

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA**

EXECSUMMITS LLC,

Plaintiff,

V.

**MICHAEL HEALY & KAREN
HEALY**

Defendants.

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CIVIL ACTION

FILE NO. _____

**MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST
MICHAEL HEALY AND KAREN HEALY**

COMES NOW ExecSummits, LLC (“Plaintiff”), and respectfully submits this memorandum of law in support of its Motion For Temporary Restraining Order And Preliminary Injunction against Defendant Michael Healy (“Defendant MH) and Defendant Karen Healy (“Defendant KH”), collectively “Defendants.”

INTRODUCTION

This suit arises in part from Defendants’ actual and threatened misappropriation of Plaintiff’s trade secrets in violation of the Georgia Trade Secrets Act, O.C.G.A. 10-1-760 *et seq.* (the “GTSA or the “Act”) and Defendants’ tortious interference with business relations, conversion, and defamation of Plaintiff, and Plaintiff seeks injunctive relief to prevent unfair competition and irreparable harm that will result from Defendants’ conduct.

BACKGROUND

On or about October 24, 2014, Defendant MH accepted work on behalf of Plaintiff as Vice President of Conferences. (Complaint ¶ 7). After conducting its

first conference in Hartford, Connecticut, Plaintiff provided Defendant MH with a secure log-in/password to view Plaintiff's proprietary event registration lists. (Complaint ¶ 9). Defendant also requested confidential lists be provided to him and they were provided to him with cautions to keep key elements confidential. (Complaint ¶13, Exhibit 1). Plaintiff has spent many years and a great deal of money in creating its business secrets and trade secrets and takes great precaution in ensuring they remain confidential and are not accessed or provided to the public. (Complaint ¶ 14, Exhibit 2). Beginning in April 2015, and unbeknownst to Plaintiff, Defendants began systematically re-directing Plaintiff's clients and vendors to their new company, G2 Summits, and requested them to make payment to G2 Summits rather than Plaintiff. (Complaint ¶ 17, Exhibit 3). On or about May 21, 2015, Plaintiff became aware of the fact that Defendant MH and Defendant KH had been re-directing Plaintiff's clients and vendors to G2 Summits and had been converting monies these individuals and entities paid that were intended for Plaintiff. (Complaint ¶ 19). On or about May 22, 2015, Plaintiff informed Defendant MH that it had learned of Defendant MH's illegal activities and asked him to cease immediately; Defendant MH refused to acknowledge he did anything wrong and vowed to continue behaving in the same fashion. (Complaint ¶ 22). As recently as September 2, 2015, Defendant MH, by way of Plaintiff's trade secrets, contacted a client of Plaintiff in an effort to dissuade this client from attending Plaintiff's IT Conference scheduled for September 15, 2015 in Los Angeles, California, and subsequently defamed Plaintiff by lying about Plaintiff's Better Business Bureau rating and by posting false, misleading, and negative blogs regarding Plaintiff. (Complaint ¶ 27, Exhibit 4).

ARGUMENT

Temporary and preliminary injunctions should issue where a party can demonstrate: (1) a substantial likelihood of success on the merits; (2) the

temporary restraining order is necessary to prevent irreparable injury; (3) the threatened injury outweighs the harm the temporary restraining order would inflict on the non-movant; and (4) the temporary restraining order would serve the public interest. *Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir. 1995). Here, an analysis of these factors compels the issuance of the relief requested.

I. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS.

Plaintiff has a substantial likelihood of succeeding on the merits of its claims. Under the Georgia Trade Secrets Act, a trade secret is any information that (1) is not commonly known by or available to the public, (2) derives economic value, actual or potential, from not being generally known to or readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (3) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. O.C.G.A. 10-1-764(4); *Penalty Kick Mgmt., Ltd. v. Coca Cola Co.*, 318 F.3d 1284, 1291 (11th Circ. 2003). A defendant misappropriates a trade secret when he discloses or uses a trade secret of another knowing that it was acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use. *Id.* at 1292; O.C.G.A. 10-1-761(2)(B)(ii)(II). Under the GTSA, injunctive relief is available for both actual and “threatened” misappropriation. O.C.G.A. 10-1-762(a). Defendant MH has both threatened and acted upon his threats. In the case at bar, Defendants have clearly shown a complete disregard for the confidential nature of Plaintiff’s trade secrets, and have clearly used Plaintiff’s trade secrets in a blatant attempt to convert monies belonging to Plaintiff for the betterment of themselves.

In addition, in order to prevail on a claim of conversion under Georgia law, a plaintiff must show there was an “unauthorized assumption and exercise of the right of ownership over personal property belonging to another, in hostility to his right; an act of dominion over the personal property of another inconsistent with

his rights; or an unauthorized appropriation." *Kistler v. F.D.I.C.*, No. CV4111-024, 2013 U.S. Dist. LEXIS 8817, 2013 WL 265803 at *6 (S.D. Ga. Jan. 23, 2013) (citing *Decatur Auto Cntr. V. Wachovia Bank, N.A.*, 276 Ga. 817, 819, 586 S.E.2d 6 (2003)). As stated in the Verified Complaint, Defendants systematically began re-directing monies payable to Plaintiff so that ultimately the monies were paid to their new company, G2 Summits.

And finally, with respect to a claim for tortious interference with business relations, "to establish a cause of action for tortious interference with business relations under Georgia law, a plaintiff must show that the defendant, (1) acting improperly and without privilege (2) and acting purposely and with malice with the intent to injure, (3) induced a third party or parties not to enter into or continue a business relationship with the plaintiff (4) for which the plaintiff suffered some financial injury." As recently as September 2, 2015, Defendant MH acted improperly and without privilege, and acted purposely and with malice with the intent to injure, in attempting to induce a third party or parties not to enter into or continue a business relationship with Plaintiff for which Plaintiff would suffer financial injury.

II. PLAINTIFF HAS DEMONSTRATED IRREPARABLE HARM

In this case, Defendants' misappropriation of Plaintiff's trade secrets will cause irreparable harm to Plaintiff. "The mere threat of disclosure, destruction, or dilution of a Plaintiff's trade secrets constitutes irreparable injury justifying injunctive relief." *Specialty Chemicals & Services, Inc. v. Chandler*, 1988 WL618583 at *5 (N.D. Ga. Sept. 29, 1988), citing to *CPG Products Corp v. Mago Corp.* 214 U.S.P.Q. (BNA 206, 214 (S.D. Ohio 1981). *See also FMC Corp v. Taiwan Tainan Giant Indus., Co.*, 730 F.2d 61, 63 (2nd Cir. 1984) ("It is clear that irreparable harm is presumed where a trade secret has been misappropriated" because a trade secret once lost is, of course, lost forever" and such loss "cannot be

measured in money damages”). Where, as here, the misappropriated information relates to customer accounts and the threatened injury is loss of those customer relationships and customer goodwill, irreparable injury is shown. *The Variable Annuity Life Insurance Co. v. Joiner*, WL 1549110 at *2-3 (S.D. Ga., May 26, 2006). Throughout the course of Defendant MH’s work on behalf of Plaintiff and thereafter, Defendant MH has shown a blatant disregard for Plaintiff’s trade secrets, and has clearly misappropriated them for his own personal gain. Plaintiff has gone to great lengths to develop and maintain the confidentiality of its trade secrets and to keep this information from going into unauthorized hands, and if left unchecked, Defendants can destroy Plaintiff’s reputation by continued abuse of the stolen trade secrets and by slandering Plaintiff and its employees and tortiously interfering with Plaintiff’s business relations.

III. THE THREATENED INJURY TO PLAINTIFF OUTWEIGHS THE HARM THE TRO WOULD INFLICT ON DEFENDANTS.

Plaintiff has spent a vast amount of money and devoted vast amounts of personnel time in developing its trade secrets and its reputation in the IT industry. That investment would be forever lost if Defendants’ continued misappropriation thereof is left unchecked. Defendants’ theft of Plaintiff’s trade secrets and confidential contact information of its customers will allow the Defendant to meet and defeat the very competitive challenge that those programs were intended to mount. The resulting loss of Plaintiff’s competitive position, while impossible to quantify with certainty, would be worth a great deal of money.

In contrast, Defendants will not suffer any substantial harm if the Court grants injunctive relief. Plaintiff is not seeking to bar Defendants from working in this sector or even putting on similar events as those put on by Plaintiff. Rather, Plaintiff is simply attempting to prevent Defendants from misappropriating its

trade secrets, cease tortiously interfering with its business and contractual relations, and cease defaming Plaintiff.

IV. THE TRO WOULD SERVE THE PUBLIC INTEREST.

Furthermore, preventing trade secret misappropriation and unfair competition of the kind in which Defendants are engaged is in the public interest. Discouraging, rather than encouraging, behavior like that engaged in by Defendants is in the public interest. “It is axiomatic that our laws protect private property and set standards for business competition and that obedience to such laws is in the public interest.” *Specialty Chemicals & Services, Inc. v. Chandler*, 1988 WL 618583 at *6, citing to *Continental Group, Inc. v. Amoco Chem. Corp.*, 614 F.2d 351, 357-58 (3d Cir. 1980). The public interest also favors fair competition, the independent development of competitive information, and the protection of trade secrets misappropriation. “Certainly, there is a cognizable public interest in discouraging employees from succumbing to the temptation of easy profit by breaching their employer’s trust and misappropriating proprietary information for their own gain.” *Id.* The public interest therefore requires entry of the requested injunction. Furthermore, there is a clear public interest in preventing individuals from defaming others and tortiously interfering with business and contractual relations.

V. PLAINTIFF IS IN IMMINENT DANGER OF IRREPARABLE HARM

On September 14, 2015, Plaintiff will be holding an IT conference in Irvine, California. This is the very type of conference that Defendant MH was hired by Plaintiff to plan, sell, coordinate, and execute, and the very type of conference that Defendants are now performing. By virtue of their previous actions, there is no reason to believe that Defendants will not continue to take any steps possible to disrupt not only this event, but all future events hosted by Plaintiff. As a result thereof, Plaintiff believes there is reasonable grounds to have a temporary

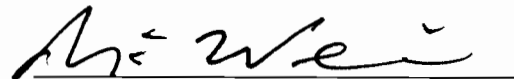
restraining order issued before Defendant can be heard in opposition. In addition, Plaintiff's counsel has both e-mailed and mailed Defendant MH a copy of the Verified Complaint, Motion For Temporary Restraining Order and Memorandum In Support Of Motion For Temporary Restraining Order And Preliminary Injunction. (Exhibit 5).

CONCLUSION

Although Plaintiff recognizes that this Honorable Court must take great precaution in considering whether or not to grant a temporary restraining order and injunctive relief in this matter, Plaintiff believes this request is reasonable and not over-reaching. In order to prevent harm that would be irreparable, Plaintiff is respectfully requesting this court to help ensure there is a level playing field by restraining Defendants from the misappropriation of its trade secrets, from tortiously interfering with Plaintiff's business relations, and from defaming Plaintiff. Plaintiff is not requesting this Court to restrain Defendant from working in his trade or profession or otherwise competing with Plaintiff. Accordingly, and based on the proffered facts in Plaintiff's Verified Complaint and this Memorandum of Law, Plaintiff respectfully requests this Honorable Court to grant its Motion.

Respectfully submitted this 11th day of September 2015.

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