. p. 39 fn. 130
1098	• Ex. 1110, Thomas Decl. p. 35 fn. 114
1099	• Ex. 1110, Thomas Decl. p. 35 fn. 114
1100	• Ex. 1110, Thomas Decl. p. 35 fn. 114
1101	• Ex. 1110, Thomas Decl. p. 35 fn. 113
1102	• Ex. 1110, Thomas Decl. p. 35 fn. 114
1103	• Ex. 1110, Thomas Decl. p. 35 fn. 114
1104	• Ex. 1110, Thomas Decl. p. 39 fn. 128
1105	• Ex. 1110, Thomas Decl. p. 38 fn. 128
1106	• Ex. 1110, Thomas Decl. p. 36 fn. 117
1107	• Ex. 1110, Thomas Decl. p. 35 fn. 115
1108	• Ex. 1110, Thomas Decl. p. 12 fn. 32
1109	• Ex. 1110, Thomas Decl. p. 36 fn. 117
1110	• Paper 37, Reply, p. 13
1113	• Ex. 1110, Thomas Decl. p. 12-13 and fn. 34-35; p. 17 fn. 42;
1114	• Ex. 1110, Thomas Decl. p. 17 fn. 41-42
1115	• Ex. 1110, Thomas Decl. p. 17 fn. 40; p. 38 fn. 125
1117	• Paper 37, Reply, p. 2

Petitioner initially moved to seal Exhibits 1070, 1071, 1072 on July 25, 2014 because Petitioner recognized that Patent Owner marked Exhibits 1070, 1071, 1072 "confidential". After additional review of these documents, Patent Owner does not believe that Exhibits 1070, 1071, 1072 should be maintained confidential and sealed. As such, the parties do not move to seal these documents here.

Pursuant to the Protective Order entered in this *Inter Partes* Review, the

parties are also filing partially redacted public versions of the Proposed Sealed Documents. *See* Protective Order, ¶ 4 (Paper No. 26). Because the Proposed Sealed Documents contain nonpublic technical, financial, and other commercially sensitive information, the Parties jointly move to seal them for good cause explained in more detail below.

I. Good Cause Exists for Sealing Confidential Information

The *Office Patent Trial Practice Guide* provides that "[t]he rules aim to strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). Further, those "rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information." *Id.* (citing 37 C.F.R. § 42.54); *see also* *Illumina v. Columbia University*, IPR2013-00011, Paper 66, Aug. 12, 2013 Dec. (granting a motion to seal "technical and business information" and "product development information").

There is good cause to seal the Proposed Sealed Documents because they contain nonpublic technical, financial, and other commercially sensitive information as described below for each document.

(1) Belly Panel Notes, Ex. 1068: this document contains nonpublic

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