

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

MONROE DIVISION

US GREENFIBER

CIVIL ACTION NO. 02-2215

VERSUS

JUDGE ROBERT G. JAMES

SHERRIE BROOKS

MAG. JUDGE JAMES D. KIRK

RULING

Plaintiff US GreenFiber (“GreenFiber”) brings this suit for injunctive relief and monetary damages against Defendant Sherrie Brooks (“Brooks”) for breach of fiduciary duty, conversion, and alleged violations of the Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. § 1030, *et seq.*, the Louisiana Trade Secrets Act, La Rev Stat §51:1431 *et seq.*, and the Louisiana Uniform Trade Practices and Consumer Protection Law, La Rev Stat §51:1401 *et seq.*

On October 18, 2002, GreenFiber filed a motion for temporary restraining order and preliminary injunctive relief [Doc. No. 4]. On October 18, 2002, this Court issued a temporary restraining order enjoining Brooks from: (1) using or disclosing any and all of GreenFiber’s business and quality control information; (2) soliciting or otherwise contacting current GreenFiber employees through the use of GreenFiber’s communications systems, and (3) disclosing information to lawyers or parties who are adverse to GreenFiber in litigation. This Court also directed Brooks to return GreenFiber’s property, equipment, documents, and business and quality control records in her possession, custody, or control. Finally, this Court ordered that a hearing on GreenFiber’s motion for preliminary injunction be held on October 24, 2002, at 10:00 a.m. A copy of the temporary restraining order and notice of hearing was served on Brooks on October 19, 2002.

A hearing on GreenFiber's motion for a preliminary injunction was held on October 24, 2002, at 10:00 a.m. Brooks failed to appear. After the hearing, Brooks did file a memoranda in opposition to GreenFiber's motion for a preliminary injunction. Having considered the evidence introduced at the hearing and the argument of counsel and Brooks, GreenFiber's motion for a preliminary injunction is GRANTED.

I. FINDINGS OF FACT

The Court finds the following facts to be established:

Brooks is a former employee of GreenFiber. While at GreenFiber, Brooks was employed as a Quality Control Manager and worked out of her home. In this position, Brooks was responsible for overseeing quality control for ten GreenFiber plants located in the states of Arizona, California, Florida, Georgia, Nebraska, North Carolina, Ohio, Texas, and Virginia.

Brooks maintained all quality control records and documents in her home. These materials were kept and maintained by Brooks in her capacity as a manager for GreenFiber. These documents were made available to Brooks solely because of her position as Quality Control Manager. Any and all documents related to Brooks's job which are or which once were located in her home are the property of GreenFiber.

On October 9, 2002, GreenFiber terminated Brooks's employment while she was at the corporate headquarters in Charlotte, North Carolina.

After her termination, Dave Bowman ("Bowman"), Brooks's direct supervisor, learned from e-mail correspondence that while Brooks was at GreenFiber's headquarters, she copied documents belonging to GreenFiber and took those documents with her when she left. Bowman wrote Brooks on October 14, 2002, stating: "As we told you in the termination interview, all

corporate documents including all copies are proprietary assets of GreenFiber and should be returned to us promptly.”

In an October 14, 2002, e-mail to Bowman, Brooks refused to return the documents she took from the headquarters. In the e-mail, Brooks threatened to provide confidential information trade secrets, property, and documents belonging to GreenFiber to an adverse party in a pending civil case. Brooks threatened to disclose, among other things, e-mails; monthly reports, customer complaints, strategic plans, sales reports, and customer pricing lists. Brooks also threatened to provide these same items to competitors of GreenFiber with whom she allegedly had job interviews. Finally, Brooks threatened to use these same items in a personal lawsuit against GreenFiber.

On October 15, 2002, counsel for GreenFiber wrote to Brooks demanding the return of all GreenFiber’s property no later than October 16, 2002.

In response to GreenFiber’s demand, Brooks returned a computer and related hardware belonging to GreenFiber on October 17, 2002. GreenFiber’s IT Consultant, John Zizzi (“Zizzi”), examined the computer on the day it was returned and determined that all documents, e-mail files, and Microsoft Office, including the Outlook e-mail program, had been removed. GreenFiber later sent the computer to a forensic engineer in California to determine whether any of the deleted data could be recovered.

Brooks did not return the other equipment, property, documents, or materials. Brooks was aware of GreenFiber’s procedures to protect its confidential, proprietary, and trade secret information from theft. In addition to password protection, which limits access to the company’s computer database to authorized employees, GreenFiber has a confidentiality policy that sets guidelines for the employees’ use and handling of GreenFiber’s business information. Each

employee is provided with a copy of this policy, and each employee is required to execute the policy as a condition of employment.

