

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION



Provided by:  
[Overhauser Law Offices LLC](http://www.iniplaw.org)  
[www.iniplaw.org](http://www.iniplaw.org)  
[www.overhauser.com](http://www.overhauser.com)

RC TRAILERS, INC., )  
 )  
Plaintiff, )  
 )  
v. ) Case No. 3:19-CV-973 JD  
 )  
DARKHORSE CARGO, INC., et al, )  
 )  
Defendants. )  
 )

**TEMPORARY RESTRAINING ORDER**

In its complaint, Plaintiff, RC Trailers, Inc. (“RC”), alleges that Defendants Darkhorse Cargo, Inc. (“Darkhorse”) and various former RC employees (turned current Darkhorse employees) (collectively “Defendants”) engaged in an unlawful scheme to steal RC’s business through coordinated acts involving unfair competition and the theft and use of trade secrets and confidential information. Now before the Court is RC’s motion and renewed motion for a temporary restraining order (“TRO”) which are fully briefed. An evidentiary hearing for the requested injunctive relief is set for January 15, 2020 [DE 32] and expedited discovery is underway [DE 35]. While awaiting the hearing, RC wants an immediate TRO in place: (1) enjoining Defendants from using any of its trade secrets or confidential information; (2) ordering return of all its property, including RC’s trade secrets and confidential information, that is in Defendants’ possession, custody, or control; (3) ordering Defendants to identify any of RC’s trade secrets or confidential information that Defendants have used on behalf of any entity or individual other than RC; (4) ordering Defendants to identify all electronic devices or servers in which they inserted an external drive into which contained RC’s trade secrets or confidential information; (5) ordering Defendants to identify any and all of RC’s customers or prospective

customers they have solicited or called upon on behalf of Darkhorse; (6) enjoining Defendants from soliciting any of RC's customers or prospective customers who Defendants took information to regarding RC (which in reality, is subsumed by prohibiting any "use" of trade secrets); and (7) enjoining Defendants from competing against RC in the regional trailer business in Michigan, Indiana, or Ohio.

### **BACKGROUND**

RC is an Indiana-based business and is a manufacturer of cargo and specialty trailers that are distributed through a U.S. network. To maintain dealer and vendor relationships and to develop new relationships, RC expends substantial time, effort, and expense developing trade secrets and confidential business information. Per RC, its trade secrets include: RC's financial data, customer lists with corresponding revenue, detailed production designs and manufacturing schematics, vendor lists, and information pertaining to RC's inventory management processes. Per RC, its confidential information includes: wholesale pricing information containing confidential cost and surcharge information, proprietary draft order forms used by company employees in taking and customizing customer orders, and materials containing cost and pricing information, which are only known and distributed to a select few. RC's policies and procedures require that its trade secrets and confidential information be kept strictly confidential by its employees, and RC restricts access to such information. In order to maintain the secrecy and confidentiality of this information, RC maintains confidentiality provisions in its employee handbooks, protects confidential information through the use of passwords, provides disclaimers communicating that information on company systems are confidential, requires employees to return all information upon termination, and limits access to such information to those who have a legitimate need for it to perform their jobs.

Between October 18, 2004 and September 21, 2018, RC employed Defendant Bryan Johnson (“Johnson”) and he was last employed as RC’s President,<sup>1</sup> responsible for overseeing RC’s operations, finances, and performance. In connection with his duties for RC, Johnson regularly interacted with RC’s customers and vendors in order to develop, cultivate, and maintain those relationships, which was one of the primary ways by which RC completed sales and developed customer goodwill. During his employment with RC, Johnson had access to RC’s trade secrets and confidential information so that he could perform his duties. On September 21, 2018, Johnson’s employment with RC ended (by termination per Johnson) and he executed an agreement which included non-solicitation and non-recruitment covenants that expired on September 21, 2019. Johnson claims that many RC employees were upset to see him leave and wanted to work for him again elsewhere. Eventually, many RC employees became disgruntled when changes were made under the new president.

At the time of Johnson’s departure, Defendant Joseph Kiefer (“Kiefer”), who had been employed by RC since 2011, was RC’s CFO. In the spring of 2019, RC promoted Kiefer to acting General Manager, the highest-ranking position with responsibility for overseeing all of RC’s operations, finances, and performance, as well as protecting its intellectual property. Kiefer claims that he was tasked with trying to restore RC to what it used to be, but he believed many RC employees were already looking for new jobs. Kiefer claims that before he left RC, many RC employees were talking openly about wanting Johnson to start a trailer company.

---

<sup>1</sup> Johnson contends that he lost his officer role upon an acquisition agreement in 2016. After that acquisition, Johnson was told to cut expenses, but Johnson refused to terminate any RC employees. In addition, Johnson was involved in other disputes over pay structures for the employees.

In May 2019, RC's sales professional, Michael Myers, claims that Kiefer approached him and attempted to recruit him to join Darkhorse, indicating that he and Johnson were going to start the business in the near future. Myers indicates that Kiefer reported having already recruited key RC employees to join the new venture, including Dennis Smith ("Smith") (sales), Nicole Steglich ("Steglich") (HR/accounting), Jessica Harrell ("Harrell") (HR/accounting/controller), Jerry Holmes ("Holmes") (purchasing) and several other production supervisors and employees.

