

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

SHAMROCK MARKETING, INC. ,

PLAINTIFF

V.

BRIDGESTONE BANDAG, LLC,

DEFENDANT.

CIVIL ACTION NO. 3:10-CV-74-H

AGREED PROTECTIVE ORDER

As the proceedings in the above-captioned matter (the “Matter”) may involve the production or disclosure of confidential or proprietary business information, the Court being sufficiently advised,

IT IS HEREBY ORDERED that:

1. A party may designate information or documents produced, used, or disclosed in connection with the Matter as “CONFIDENTIAL” and therefore subject to the protections and requirements of this Order, if so designated in writing to the other party or orally if recorded as part of a deposition or proceeding. Information and documents that a party believes contain or refer to information that is not generally available to or accessible by the general public, or that is to be kept confidential due to pre-existing obligations, or that if disclosed would tend to damage the party’s competitive position, may be designated in good faith as “CONFIDENTIAL.”
2. The failure of a party to designate information or documents as “CONFIDENTIAL” in accordance with this Order, and the failure to object to such a designation, shall not preclude a party at a later time from subsequently designating or objecting to the designation of such information or documents as “CONFIDENTIAL.” The parties understand and acknowledge that

a party's failure to designate information or documents as "CONFIDENTIAL" relieves the other party of any obligation of confidentiality until such a designation is made. Promptly after any such subsequent designation, the receiving party shall mark with the appropriate legend "CONFIDENTIAL" any such subsequently designated documents, and all documents containing any such subsequently designated information in the receiving party's possession, custody, or control will be thereafter appropriately treated in accordance with this Order.

3. In the event that a party seeks discovery from a non-party to this action, either the non-party or the parties may invoke the terms of this Agreed Protective Order with respect to any confidential information provided to the parties by the non-party by so advising all parties to this suit in writing.

4. Other than by the producing party, any information or document designated as "CONFIDENTIAL" shall be used solely in connection with this Matter and shall not be disclosed to anyone other than:

- (a) The Judge and related personnel;
- (b) Necessary principals, officers, and employees of the receiving party provided that:
 - (i) such disclosure is needed to assist in the prosecution or defense of this action;
 - (ii) such information is maintained in separate and identifiable files, access to which is restricted to the necessary persons; and
 - (iii) before such person is shown or receives any information or document designated as "CONFIDENTIAL," he or she must execute a Declaration in the form of Exhibit A attached hereto and a copy of the executed Declaration shall be provided to the producing party;

- (c) Counsel of record (including non-attorney personnel such as secretaries and paralegals employed by counsel of record, who must access designated information and documents in the course of assisting counsel of record);
 - (d) Testifying experts, investigators, consulting experts, and advisors who are retained for purposes of the Matter, provided that before such person is shown or receives any information or document designated as “CONFIDENTIAL,” he or she must execute a Declaration in the form of Exhibit A attached hereto and a copy of the executed Declaration shall be provided to the producing party;
 - (e) Witnesses being shown documents authored, created, or received by that witness.
5. In no event shall “CONFIDENTIAL” information be stored at any business premises of the receiving party unless such information is stored in a secured area accessible only to persons eligible to review such information.
6. Whenever any document designated as “CONFIDENTIAL” or any pleading containing “CONFIDENTIAL” information is filed with the Court, such document or pleading shall be filed under seal and shall display a bold heading on its first page in substantially the following form: “FILED UNDER SEAL - SUBJECT TO ORDER PROHIBITING PUBLIC DISCLOSURE.”
7. Unless otherwise permitted herein, within ninety (90) days after the final disposition of the Matter, including all appeals therefrom, all documents designated as “CONFIDENTIAL,” all copies of documents designated as “CONFIDENTIAL,” and all excerpts therefrom in the possession, custody or control of the receiving parties, and their witnesses, experts, investigators, advisors, or consultants shall be destroyed or returned to counsel for the producing party. Each counsel of record for a party may retain one (1) copy of each document, pleading, trial exhibit, deposition exhibit, work product, and transcript embodying documents or information designated

as “CONFIDENTIAL” for archival purposes only, but shall destroy or return all other copies of such documents, pleadings, trial exhibits, deposition exhibits, work product and transcripts. The receiving party and its counsel shall separately provide written certification to the producing party that the actions required by this Paragraph have been completed.

