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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BOURNE INTERNATIONAL, INC.,

Plaintiff,

v.

CHET STOLER and SOUTH SEAS
TRADING COMPANY,

Defendants.

CASE NO. C06-5680RJB

ORDER DECLINING TO ENTER
STIPULATED PROTECTIVE
ORDER

This matter comes before the Court on the parties' stipulated Protective Order (Dkt. 22).
The Court has considered the proposed Protective Order and the remainder of the file herein.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Amended Complaint alleges the following claims: (1) Breach of Corporate Duties and Misappropriation of Corporate Opportunity by a former Shareholder, Director, Officer and/or Employee; (2) Trade Dress infringement of Bourne International, Inc.'s ("Bourne") Leaf Collection™ furniture; (3) Fraud and Misrepresentation; (4) Interference with Contractual Relations; (5) Interference with Prospective Advantage and Business Expectancy; (6) Misappropriation of Trade Secrets; and (7) Copyright Infringement. Dkt. 11 at 1.

The following is a summation of the factual allegations contained in the Amended Complaint: Chet Stoler, owner of South Seas Trading Company, is a former shareholder, director, officer, and employee of Bourne. *Id.* at 4. Bourne imports furniture from Asian factories in Indonesia. *Id.* at 3.

1 Through Mr. Stoler, Bourne contracted to import five shipping containers of furniture
2 from a furniture line known as “The Leaf Collection” for Otsuka, a company in Hawaii. On
3 September 26, 2006, Mr. Stoler resigned as president and director and surrendered his shares in
4 Bourne. *Id.* at 5. He continued as an employee until he resigned from the company on November
5 7, 2006. *Id.* The plaintiff alleges that Mr. Stoler diverted some of the Otsuka shipments to his own
6 account and that after the first shipment, Otsuka notified Bourne that it intended to use South
7 Seas Trading for the remaining shipments. *Id.* at 4, 5. The plaintiff believes that Mr. Stoler
8 initiated or finalized an arrangement with Otsuka to use South Seas Trading rather than Bourne
9 while Mr. Stoler was in Hawaii as an employee of Bourne. *Id.* at 6.

10 On April 3, 2007, Bourne moved to compel production pursuant to a subpoena duces
11 tecum served upon Richard Jamieson and Jamieson Import Services, Inc. (collectively
12 “Jamieson”), the import broker for the parties. Dkt. 12 at 1, 3. Richard Jamieson and Jamieson
13 Import Services, Inc, via counsel, were permitted to appear as interested parties in this action and
14 filed a response to the motion. Dkt. 18. The response opposed the motion on the grounds that the
15 subpoena sought privileged, protected, or proprietary information, trade secrets, or other
16 confidential commercial information. *See, e.g.*, Dkt. 12-3 at 1-4. The Court granted in part and
17 denied in part the Plaintiff’s Motion for Order Compelling Production Pursuant to Subpoena
18 *Duces Tecum* (Dkt. 12). Dkt. 20. The parties now seek entry of a stipulated protective order.
19 Dkt. 22. Jamieson has not signed the stipulated protective order.

20 II. DISCUSSION

21 Pursuant to Fed. R. Civ. P. 26(c), protective orders should be issued “for good cause
22 shown.” This is a public court, and its business should be conducted publicly unless there is a
23 specific reason to keep things confidential. When protective orders are appropriate, they should
24 be narrowly drawn, the presumption being in favor of open and public litigation. The stipulated
25 protective order submitted in this case is deficient in the following respects:

26 First, the parties fail to demonstrate “good cause” for issuance of a protective order. The
27 Court has previously held that certain documents held by Jamieson “may constitute trade secrets
28 deserving of protection from disclosure.” Dkt. 20 at 5. The Court encouraged use of a “privilege

1 log designating specific documents with specific objections, so that the Court, in absence of
2 agreement, c[ould] make specific rulings.” Dkt. 22 at 2. The proposed protective order is not
3 signed by Jamieson and is not limited to documents identified by the Court as potentially
4 constituting trade secrets. Instead, the proposed order applies to “documents believed by either
5 party to constitute protected trade secrets or other confidential business information.” *Id.* The
6 parties have not provided the Court with a privilege log or demonstrated agreement that particular
7 documents constitute trade secrets. Without such a showing of good cause, issuance of a
8 protective order would be inappropriate and premature. The parties may, of course, agree on
9 confidentiality among themselves, but when the parties request the involvement of the Court, the
10 parties must make the requisite showing.

11 Second, the stipulated protective order appears to govern the actions of persons not
12 parties to the protective order. Dkt. 22 at 5. The protective order should govern the conduct only
13 of parties thereto.

14 Third, the proposed protective order expressly provides that the Court retains jurisdiction
15 over the protective order but that only laws of the State of Washington apply. *Id.* The
16 applicability of state and federal law to the protective order is an issue not yet before the Court
17 and beyond the bounds of a proper protective order.

18 Fourth, the stipulated protective order provides for filing documents under seal. Dkt. 22 at
19 6. This provision is not in accord with Local Rule CR 5(g).

20 Fifth, the stipulated protective order provides that other persons may become parties to
21 the protective order without court action. *Id.* at 6. While other persons may agree to be bound by
22 the stipulated protective order, only current signatories thereto are parties to the proposed
23 protective order.

24 Finally, the order must contain a provision that the court may change the terms of the
25 protective order on its own motion after notice to the parties and an opportunity to be heard.

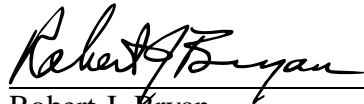
III. ORDER

Therefore, it is hereby

ORDERED that the parties' stipulated Protective Order (Dkt. 22) will remain in the file but will not be signed.

The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

DATED this 15th day of May, 2007.


Robert J. Bryan
United States District Judge