In June 2019, Kiefer's employment with RC ended (by termination per Kiefer), at which time RC presented Kiefer with a non-compete agreement. Unbeknownst to RC, Kiefer deleted the post-employment restrictions in the agreement and returned it to Steglich. Thereafter, on September 23, 2019 (immediately after Johnson's restrictive covenants expired), RC employees started resigning in mass and went to work for Darkhorse. Johnson admits that at this time, he asked Smith, Holmes, Steglich, and Harrell to come work at his new trailer company. The employees who ultimately left RC included those identified above and many others necessary to immediately begin competing against RC. Johnson had known some of these employees since starting his career in the trailer industry 35 years ago and recruited them back then.

Braden Edwards ("Edwards") began overseeing the finances of RC upon Kiefer's departure. Per Edwards's declaration (and the exhibits attached thereto) [DE 7-1; DE 41], RC's confidential and trade secret information was taken by Defendants, including electronic copies of product designs, mechanical drawings, and manufacturing documents (with proprietary schematics and detailed measurements used to create trailers and parts); an electronic copy of an 80-page dealers' price book (with RC's wholesale costs for dealer items listed); an excel spreadsheet containing RC's comprehensive private financial data from the past three years (which was attached to an email that Steglich sent to herself from her RC work e-mail account in

July 2019); a cataloging of RC's customers and associated revenue from the past three years (which was attached to an email that Steglich sent to herself from her RC work e-mail account in September 2019); RC's bill of materials with itemizations of RC pricing on parts; a list of vendors and suppliers from which RC sources its raw materials; a document detailing RC's day-to-day production and inventory management, including worksheets related to unit count methods and inventory control; and detailed budgeting information.

As of October 2019, RC sent cease and desist letters to Defendants. Defendants have since then deleted and/or failed to retain some information taken from RC and returned other confidential information and trade secrets. Even after Defendants' representation that they have cooperated to identify and return RC's property, on November 26, 2019, RC's counsel received a letter from Defendants' counsel that contained a new, previously unproduced USB drive [DE 33]. The USB drive was provided by Holmes, who continues to work for Darkhorse in the same capacity as he did for RC; that is, as a Purchasing Manager. The USB drive contains RC's confidential files including pricing information, part numbers, part names, and names/contact information for RC's vendors that were modified for Darkhorse's use as evidenced by the fact that "DH" now appears before the various parts listed. In fact, Holmes concedes to having edited RC's purchase order templates (that are no longer in use by RC) with the thought that he could use the templates at Darkhorse [DE 36]. Holmes contends that the information isn't proprietary because the templates only contain generic part names assigned by vendors and that this information can be obtained by contacting the vendors themselves. Holmes indicates that he has since been advised that he cannot use anything from RC, but a review of the file modification dates on the USB drive shows that someone accessed these files both before and after Holmes left RC.

Given this recent development, RC renewed its request for a TRO claiming that “it is essential that RC obtain a TRO to prevent Darkhorse’s continued use of its trade secrets and confidential information.” [DE 33 at 3]. RC believes that only a TRO will ensure that Defendants will return and not further use RC’s trade secret and confidential information [DE 39].

On the other hand, Johnson indicates that he has directed his employees not to use any of RC’s information or property for the benefit of Darkhorse, and that Darkhorse is not making (and has not made) use of any materials obtained from RC [DE 27; DE 36]. Defendants also seem to argue that because RC is affiliated with entities having billions of dollars in assets, then Darkhorse—who has only sold 26 trailers since its founding—isn’t a threat to Plaintiff.

### **DISCUSSION**

This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1367. The standard for determining whether a TRO is appropriate is analogous to the standard applicable when determining whether preliminary injunctive relief is appropriate. *See YourNetDating, Inc. v. Mitchell*, 88 F.Supp.2d 870, 871 (N.D. Ill. 2000). The party seeking the TRO bears the burden of showing that it is “reasonably likely to succeed on the merits[,] is suffering irreparable harm that outweighs any harm the nonmoving party will suffer if the injunction is granted, there is no adequate remedy at law, and an injunction would not harm the public interest.” *Joelner v. Vill. of Wash. Park*, 378 F.3d 613, 619 (7th Cir. 2004) (stating the standards for preliminary injunction). If Plaintiffs meet this threshold, the court “weighs the factors against one another in a sliding scale analysis . . . to determine whether the balance of harms weighs in favor of the moving party or whether the nonmoving party or public interest will be harmed sufficiently that the injunction should be denied.” *Christian Legal Society v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006).

