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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PRECISION RINGS, INC.,

Plaintiff,

v.

WRIGHTSPEED, INC.,

Defendant.

Case No. 1:15-cv-01957

NOTICE OF REMOVAL

Defendant Wrightspeed, Inc. (“Wrightspeed”), by counsel, pursuant to 28 U.S.C. §§ 1331, 1332, 1338, 1441 and 1446, hereby removes the subject action from the Marion County Superior Court, State of Indiana, to the United States District Court for the Southern District of Indiana, Indianapolis Division, on the following grounds:

TIMELY REMOVAL

1. On November 13, 2015, Plaintiff commenced an action against Wrightspeed in the Superior Court of Marion County, Indiana, under Cause No. 49D12-1511-PL-037874, and bearing the same title as the above caption.
2. Wrightspeed was provided with copies of the Summons and Complaint on November 13, 2015. Copies of the Summons and Complaint are attached hereto as **Exhibit 1**.
3. This Notice of Removal is being filed within 30 days of service of the Summons and Complaint and thus it is timely filed pursuant to 28 U.S.C. § 1446(b).
4. Wrightspeed has not served any pleading nor made any argument in the state court action prior to filing this Notice. Wrightspeed appeared in the state court by counsel and stipulated to Plaintiff’s filing of a stipulation and proposed order extending the date for Plaintiff’s motion for preliminary injunction and certain discovery deadlines, which was without prejudice to Wrightspeed’s right to file this notice of removal. Copies of all process, pleadings,

and orders filed or served on Wrightspeed in the state court action (other than the Summons and Complaint) are attached hereto as **Exhibit 2**.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over the action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

6. This Court also has original and exclusive jurisdiction over the action pursuant to 28 U.S.C. § 1331 because the action raises a claim under the Copyright Act.

7. Venue is proper under 28 U.S.C. § 1441(a) because this Court is the federal district court embracing the place where Plaintiff filed the state court action.

DIVERSITY OF CITIZENSHIP

8. Pursuant to the Complaint, at all relevant times Plaintiff has been an Indiana corporation with its principal place of business in Indiana. Plaintiff is therefore a citizen of Indiana.

9. Wrightspeed is a Delaware corporation with its principal place of business in California. Wrightspeed is therefore citizens of Delaware and California.

10. Because the parties are citizens of different states, there exists complete diversity among the parties.

AMOUNT IN CONTROVERSY

11. Plaintiff alleges breach of a nondisclosure agreement (“NDA”) and seeks declaratory relief, injunctive relief, unspecified damages and attorney’s fees. *See* Ex. 1, ¶¶ 24-41 & Prayer for Relief, ¶¶ 1-4. Plaintiff’s failure to quantify its damages does not prevent removal. “The rule could hardly be otherwise. For if it were, any plaintiff could avoid removal simply by declining, as the plaintiff has done here, to place a specific dollar value upon its claim.” *White v. J.C. Penney Life Ins. Co.*, 861 F. Supp. 25, 26 (S.D. W.Va. 1994). “The question how much damages [plaintiff] is seeking is anyway a red herring, since the jurisdictional minimum in

diversity cases is not the amount sought by the plaintiff but the amount at stake to either party to the suit.” *BEM I, L.L.C. v. Anthropologie, Inc.*, 301 F.3d 548, 553 (7th Cir. 2002).

12. The burden is on the defendant to prove by a preponderance of the evidence that the amount in controversy requirement is met. When the plaintiff “provides little information about the value of her claims,” defendant’s “good faith estimate of the stakes is acceptable if it is plausible and supported by a preponderance of the evidence.” *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 510 (7th Cir. 2006). The stakes include, cumulatively, plaintiff’s damages; attorney’s fees incurred by plaintiff up to the time of removal, including for work performed prior to filing its complaint; and the financial costs that would be imposed on defendant by the equitable remedies plaintiff seeks, such as an injunction or disgorgement. *See id.*; *ABM v. Sec. Servs., Inc. v. Davis*, 646 F.3d 475, 479 (7th Cir. 2011). “[T]he estimate of the dispute’s stakes advanced by the proponent of federal jurisdiction controls unless a recovery that large is legally impossible.” *Back Doctors Ltd. v. Metro. Prop. & Cas. Co., Inc.*, 637 F.3d 827, 830 (7th Cir. 2011).