8. This Order shall survive the final disposition of the Matter, by judgment, dismissal, settlement, or otherwise.

9. In the event that anyone violates or threatens to violate the terms of this Order, the parties agree that the aggrieved party may apply immediately to obtain injunctive relief against any such violation or threatened violation, and in the event the aggrieved party shall do so, the respondent, subject to the provisions of this Order, shall not employ as a defense thereto any claim that the aggrieved party possesses an adequate remedy at law.

10. Neither this Order nor any stipulation therefore, nor any disclosure or use of information or documents, in whatever form, pursuant to this Order, shall be deemed an admission, waiver, or agreement by either party that any information or document designated as “CONFIDENTIAL” hereunder is or is not a trade secret or confidential information for purposes of determining the merits of any claims either party may have against one another or a third party.

11. The terms of this Order shall in no way affect a party’s right to withhold information on grounds of privilege or immunity from discovery such as, by way of example and not by way of limitation, attorney-client privilege or work product doctrine. Inadvertent production of documents subject to work product immunity or the attorney-client privilege shall not constitute a waiver of the immunity or privilege, provided that the producing party notifies the receiving party in writing of such inadvertent production immediately upon learning of same. Such

inadvertently produced documents, and all copies thereof, shall be returned to the producing party upon request. No use may be made of such documents subsequent to the request to return them.

12. Any party designating any person under Paragraph 4 shall have the duty to reasonably ensure that such person observes the terms of this Protective Order. In addition to the designated person, the party designating persons under Paragraph 4 shall be responsible upon breach of such duty for the failure of any such person to observe the terms of this Protective Order.

13. This stipulation is for the Judge's consideration and approval as an order. Until the Judge issues a signed Protective Order, the parties agree to abide by and be bound by the terms of this stipulation upon signature hereof as if an order had been entered on that date.

14. This Protective Order may be amended without leave of the Judge by agreement of outside counsel for the parties in the form of a written stipulation filed with the Court.

SIGNED this ____ day of _____, 2010.

Judge, United States District Court

Agreed to and respectfully submitted by,

Dated: March 31, 2010

<p><u><i>/s/ O. Scott Barber</i></u> Philip W. Collier Richard A. Vance Oliver H. (Scott) Barber, III STITES & HARBISON, PLLC 400 West Market Street Suite 1800 Louisville, KY 40202-3352 Telephone: (502) 587-3400 COUNSEL FOR DEFENDANT, BRIDGESTONE BANDAG, LLC</p>	<p><u><i>/s/ Merrill S. Schell (by permission)</i></u> M. Stephen Pitt Merrill S. Schell WYATT, TARRANT & COMBS, LLP 2800 PNC Plaza 500 W. Jefferson St. Louisville, KY 40202 Telephone: (502) 589-5235 COUNSEL FOR PLAINTIFF, SHAMROCK MARKETING, INC.</p>
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EXHIBIT A

DECLARATION OF (Name of Declarant)

I, _____, declare as follows:

1. My address is _____
_____.

2. I am a party's expert, investigator, or advisor, or am otherwise a necessary employee for purposes of disclosure of the CONFIDENTIAL information and documents as described in the Stipulated Protective Order.

3. My present employer is _____ located at _____
_____.

4. My present occupation or job description is _____
_____.

5. I received a copy of the Agreed Protective Order entered in this action on or about _____.

6. I have carefully read and understand the provisions of the Agreed Protective Order.

7. I will comply with all of the provisions of the Agreed Protective Order.

8. I will hold in confidence, not disclose to anyone not designated in the Agreed Protective Order, and will use only for the purposes of assisting in the resolution of disputes between the parties in connection with this Matter, any information or documents designated as "CONFIDENTIAL."

9. I will return all documents designated as "CONFIDENTIAL" that may come into my possession, and documents or things which I may prepare relating thereto, to counsel for the

party who disclosed or furnished such documents to me promptly upon the request of counsel for either party to this Matter, or, if applicable, upon the request of counsel by whom I have been retained, or upon the conclusion of this litigation.

10. I hereby irrevocably consent to the exclusive jurisdiction and in personam jurisdiction of the state and federal courts in Jefferson County, Kentucky for the purpose of enforcement against me of the terms of the Stipulated Protective Order and of the terms of this Declaration.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON _____ (Date).

(Signature)