



STATE OF INDIANA
COUNTY OF VANDERBURGH

) VANDERBURGH SUPERIOR COURT
) SS: ★ FILED ★
) AUG 27 2015

IN THE VANDERBURGH SUPERIOR COURT

Debra S. Stucke
CLERK

PROFESSIONAL
TRANSPORTATION, INC.,

Plaintiff,

vs

ROBERT E. WARMKA

Defendant.

) CAUSE NO. 82D 06-1508-PL-4384

COMPLAINT

Comes now Plaintiff, Professional Transportation, Inc. by counsel Paul J. Wallace and Craig R. Emig of Jones • Wallace, LLC, and for its Complaint against Defendant, Robert E. Warmka alleges as follows:

Common Allegations

1. Plaintiff is an Indiana corporation with its principal place of business located at 3700 E. Morgan Avenue, Evansville, Vanderburgh County, Indiana.
2. Upon information and belief, Defendant resides at 6153 West 143rd Street, Savage, Minnesota 55378.
3. Upon information and belief, Minnesota Coaches Inc. ("MCI") is a Minnesota corporation with its principle place of business at 101 East 10th Street, #300, Hastings, Minnesota 55033.
4. During the period from September 24, 2012, to December 12, 2013, Plaintiff employed Defendant as a Director of Operations.

5. On September 24, 2012, Plaintiff and Defendant executed a Trade Secrets Agreement ("Agreement"), a true and accurate copy of which is attached as "Exhibit A."

6. On December 12, 2013, Defendant was terminated from his employment with Plaintiff due to poor performance and at the time of termination, Defendant appropriated, without permission, Plaintiff's confidential material and trade secrets.

7. The Agreement stipulated that Defendant may be engaged by Plaintiff in a position of trust and confidence, and learn, have access to, and develop confidential trade secrets and other proprietary information of Plaintiff.

8. The Agreement also stipulated that Plaintiff desired to protect its rights in its confidential, trade secret, and other proprietary information and that Plaintiff retained ownership of Defendant's work produced on behalf of Plaintiff.

9. Defendant agreed that following his termination of employment from Plaintiff, he would not use, in any manner, Plaintiff's proprietary information for his or any third-party's benefit without written authorization from Plaintiff.

10. Plaintiff and Defendant agreed in the Agreement that Indiana law governs the interpretation and enforcement of the Agreement and the sole venue for any litigation related to the Agreement shall be in any court located in Vanderburgh County, Indiana.

11. Incident to his employment at Plaintiff, Defendant had access to Plaintiff's Driver's Manual, a true and accurate copy of which is attached hereto as "Exhibit B."

12. Plaintiff copyrighted its Driver's Manual on or before 2012.

13. Following his termination from Plaintiff, Defendant began employment at MCI, a competitor of Plaintiff.

14. Sometime after his termination, Plaintiff became aware that Defendant alone or on behalf of MCI had copied and reproduced substantial parts of its Driver's Manual into Crew Motion's Handbook. A true and accurate copy of the MCI/Crew Motion handbook is attached as "Exhibit C."

15. Upon information and belief, Crew Motion is a Minnesota-registered assumed name of MCI.

16. Crew Motion described itself as "an exciting new part of our business" in the Handbook which contains Plaintiff's misappropriated proprietary information.

17. The section titled "Do's & Don't's" on pages seven (7), eight (8), and nine (9) of MCI's Handbook is copied nearly verbatim from Plaintiff's Driver's Manual pages ten (10), eleven (11), and twelve (12) under Plaintiff's "Driver Job Description and Responsibilities."

18. The section titled "Railroad Radio Rules" on pages fourteen (14), fifteen (15), sixteen (16), and seventeen (17) of MCI's Handbook is copied nearly verbatim from Plaintiff's Driver's Manual pages fifty-two (52) and fifty-three (53) under Plaintiff's "Railroad Radio Rules."

19. The section titled "Safety Rules for All Employees" on pages twenty-two (22) and twenty-three (23) contains substantial portions copied directly from Plaintiff's Driver's Manual pages twenty-four (24) and twenty-five (25) "Safety Rules for All Employees."

20. The section titled "Safe Vehicle Operation" on pages twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), and twenty-nine (29) of MCI's handbook is copied nearly verbatim from Plaintiff's

Driver's Manual pages thirty (30), thirty-one (31), thirty-two (32), and thirty-three (33) under Plaintiff's "Vehicle Safety."