13. **Plaintiff’s damages.** Plaintiff alleges that it “invests considerable time money and resources into the development of its confidential and trade secret information;” that “[i]ts proprietary information is among [its] most valuable business assets;” that “[f]or a potential business partner to take [its] designs and provide them to a competitor for manufacture strikes at the very essence of [its] business model;” and that absent the injunctive relief it seeks, it “will experience a threat to its business vitality and viability.” *See Ex. 1*, ¶¶ 5, 23. According to public sources, Plaintiff was founded over 65 years ago, has over 50 full time employees, and generates an estimated \$7.6 million in annual revenue. *See Ex. 3* (corporate search report available on FindTheCompany.com.). Based on Plaintiff’s description of the alleged threat to its most valuable business assets and very existence, Wrightspeed estimates that Plaintiff seeks damages in excess of \$75,000 by several orders of magnitude.

14. **Plaintiff’s attorney’s fees.** Plaintiff demands attorney’s fees under a fee shifting provision in the parties’ January 11, 2015 NDA. *See Ex. 1*, ¶¶ 11, 41, Prayer for Relief ¶ 3.

Presumably, should this case proceed to trial, this claimed element of damages alone could exceed \$75,000.

15. **Plaintiff's refusal to stipulate.** Prior to removal, Plaintiff refused Wrightspeed's request to stipulate that the amount in controversy, including attorney's fees, would not exceed \$75,000. Plaintiff's "refusal to admit that the combination of these recoveries would not exceed \$75,000 raise[s] the reasonable inference that it would." *See Oshana*, 472 F.3d at 512.

16. **Costs of an injunction to Wrightspeed.** Plaintiff seeks a preliminary injunction enjoining Wrightspeed from violating the NDA "and/or benefitting from prior violations" and "compelling Wrightspeed to take all necessary actions to stop any harm caused by its prior breaches." *See* Ex. 1, ¶¶ 33, 35, Prayer for Relief, ¶ 2. Specifically, Plaintiff seeks to enjoin Wrightspeed from (allegedly) having a third party manufacture certain products for Wrightspeed on the ground that Wrightspeed is (allegedly) using Plaintiff's confidential information and trade secrets in violation of the NDA. *See id.* ¶¶ 5, 7-23.

17. "[T]he cost to a defendant of complying with an injunction sought by the plaintiff may properly be considered in determining the amount in controversy." *Uhl v. Thoroughbred Tech. & Telecomm., Inc.*, 309 F.3d 978, 983 (7th Cir. 2002). A defendant's estimate of such costs may include clerical and ministerial costs of complying with the injunction, as well as the value of any benefit that the injunction would force the defendant to forgo, such as where the suit asks that the defendant be enjoined from completing a lucrative transaction. *See Oshana*, 472 F.3d at 510-512; *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 610 (7th Cir. 1997).

18. Wrightspeed estimates that its administrative and compliance costs to implement the injunction Plaintiff seeks would exceed \$75,000. Wrightspeed estimates that such an injunction also would impose more than \$75,000 in foregone benefits to Wrightspeed by wrongly requiring Wrightspeed to cease product development and related activities allegedly related to Plaintiff's proprietary information and thus to forego the benefit of getting Wrightspeed's product to market as soon as Wrightspeed otherwise could absent the injunction.

19. **Cumulative stakes.** Based on the foregoing, “it does not appear to a legal certainty that the amount in controversy is less than the jurisdictional threshold.” *See R.R. Street & Co., Inc. v. Vulcan Materials Co.*, 569 F.3d 711, 717 n.8 (7th Cir. 2009).