Although Brooks did not execute this policy, it is clear from her e-mail that she was aware of this policy. Furthermore, Dennis Barrineau (“Barrineau”), President of GreenFiber, sent an e-mail to employees who had not executed the policy explaining it to them again.

Despite her knowledge of these policies and GreenFiber’s demands for return of its property, Brooks continued to engage in unlawful actions. She also engaged in unauthorized access of the company’s communications systems to contact other employees, including Bowman, following her termination.

On October 22, 2002, Brooks sent a FedEx package to GreenFiber’s counsel in response to the demand to return all confidential information, trade secrets, property, and documents. Although Brooks returned some of the requested items, Brooks admits that she continues to retain documentation regarding GreenFiber’s compliance with government standards.

II. CONCLUSIONS OF LAW

The Court makes the following conclusions of law:

Jurisdiction is proper pursuant to 28 U.S.C. § 1331 because GreenFiber has alleged violations of the CFAA. Further, diversity jurisdiction pursuant to 28 U.S.C. § 1332 exists because GreenFiber and Brooks are citizens of different states and the amount in controversy exceeds \$75,000.

In determining whether to grant or deny a preliminary injunction, the Court applies a four-part test:

- (1) a substantial likelihood that plaintiff will prevail on the merits;
- (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted;
- (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to the defendant; and
- (4) that granting the preliminary injunction will not disserve the public interest.

Canal Authority of State of Florida v. Callaway, 489 F2d 567, 572 (5th Cir 1974).

“A preliminary injunction is an extraordinary remedy and should be granted only if the movant has clearly carried the burden of persuasion with respect to all four factors.” *Allied Marketing Group, Inc. v. CDL Marketing, Inc.*, 878 F2d 806 (5th Cir 1989) (citing *Mississippi Power & Light v. United Gas Pipe Line*, 760 F2d 618, 621 (5th Cir 1985); *Apple Barrel Productions, Inc. v. Beard*, 730 F2d 384, 389 (5th Cir 1984)). Failure of the movant to establish any one of the four factors defeats the right to injunction. See *Rohoe, Inc. v. Marque*, 902 F2d 356 (5th Cir 1990). As discussed below, the Court concludes that GreenFiber has sufficient established all four factors and, therefore, is entitled to injunctive relief.

A. GreenFiber has Proven a Substantial Likelihood that It Will Prevail on the Merits

1. Computer Fraud and Abuse Act

The CFAA makes it a crime for anyone to “intentionally access[] a protected computer without authorization, and as a result of such conduct, cause[] . . . loss to 1 or more persons during any 1-year period . . . aggregating at least \$5,000 in value . . .” 18 U.S.C. § 1030(a)(5)(A)(iii) and (B)(i). The CFAA also provides that “[a]ny person who suffers damage for loss by reason of violation of this section may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief.” 18 U.S.C. §

1030(g). A “protected computer” includes a computer “which is used in interstate or foreign commerce or communication.” 18 U.S.C. § 1030(e)(2)(B).

In order for GreenFiber to succeed on its claim that Brooks violated the CFAA, it must establish that Brooks intentionally accessed a protected computer, that she did so without authorization or by intentionally exceeding her authorized access, and that she caused GreenFiber a loss of at least \$5,000.

The Court finds that GreenFiber is likely to succeed on the merits of its CFAA claim. The computer at issue was used by Brooks to communicate with GreenFiber’s offices and customers involved in interstate and foreign commerce. Although Brooks was not authorized to access GreenFiber’s communications systems after her termination, Brooks intentionally accessed GreenFiber’s internal e-mail system and sent messages to GreenFiber employees. Brooks also removed from the computer assigned to her all documents, e-mail files, and Microsoft Office including the Outlook e-mail program. Any authority Brooks may have had to access the computer following her termination did not include the authority to remove these documents and programs. Finally Bowman’s affidavit, together with Barrineau’s testimony support GreenFiber’s contention that it suffered damages and losses in excess of \$5,000.