21. The section titled "Fuel Card/Pin Policies and Procedures" on page thirty-one (31) of MCI's Handbook is copied nearly verbatim from Plaintiff's Driver's Manual page sixteen (16) under "Fuel Card/Pin Policies and Procedures."

22. Upon information and belief, utilizing the information Warmka had wrongly taken from Plaintiff, MCI then started servicing Plaintiff's customers at the same locations that Plaintiff had contracted.

23. Upon information and belief, Defendant and MCI used Plaintiff's proprietary information that was subject to the Agreement to develop business plans, models, procedures, and customers for MCI.

24. Defendant and MCI have wrongfully used the confidential information and trade secrets that were misappropriated from Plaintiff.

25. MCI has begun contacting Plaintiff's customers, duplicating Plaintiff's services, and undercutting Plaintiff's business.

26. Plaintiff has demanded that Defendant and MCI cease the use of and return the confidential information and trade secrets acquired from Plaintiff and compensate Plaintiff for its damages, but Defendant and MCI have refused to do so.

27. The conduct of the Defendant and MCI has and continues to cause Plaintiff irreparable harm. Plaintiff has no adequate remedy at law.

Count I – Indiana Trade Secret Violation

28. Plaintiff incorporates herein by reference the allegations in rhetorical paragraphs one (1) through twenty-seven (27).

29. Plaintiff's Driver's Manual and customer information constituted confidential business information.

30. Plaintiff's derived independent economic value from its Driver's Manual and customer information.

31. The information contained in the Driver's Manual and Plaintiff's customer information is not generally known or readily accessible by proper means by other persons who can obtain economic value from its use.

32. Plaintiff took reasonable steps to maintain this information's secrecy by requiring trade secret agreements, its internal policies and by monitoring and related activities.

33. Defendant misappropriated Plaintiff's trade secrets under Indiana law.

34. MCI knew or should have known that this information was acquired by improper means.

35. Plaintiff was damaged by Defendant and MCI's misappropriation of its proprietary information.

Count II – Unfair Competition

36. Plaintiff incorporates herein by reference the allegations in rhetorical paragraphs one (1) through thirty-five (35).

37. Defendants misappropriated Plaintiff's proprietary information by improper means.

38. Defendant and MCI used the misappropriated information to "reverse pass off," offering Plaintiff's services and materials as their own.

39. Defendant and MCI used this unfair advantage to Plaintiff's detriment by directly competing and soliciting Plaintiff's current customers.

Count III – Copyright Infringement

40. Plaintiff incorporates herein by reference the allegations in rhetorical paragraphs one (1) through thirty-nine (39).

41. Defendant and MCI reproduced substantial portions of Plaintiff's Driver's Manual without Plaintiff's knowledge, permission, or consent.

42. Upon information and belief, Defendant and MCI represented substantial portions of Plaintiff's Driver's Manual as their own work product and used it to solicit business from Plaintiff's customers.

43. Defendant and MCI have infringed Plaintiff's copyright interests of its Driver's Manual in violation of 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

44. Defendant and MCI's acts of infringement are willful, intentional, and purposeful in violation of Plaintiff's rights.

45. Plaintiff is entitled to Defendant and MCI's profits attributable to the infringement pursuant to 17 U.S.C. §504(b).

46. Plaintiff is entitled to attorney fees and costs pursuant to 17 U.S.C. §505. WHEREFORE, Plaintiff, by counsel, demands judgment against Defendant as follows:

A. Restrain and enjoin Defendant and/or anyone acting through him from using Plaintiff's customer list, Driver's Manual, confidential material and other trade secrets.

B. Restrain and enjoin Defendant and/or anyone acting through him from using or infringing on Plaintiff's copyright.

C. Order Defendant to return all confidential materials and trade secrets to Plaintiff.

D. Restrain and enjoin Defendant from directly or indirectly contacting Plaintiff's customers which were wrongfully appropriated by Defendant and MCI.

E. Award Plaintiff damages for loss of business and profit suffered by reason of Defendant or anyone acting through him solicitation of Plaintiff's customers and wrongful appropriation of Plaintiff's trade secrets or for infringement of Plaintiff's copyrighted materials.

F. Grant Plaintiff all other appropriate relief.

Respectfully submitted,

JONES • WALLACE, LLC

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