SUBJECT MATTER JURISDICTION

20. Pursuant to 28 U.S.C. § 1338(a), federal district courts have original and exclusive jurisdiction of any civil action arising under the Copyright Act. To determine whether an action arises under the Copyright Act, courts in the Seventh Circuit apply the standard outlined in *T.B. Harms Co. v. Eliscu*, 339 F.2d 823 (2d Cir. 1964). *See Int'l Armor & Limousine Co. v. Moloney Coachbuilders, Inc.*, 272 F.3d 912, 915-916 (7th Cir. 2001). Under the “Harms test,” among other grounds, an action arises under the Copyright Act if the complaint asserts a claim requiring construction of the Act. *See Harms*, 339 F.2d at 828.

21. In the demand letter that Plaintiff attached to its Complaint, Plaintiff contends that Wrightspeed disclosed Plaintiff’s proprietary information “in violation of . . . [Plaintiff’s] copyright rights (U.S. Copyright Registration No. VAu 1-175-140),” referring to the part design drawings Plaintiff alleges it provided to Wrightspeed. *See Ex. 1* (at Ex. B thereto at 1-2). Plaintiff contends in the letter that “the only proper means” by which Wrightspeed “could have purchased from another source rings that are the subject” of that information “would have been to have alternate suppliers design a different version of the ring based only on [Wrightspeed’s] information, without [Wrightspeed] providing any of [Plaintiff’s] Proprietary Information or derivative information.” *See id.*

22. In its Complaint, Plaintiff alleges that Wrightspeed misappropriated Plaintiff’s trade secrets by using or disclosing those same part design drawings. *See Ex. 1 ¶¶ 12-18*. Since Plaintiff registered and deposited the drawings with the Copyright office, however, the drawings are not confidential and thus not subject to the NDA. Therefore Plaintiff’s allegations that Wrightspeed disseminated the drawings and created derivations thereof in violation of the NDA are, in fact, allegations of copyright infringement.

23. This suit therefore arises under the Copyright Act. *See, e.g., Precision Drone, LLC v. Channel Masters, LLC*, No. 1:15-cv-00476-LJM-TAB, 2015 WL 3886124, at *2 (S.D. Ind. June 23, 2015) (denying remand, finding claims for improper display of copyrighted images in suit alleging breach of NDA and trade secret misappropriation were not covered by the NDA because the materials were not trade secrets, and that, “[i]n such a case, the breach of contract claims are preempted by the Copyright Act because ‘the allegations of breach are based on nothing more than the act of infringement’”) (quoting *Higher Gear Group v. Rockenbach Chevrolet Sales, Inc.*, 223 F.Supp.2d, 953, 958 (N.D. Ill. 2002) (Copyright Act preempted contract claim to the extent plaintiffs intended to show that contract prohibited unauthorized copying and creation of derivative products)); *gh, LLC v. Curtin*, 422 F.Supp.2d 994, 996-998 (N.D. Ind. 2006) (denying remand, finding suit alleging breach of NDA and trade secret misappropriation arose under the Copyright Act because “[t]here is simply no way to order specific performance” absent determinations “that would require construction of the [Act].”).

STATUTORY NOTICE

24. As required by 28 U.S.C. § 1446(d), concurrent with the filing of this Notice of Removal, a true and accurate copy of thereof is being filed with the Clerk of the Marion County Superior Court, State of Indiana, and written notice thereof is being sent to Plaintiff’s counsel.

25. Nothing in this Notice of Removal should be construed as an admission or acknowledgement of liability or that Plaintiff is entitled to any damages, attorney’s fees or equitable relief. By filing this Notice, Wrightspeed does not waive any available defenses.

CONCLUSION

26. Removal of this action to this Court is proper pursuant to 28 U.S.C. §§ 1331, 1332, 1441 and 1446.

WHEREFORE, Defendant Wrightspeed, Inc., respectfully requests that the action now pending in Marion County Superior Court, State of Indiana, be removed to this Court for all further proceedings.

Respectfully submitted,

/s/ Matthew D. Bruno

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Notice of Removal was sent to the following via U.S. mail, postage prepaid, on this 11th day of December, 2015.

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Counsel for Plaintiff

/s/ Matthew D. Bruno

Counsel for Defendant