As to the merits of Plaintiff's claims, the Court cannot conclude at this time that any restrictive employment provisions are still in effect,<sup>2</sup> thus it considers the remaining claims sounding in the misappropriation of trade secrets, unfair competition, breach of fiduciary duties, and conversion. The Court finds that RC is likely to succeed on the merits of its claims. The evidence provided by RC, including the evidence in its accompanying exhibits, provides substantial evidence that Defendants misappropriated RC's trade secrets and unfairly interfered with RC's employee and vendor relationships. *See, e.g., Mission Measurement Corp. v. Blackbaud, Inc.*, 216 F.Supp.3d 915, 920 (N.D. Ill. 2016). In fact, Defendants admit to taking and converting at least some of RC's materials with the intent to use it for Darkhorse's benefit, despite RC having taken measures to maintain the information's secrecy. Defendants have also been unable to locate items that once contained trade secrets and confidential information belonging to RC. In addition, the most recent return of stolen RC property, shows that Defendants likely engaged in misappropriation and conversion. Darkhorse also admits to hiring away key employees from RC—the timing of which is suspicious at a minimum given sworn statements made by Mr. Myers and Darkhorse's ability to immediately start-up and compete in the business by selling trailers. These actions would more than likely constitute violations of state and federal law, as enumerated in the complaint and motion for TRO. *See* 18 U.S.C. § 1832; Ind. Code 24-2-3; *Bartholomew Cty. Beverage Co. v. Barco Beverage Corp.*, 524 N.E.2d

---

<sup>2</sup> For this reason, it would be improper to enjoin Defendants at this time from competing against RC in the regional trailer business so long as Darkhorse is only using its own resources and not using any materials that were once RC's. Moreover, while RC argues that Defendants have demonstrated their intent to use RC's trade secrets and confidential information, before enjoining Defendants' solicitation of certain customers, more information is needed concerning Defendants' actual use of protected information to solicit customers.

353 (Ind. Ct. App. 1988) (unfair competition includes actions for interference with contract or business relationships, as well as for predatory price cutting).

Additionally, RC is likely to suffer irreparable harm for which there is no adequate remedy at law if the Court were not to enter a TRO. Defendants' activities likely caused the massive loss of RC's workforce and at least some harm to RC's reputation and goodwill. *Merrill Lynch v. Salvano*, 999 F.2d 211, 215 (7th Cir. 1993) (finding irreparable harm and lack of legal remedy where plaintiff risked loss of customers). The dangers confronting RC from Darkhorse's taking and conversion of RC's information (and employees) for Darkhorse's intended immediate use constitute irreparable harm for which there is no adequate remedy at law. Moreover, trade secret misappropriation gives rise to a presumption of irreparable harm and that monetary damages are insufficient to compensate for trade secret misappropriation. *HCA Franchise Corp. v. Alisch*, No. 3:16-CV-476, 2016 WL 10706285, at \*7 (N.D. Ind. Aug. 12, 2016). This irreparable harm outweighs any harm that Defendants would suffer if the TRO is granted, especially given that Defendants allege that they are not currently using RC's materials for the benefit of Darkhorse. Finally, granting a TRO will not harm the public interest, since the public has an interest in ensuring the enforcement of state and federal laws, including the those that protect trade secrets, so that legitimate business interests are protected.

Having considered each of these factors, the Court finds that the balance of harms weighs in favor of granting a TRO in this case. The potential harm to RC is great, while the potential harm to Defendants is low and the public interest is best served by temporarily restraining Defendants likely illegal activities.



Accordingly, it is hereby ORDERED that pursuant to Fed. R. Civ. P. 65(d)(2), the Defendants, their officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with them who receive actual notice of this order are:

- (1) enjoined from using any of RC's trade secrets or confidential information;
  - (2) ordered to return within 5 days all of RC's property, including RC's trade secrets and confidential information, that is in Defendants' possession, custody, or control;
  - (3) ordered to identify within 5 days any of RC's trade secrets or confidential information that Defendants have used on behalf of any entity or individual other than RC<sup>3</sup>;
  - (4) ordered to identify within 5 days all electronic devices or servers in which Defendants have inserted an external drive into which contained RC's trade secrets or confidential information;
- and
- (5) ordered to identify within 5 days any and all of RC's customers that Defendants have solicited or called upon on behalf of Darkhorse.

Federal Rule of Civil Procedure 65(c) permits the issuance of this temporary restraining order "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been unlawfully enjoined or restrained." RC has provided sufficient evidence to make an initial showing of Defendants' improper activities and the scope of the TRO doesn't appear to have the potential to cause harm to the Defendants. This is so because Defendants have no right to possess or use RC's information/materials and the remainder of the injunction merely requires the identification of

---

<sup>3</sup> This information would help the Court evaluate to what extent the Defendants should be enjoined from soliciting RC's customers and prospective customers.

certain information but does not prevent Darkhorse from making sales in the trailer industry with its own resources. Thus, no bond is ordered.

This TRO shall continue in effect for fourteen (14) days from the time of entry of this Order but may be extended for good cause shown or consent of the parties.

The Court GRANTS the Defendants' contested motion for leave to supplement the record [DE 42] and GRANTS the TRO [DE 6] and Renewed TRO [DE 33] only to the extent detailed herein.

SO ORDERED.

ENTERED: December 20, 2019 at 11:35 AM

/s/ JON E. DEGUILIO  
Judge  
United States District Court