

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OMEGA SA,

Plaintiff,

v.

XIE ZHENMIN, *et al.*,

Defendants.

Civil Action No.: 12-cv-9338 (SAS)

FILED
MAR 27 2013
3/27/13

PROTECTIVE ORDER

WHEREAS, the Parties and/or certain third parties may disclose information during the course of this lawsuit, pursuant to the Temporary Restraining Order, Preliminary Injunction, or during discovery or otherwise, including but not limited to documents, interrogatory answers, responses to requests to admit, and deposition testimony (collectively, "Discovery Materials"); and

WHEREAS, the Discovery Materials may constitute, contain, or reflect proprietary, confidential, and otherwise commercially sensitive non-public information ("Confidential Information").

NOW, THEREFORE to protect this Confidential Information, the Court ORDERS:

1. Use of Discovery Materials. Confidential Information may be used only for the prosecution and/or defense of this Action through final disposition on appeal, or any other action brought in connection with the counterfeit activity of the Defendants or the 29 counterfeit websites identified in the Complaint.
2. Confidentiality. Information may be designated "**Confidential**" by the producing

party if the information reflects, refers to or evidences (a) confidential technical information, scientific data, technical drawings, plans or sketches or computer code; (b) confidential product or process information; (c) confidential business plans, forecasts or data; (d) confidential financial plans, forecasts or data; (e) confidential operational plans, forecasts, or data; or (f) any other information deemed confidential by applicable federal case law, statute or regulation.

Information may be designated “**Highly Confidential**” if the producing party, in good faith, deems the information to be particularly sensitive, so that even its limited use by another party in connection with the Action would risk the loss of a significant competitive advantage.

3. Maintaining Confidentiality.

(a) All Discovery Materials designated as “CONFIDENTIAL” by the producing Party shall be maintained in confidence by the receiving Party. The receiving Party shall not provide or disclose Confidential Information to any person other than:

- (i) the receiving Party, including its current and former officers and employees;
- (ii) the receiving Party’s current and former counsel (including attorneys and their paralegal, secretarial, and clerical staff, and any outside vendors retained for copying, document management, and similar ministerial services);
- (iii) any testifying or non-testifying expert retained on behalf of the receiving Party or its counsel, but only after such expert has agreed to be bound by this Order;
- (iv) the Court, Court personnel, and stenographers and/or videographers engaged in connection with depositions, trial, hearings, or court conferences;

(b) All Discovery Responses designated as “Highly Confidential – Attorney’s Eyes Only” by the producing Party shall be maintained in confidence by the receiving Party’s counsel. The receiving Party’s counsel shall not provide or disclose this information to any person other

than:

(i) the receiving party's counsel (including attorneys and their paralegal, secretarial, and clerical staff, and any outside vendors retained for copying, document management, and similar ministerial services);

(ii) any testifying or non-testifying expert retained on behalf of the receiving Party or its counsel, but only after such expert has agreed to be bound by this Order;

(iii) the Court, Court personnel, and stenographers and/or videographers engaged in connection with depositions, trial, hearings, or court conferences

4. Acceptance of information designated as Confidential or Highly Confidential Information shall not constitute an admission by the Receiving Party or evidence that the information is Confidential or Highly Confidential Information, and the Receiving Party may at any time request that the Producing Party or the Court reclassify (a) Highly Confidential Information as either Confidential Information or non-confidential information or (b) Confidential Information as non-confidential information. Information designated Confidential or Highly Confidential shall maintain that designation for all purposes unless and until (a) the Producing Party agrees to redesignate the information, or (b) the Court rules that information so designated shall no longer be protected as designated. The burden of proof in any motion challenging the designation of information as Confidential or Highly Confidential Information shall be on the Producing Party to justify the appropriateness of the designation.

5. To the extent that a party desires to file any Confidential or Highly Confidential Information with the Court, the party shall follow and comply with the Local Rules governing filing of such information under seal.

6. This Order shall not prevent any party or non-party from applying to the Court for further or other protective orders or for modifications of this Order or from agreeing to modifications of this Order. Any agreed to modification shall be in writing, and signed by counsel on behalf of the parties.

7. The inadvertent or mistaken disclosure of any Confidential or Highly Confidential

Information by a Producing Party, without the designation required under Paragraph 3, shall not constitute a waiver of any claim that the information is entitled to protection under this Order. Along with notice of inadvertent or mistaken disclosure, the Producing Party shall provide properly marked information to each party to whom the information was disclosed. Upon receipt of the properly marked information, the Receiving Party shall return to the Producing Party, or destroy, the improperly marked information that was initially produced.

8. If a party inadvertently produces or provides discovery which it believes is subject to a claim of attorney-client or work product privilege, the Producing Party may give written notice to the Receiving Party that the information is subject to a claim of privilege and request that the information be returned to the Producing Party. The Receiving Party shall immediately return the information to the Producing Party and delete any electronically stored copies, and certify that it has returned or destroyed all copies. Within five business days of the notification that the inadvertently disclosed information has been returned and/or deleted, the Producing Party shall produce a privilege log with respect to the inadvertently disclosed information. The return of the information by the Receiving Party shall neither constitute an admission or concession, or permit any inference, that the information is, in fact, properly subject to a claim of privilege, nor foreclose any party from moving the Court for an order that the information has been improperly designated or should be produced for reasons other than a waiver caused by the inadvertent production.

9. If a party seeks discovery from a third party, the third party shall be entitled to all of the protection and benefits that a Producing Party has under this Order.

10. Jurisdiction. The United States District Court for the Southern District of New York shall have jurisdiction over any dispute arising out of this Protective Order, and shall retain such jurisdiction after the conclusion of the Litigation.

The clerk of the court is directed to close this motion (Docket # 21).

IT IS SO ORDERED



SHIRA A. SCHEINDLIN
UNITED STATES DISTRICT JUDGE

Dated: March 27 2013