

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

JM POLYMERS, LLC, a Michigan limited liability company,

Plaintiff,

vs.

Case No. 2013-3899-CK

SPARTAN POLYMERS, LLC, a Michigan limited liability company and MICHAEL A. KIRTLEY,

Defendants.

OPINION AND ORDER

Plaintiff has filed a motion to clarify the Court's June 16, 2014 Order and to compel discovery from Defendants. Defendants have filed a response.

Facts and Procedural Background

Defendant Spartan Polymers, LLC ("Defendant Spartan") is a company owed and operated by Defendant Michael A. Kirtley ("Defendant Kirtley"). Defendant Spartan is a manufacturer's sales representative in the plastic and resin industry. On or around September 30, 2004, Plaintiff entered into a manufacturer's representative agreement with Defendant Spartan whereby Defendant Spartan agreed to act as Plaintiff's exclusive sales representative for 27 specific customer accounts (the "Agreement"). Defendant Spartan, through Defendant Kirtley's actions, has since repeatedly breached the Agreement.

On September 27, 2013 Plaintiff filed its verified complaint and motion for a temporary restraining order. In its complaint, Plaintiff asserts claims against Defendants for: Count I- Breach of Contract, Count II- Breach of Fiduciary Duty, Count III- Tortious Interference with

Contractual and Business Relations, Count IV- Violation of Michigan Uniform Trade Secrets Act (MUTSA), Count V- Attorneys' Fees as Authorized under the Michigan Uniform Trade Secrets Act, and Count VI- Civil Conspiracy.

On June 9, 2014, Plaintiff filed a motion to compel discovery and to re-designate documents marked "attorney's eyes only" as "confidential." Specifically, Plaintiff sought: (1) the production of e-mails and other documents containing information regarding Defendants' relationship/communication with any of the 27 customers before July 11, 2008, and (2) the re-designation from attorney's eyes only ("AEO") to confidential of an 11 page document produced on May 28, 2014 showing the sale of all products sold by Defendants to any of the 27 accounts before July 11, 2008 (the "Accounting Summary").

On June 16, 2014, the Court held a hearing in connection with the June 9, 2014 motion. While an order was entered after the hearing concluded, the order was allegedly drafted by Defense counsel and Plaintiff's counsel was not given an opportunity to review the proposed order before it was entered (the "Order"). Plaintiff contends that the Order contains inaccuracies and now requests that the Court clarify the Order as well as compel additional discovery.

Arguments and Analysis

Defendants' objection to re-designating the 11 page Account Summary and to producing the pre-July 11, 2008 communications is that Plaintiff has failed to establish that they were actively selling the product(s) at the time. The parties dispute centers on whether Plaintiff had access to the propylene ("COPP") at the time at issue. In support of their motion, Plaintiff relies on the affidavit of Josh Ullrich, Plaintiff's president. Mr. Ullrich testified that Plaintiff at any given time has 2-3 supply chains for COPP and that COPP was listed as a current inventory item before July 2008.

In response, Defendant relies on emails sent by Matt Johnson, one of Plaintiff's employees, in which he states that Plaintiff is working on getting a new supplier for COPP and indicates that Plaintiff had an ongoing difficulty in obtaining COPP.

After reviewing the evidence presented by the parties, the Court is convinced that the 11 page Account Summary should be re-designated as confidential rather than AEO, and that Defendants should produce the pre-July 2008 communications. While the evidence presented by Defendants indicates that Plaintiff had an ongoing difficulty in obtaining COPP, Plaintiff's affidavit shows that Plaintiff was engaged in the sale of COPP prior to July 2008, thereby rendering Defendants' sale of COPP competitive. Based on that fact, the Court is convinced that Plaintiff has presented sufficient evidence to justify the discovery it seeks. Consequently, Plaintiff's motion must be granted.

Conclusion

For the reasons set forth above, Plaintiff's motion for clarification of the June 16, 2014 Order and to compel discovery is GRANTED. The 11 page Account Summary is hereby re-classified as "confidential" rather than "attorney's eyes only." Further, Defendants shall produce all emails, communications and/or other documents with any of the 27 customers at issue from September 30, 2004 through July 11, 2008 with 14 days of the date of this Opinion and Order. Pursuant to MCR 2.602(A)(3), this Opinion and Order neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.

John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: August 25, 2014

JCF/sr

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