2. Louisiana Trade Secrets Act

The Louisiana Trade Secret Act “authorizes injunctive relief against one who is guilty of actually or threatening to misappropriate a trade secret.” *Technical, Inc. v. Allpax Products, Inc.*, Civ. A. No. 90-872, 1990 WL 41924, at *9 (ED La March 28, 1990) (citing La. Rev. Stat. § 51:1432). “In addition to or in lieu of injunctive relief, a complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for the unjust

enrichment caused by misappropriation that is not taken into account in computing damages for actual loss.” La. Rev. Stat. § 51:1433. A “trade secret” is defined as:

information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

La. Rev. Stat. § 51:1431(4). The term “misappropriation” means:

- (a) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
- (b) disclosure or use of a trade secret of another without express or implied consent by a person who:
 - (i) used improper means to acquire knowledge of the trade secret; or
 - (ii) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:
 - (aa) derived from or through a person who had utilized improper means to acquire it;
 - (bb) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - (cc) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
 - (iii) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

La. Rev. Stat. § 51:1431(2).

“The plaintiff bears the burden of proving both the existence of a legally protectable trade secret and the legal basis upon which to predicate relief.” *Technical Inc.*, 1990 WL 41924 at *9.

The Court finds that GreenFiber is likely to succeed on the merits of its Louisiana Trade Secrets Act claim. The information and records at issue constitute “trade secrets” under La. Rev. Stat. § 51:1431(4). Brooks is in possession of sensitive quality control and business records including product compliance records, e-mails, monthly reports, customer complaints, strategic plans, sales reports, and customer pricing lists. According to GreenFiber, this information derives independent economic value from not being generally known to and not being readily ascertainable by other persons, including their competitors and parties adverse to them in pending litigation. Further, GreenFiber has taken reasonable efforts to maintain the secrecy of this information by instituting a confidentiality policy and by using password protection to limit access to this information to authorized employees.

Additionally, Brooks misappropriated GreenFiber’s trade secrets when, after her termination, she copied and took documents belonging to GreenFiber which she knew to be proprietary and confidential. Brooks has also threatened to: (1) provide confidential information, trade secrets, property, and documents belonging to GreenFiber to an adverse party in a pending civil case; (2) disclose, among other things, e-mails, monthly reports, customer complaints, strategic plans, sales reports, and customer pricing lists; (3) provide these same items to competitors of GreenFiber with whom she allegedly had job interviews; and (4) use these same items in a personal lawsuit against GreenFiber.

Therefore, the Court concludes that GreenFiber has proven a substantial likelihood that it will succeed on the merits of its CFAA and Louisiana Trade Secrets Act claims.

B. GreenFiber has Proven the Remaining Injunction Factors

Having found that GreenFiber has proven a substantial likelihood that it will succeed on the merits, GreenFiber must also sustain its burden on three other factors before the Court will issue an injunction. GreenFiber must prove: (1) that an injunction is necessary to prevent irreparable injury, (2) that the balance of interests favors issuance of an injunction, and (3) that injunctive relief will not undermine or disserve the public interest.

GreenFiber asserts that it will suffer irreparable injury in the absence of an injunction because Brooks will likely use business, customers, pricing, and quality control information for her improper benefit in her prospective lawsuit. Furthermore, Brooks has also threatened to use that information on behalf of a GreenFiber competitor in a \$1.7 million lawsuit against GreenFiber and on behalf of other GreenFiber competitors with whom Brooks intends to obtain employment. The Court finds these reasons sufficient to show irreparable injury.

GreenFiber also argues that the balance of interests favors the issuance of an injunction. The Court agrees. This injunction will enforce and protect the legal rights of GreenFiber while in no way unfairly limiting Brooks's ability to continue working. Brooks can work at any job she chooses, including going to work for one of GreenFiber's competitors. What she cannot do is disclose confidential, proprietary, and trade secret information.

Finally, GreenFiber asserts that an injunction will not undermine or disserve the public interest. Again, the Court agrees. This injunction will serve to protect the private interests that our state and federal laws intend to protect. The Court finds no countervailing public interest in allowing Brooks to violate the law.

Having found a substantial likelihood that GreenFiber will succeed at trial, the Court concludes that GreenFiber will suffer irreparable injury in the absence of an injunction, that the

threatened harm to GreenFiber outweighs the harm that Brooks might sustain, and that enjoining her from using or disclosing GreenFiber's trade secrets, proprietary, business, quality control, customer, and pricing information will not disserve the public interest.

III. CONCLUSION

GreenFiber has carried its burden of persuasion by showing that (1) there is a substantial likelihood that it will prevail on the merits, (2) it will suffer irreparable harm if a preliminary injunction is not granted, (3) the threatened injury to it outweighs the threatened harm the injunction may do to Brooks, and (4) granting the preliminary injunction will not disserve the public interest. Accordingly, GreenFiber's request for preliminary injunctive relief is hereby GRANTED.

MONROE, LOUISIANA, this 24 day of October, 2002

ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE