



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DENIZEN LLC)
)
 Plaintiff,)
)
 vs.)
)
 MINDSHARE ENTERTAINMENT USA, LLC,)
)
 MINDSHARE DAYS PRODUCTIONS, LLC,)
)
 and)
)
 MINDSHARE USA, LLC)
)
 Defendants.)
 _____)

Civil Action No. _____

JURY TRIAL DEMANDED

VERIFIED COMPLAINT

Denizen LLC (“Denizen”) hereby alleges by and through its attorneys as follows:

THE PARTIES

1. Denizen is a Delaware limited liability company with its principal place of business located in the state of Maryland.
2. Defendant MindShare Entertainment USA, LLC is a Delaware limited liability company in the state of Delaware with, upon information and belief, its principal place of business located in New York, New York.
3. Defendant MindShare Days Productions, LLC is a Delaware limited liability company with, upon information and belief, its principal place of business located in New York, New York.
4. Defendant MindShare USA, LLC (MindShare USA, LLC, MindShare Days Productions, LLC, and MindShare Entertainment USA, LLC are collectively referred to herein as “MindShare”), upon information and belief, is a New York limited liability company with its

principal place of business located in New York, New York. MindShare USA, LLC's parent company, WPP plc, holds MindShare USA, LLC out as a Delaware company. (See Exh. G.) Upon information and belief, MindShare USA, LLC regularly transacts business in Delaware and with Delaware entities.

JURISDICTION

5. This action arises under various provisions of the Delaware Code, including 6 Del. C. § 2001, *et seq.*, and under applicable common law governing substantial and related claims that arise out of the same or related operative facts.

6. This Court has jurisdiction over MindShare USA, LLC pursuant to Delaware's long-arm statute, 10 Del. C. § 3104.

FACTUAL BACKGROUND

Denizen's Business Activities, Trade Secrets, and Other Confidential and Proprietary Information

7. Television networks generally sell advertising during television programs and generally receive revenue for use of the commercial airtime in proportion to the program's viewership, i.e., ratings.

8. As such, networks face the problem of viewers not watching the advertisements in between segments of the television program.

9. Denizen is an innovator in advertising and created the concept of "program integrated advertisement" in order to entice viewers to pay attention to advertisements in various media, including, but not limited to, television, radio, and the Internet.

10. The U.S. Patent and Trademark Office found that Denizen's idea of program integrated advertisements was novel and awarded Denizen a patent in 2005.

11. Denizen created trade secrets for when and how to implement and go about contacting the parties needed to make program integrated advertisements. *See* Exh. A at ¶¶ 8-11.

Confidentiality Agreement between Denizen and MindShare

12. MindShare and Denizen entered into a Confidentiality Agreement dated October 22, 2004. *See* Exh. B.

13. Joe Scangamor, Chief Financial Officer, executed the Confidentiality Agreement on behalf of MindShare.

14. Section 1.1 of the Confidentiality Agreement defines “Confidential Information,” which includes, but is not limited to “all information and knowledge (and all tangible and intangible embodiments thereof)” that MindShare received from Denizen “related or unrelated” to program integrated advertisements:

including without limitation, . . . research and development projects and results, business plans, . . . systems, merchandising, marketing approaches, marketing plans and materials, affiliate relations, product information, processes, . . . designs, formats, analyses, strategies, forecasts and names, addresses, and any other characteristics, . . . as well as any other materials or information relating to or dealing with the business operations or activities of [Denizen], whether written or oral . . . , which Disclosure holds confidential, as well as any information generated, prepared on the basis of or derived from any of the foregoing.

Exh. B.

15. MindShare agreed that the Confidential Information Denizen disclosed is proprietary. *See* Exh. B at § 2.

16. MindShare agreed “not to use, publish, disclose, communicate or divulge for the direct or indirect benefit of any person, firm, association, or company (including [MindShare]) any Confidential Information.” *Id.*

17. MindShare agreed that the restrictions contained in the Confidentiality Agreement “are reasonable and necessary in order to protect the legitimate interests of [Denizen],

and that any violation thereof would result in a material breach of this Agreement and irreparable injuries to [Denizen].” Exh. B at § 3.5.

18. MindShare contracted that if it were to breach the Confidentiality Agreement, Denizen “shall be entitled to obtain injunctive and/or other preliminary or equitable relief, in addition to any remedies available at law.” *Id.*

19. MindShare also agreed to waive any requirement for the securing or posting of any bond if Denizen sought such a remedy for MindShare’s breach of the Confidentiality Agreement. *Id.*

20. The Confidentiality Agreement is governed by and is to be construed in accordance with New York law, without regard to New York’s choice of law provisions. *Id.* at § 3.4.

Meeting between Denizen and MindShare

21. After the Confidentiality Agreement was executed, Denizen disclosed its proprietary, trade secret business plans to implement program integrated advertisements to MindShare at MindShare’s office at Worldwide Plaza, 825 Eighth Avenue, New York, New York 10019. *See* Exh. A at ¶¶ 4-11.

22. Present at the meeting for MindShare were Marc Goldstein, Kathy Crawford, Libby Parella, and Connie Garrido. *See* Exh. A at ¶ 6.

23. Upon information and belief, Mr. Goldstein is or was the Chief Executive Officer, Ms. Crawford is or was the President, Ms. Parella was a Senior Partner, and Ms. Garrido is or was a Director of MindShare.

24. During the meeting, Denizen disclosed to MindShare certain techniques, which Denizen held and continues to hold as trade secrets, that could be used to implement program integrated advertisements, such as, but without limitation, ways to shoot the advertisements,

strategies for obtaining Screen Actors Guild contracts, methods to gain access or rights to television program content, and how and when an advertising agency could work with a production house or network. *See* Exh. A at ¶¶ 8-11.

25. After the meeting ended, MindShare informed Denizen that Denizen had a good idea. *See id.* at ¶ 12.

26. MindShare, through Mr. Goldstein, told Denizen that there were no current opportunities for it to partner with Denizen, but if an opportunity were to arise in the future, it would contact Denizen. *See id.*

MindShare's Advertising Campaign for Unilever

27. Upon information and belief, MindShare entered into a contract with Unilever regarding advertising.

28. Upon information and belief, the Unilever entity in the United States with which MindShare works is Unilever United States, Inc., a Delaware corporation.

29. Upon information and belief, MindShare brokered an agreement between Lifetime Networks and Unilever.

30. Upon information and belief, the agreement brokered by MindShare is a brand partnership that seeks to increase consumer awareness of Lifetime Television's miniseries "Maneater" and the Vaseline Aloe Fresh line of light lotions.

31. Vaseline Aloe Fresh is a Unilever brand.

32. The Unilever-advertising campaign brokered and developed by MindShare includes custom, co-branded promotional spots and original branded-content vignettes. *See* Exhs. C-D.

33. An example of the advertising campaign is found at <http://www.mylifetime.com/fun-games/sweeps/rules-for-skin-season> (last accessed June 8, 2009),

a printout of which is attached as Exhibit E. As part of the advertising campaign, a nationwide sweepstakes could be entered until July 15, 2009 at 11:59:59 pm. *See* Exh. F.

34. Maneater premiered on May 30 and 31, 2009 at 9 pm eastern time.

35. Although the sweepstakes has ended, the custom, co-branded promotional spots and original branded-content vignettes can be viewed at <http://www.mylifetime.com/games/sweeps/rules-for-skin-season> (last accessed August 19, 2009), a printout of which is attached as Exhibit H.

MindShare Wrongfully Used and Continues to Use Denizen's Proprietary, Confidential, Commercially Sensitive and Trade Secret Information

36. MindShare used and continues to wrongfully use Denizen's proprietary, confidential, commercially sensitive, and trade secret information, including, but not limited to, Denizen's business plans to implement program integrated advertisements.

37. MindShare did not seek Denizen's authorization to use Denizen's proprietary, trade secret information.

38. Upon information and belief, based at least on the success of the Unilever-advertising campaign, MindShare intends to solicit customers by continuing to use Denizen's proprietary, trade secret information to solicit customers for MindShare.

CLAIMS

COUNT ONE: MISAPPROPRIATION OF TRADE SECRETS

39. Denizen repeats and realleges each and every allegation made in the foregoing paragraphs as if fully set forth herein.

40. Denizen's trade secret materials comprise information, including, but not limited its business plans, techniques for implementing program integrated advertisements, such as, but without limitation, ways to shoot the advertisements, strategies for obtaining Screen Actors Guild

contracts, methods to gain access or rights to television program content, and how an advertising agency could work with a production house or network, that are not generally known to the public or to other persons who can obtain economic value from their disclosure or use.

41. This information is the subject of reasonable efforts by Denizen to maintain their secrecy, and they derive independent economic value from not being generally known.

42. The information comprising Denizen's trade secrets constitutes "trade secrets" under New York common law.

43. Upon information and belief, MindShare willfully and maliciously misappropriated Denizen's trade secrets and derivatives.

44. By reason of the above alleged acts and conduct of MindShare and, upon information and belief, MindShare's intent to solicit customers by using Denizen's trade secrets, Denizen has suffered monetary damages to its business, lost customers and potential customers, and will suffer great harm and continuing damage due to the misappropriation of its trade secrets.

45. Denizen is entitled to recover from MindShare the actual, compensatory and consequential damages sustained by Denizen as a result of MindShare's wrongful acts described in this Complaint or the value of MindShare's unjust enrichment in an amount to be determined at trial. Denizen is presently unable to ascertain the full extent of such damages.

46. MindShare's acts of misappropriation were both willful and malicious, and, Denizen is entitled to an award of punitive (exemplary) damages.

47. Denizen is further entitled to an award of attorneys' fees and costs against MindShare.

COUNT TWO: BREACH OF CONTRACT

48. Denizen repeats and realleges each and every allegation made in the foregoing paragraphs as if fully set forth herein.

49. Denizen entered into the Confidentiality Agreement with MindShare attached as Exhibit B, and fulfilled its obligations under the agreement.

50. On information and belief, MindShare breached the Confidentiality Agreement with Denizen by using Denizen's trade secrets to create an advertising campaign featuring program integrated advertisements for Unilever and Lifetime Networks. *See* Exh. A at ¶ 13.

51. As a result of MindShare's breach and, upon information and belief, MindShare's intent to solicit customers by using Denizen's trade secrets, Denizen has suffered and will suffer further harm, including the loss of confidential and proprietary information, competitive position, customers, and goodwill, the amount of which will be difficult to ascertain.

52. Denizen is entitled to restitution for any damages incurred as a result of the breach by MindShare, including investigative costs.

COUNT THREE: COMMON LAW UNFAIR COMPETITION

53. Denizen repeats and realleges each and every allegation made in the foregoing paragraphs as if fully set forth herein.

54. MindShare wrongfully obtained, possessed and used, and continues to possess and use, Denizen's confidential and proprietary information, which may constitute "trade secrets" (as defined by the Restatement of Torts § 757), relating to its business operations, customers and prospective customers. Denizen invested substantial time and money in developing the confidential and proprietary information at issue in this Complaint. By misappropriating Denizen's intellectual property without authorization as described above, MindShare has gained an unfair competitive advantage over Denizen. MindShare obtained Denizen's confidential and proprietary information at little or no cost, and used Denizen's confidential and proprietary information to broker the agreement between Unilever and Lifetime Networks.

55. By reason of the above alleged acts and conduct of MindShare and, upon information and belief, MindShare's intent to solicit customers by using Denizen's trade secrets, Denizen has suffered, and will continue to suffer, great harm and damage.

56. Denizen is entitled to recover from MindShare the greater of restitution for any damages sustained by Denizen as a result of MindShare's wrongful acts described in this Complaint or the value of MindShare's unjust enrichment in an amount to be determined at trial. Denizen is presently unable to ascertain the full extent of such damages.

57. MindShare's actions were both willful and malicious, and Denizen is entitled to an award of punitive damages, attorneys' fees, and costs against MindShare.

COUNT FOUR: CONVERSION

58. Denizen repeats and realleges each and every allegation made in the foregoing paragraphs as if fully set forth herein.

59. Upon information and belief, MindShare wrongfully converted valuable property belonging to Denizen, including Denizen's proprietary and confidential information. MindShare's conduct is both willful and malicious and has been or will be taken with the intention of causing harm to Denizen or has been taken with knowledge that harm will come to Denizen.

60. As a result of the conversion by MindShare of the aforesaid valuable property, Denizen has been injured, damaged and harmed. Because of the nature of the property converted, Denizen will continue to suffer a loss of sales, loss of business reputation and goodwill, and other harm. Denizen is also entitled to MindShare's unjust enrichment from such conversion.

COUNT FIVE: INTENTIONAL MISREPRESENTATION/FRAUD

61. Denizen repeats and realleges each and every allegation made in the foregoing paragraphs as if fully set forth herein.

62. By the acts alleged in the preceding paragraphs, MindShare has committed the tort of intentional misrepresentation.

63. Denizen disclosed its trade secrets to MindShare so that a business relationship could be entered between Denizen and MindShare. *See* Exh. A at ¶ 7.

64. In response to direct questions by Denizen, MindShare said that it had no need for the trade secrets at that time, but that if it did in the future, it would contact Denizen. Exh. A at ¶ 12.

65. On information and belief, MindShare knew these statements were false at the time they were made.

66. On information and belief, MindShare made the false representations with the intention that Denizen rely on the statements, and with the intention of inducing Denizen into not taking adverse action against MindShare, including, but not limited to, Denizen's contacting Lifetime Networks or Unilever or taking action to prevent misappropriation of its confidential information.

67. Denizen was reasonable in relying on MindShare's misrepresentations because of the positions the people Denizen met with held at MindShare.

68. MindShare had a duty to disclose that it planned on using Denizen's trade secrets to pitch and obtain clients and that it intended to create advertisements through use of Denizen's trade secrets. Had Denizen known those facts, it would have at least acted to protect its confidential and proprietary information and prevented dissemination of its trade secrets.

69. As a result of the concealment, suppression, and its reliance on MindShare's misrepresentations, Denizen suffered monetary and non-monetary harm.

70. Denizen's monetary harm includes lost profits and the benefits obtained by brokering and creating the advertising campaign for Unilever and Lifetime Networks.

71. Denizen was harmed because of these misrepresentations, and the concealment of facts allowed MindShare more time in which to misappropriate and convert Denizen's trade secrets, and confidential and proprietary information. MindShare has used the wrongfully obtained information to obtain an unfair competitive advantage over Denizen. Because of the nature of the property converted and misappropriated, Denizen will continue to suffer a loss of sales, loss of business reputation and goodwill, and other harm.

72. MindShare's misrepresentations and concealment of facts were willful and malicious, and Denizen is entitled to an award of punitive damages, attorneys' fees, and costs against MindShare.

COUNT SIX: NEGLIGENT MISREPRESENTATION

73. Denizen repeats and realleges each and every allegation made in the foregoing paragraphs as if fully set forth herein.

74. By the acts alleged in the preceding paragraphs, MindShare has committed the tort of negligent misrepresentation.

75. MindShare made false representations to Denizen that it did not have a need for Denizen's trade secrets.

76. MindShare had no reasonable grounds for believing that these representations were true when they made them. Upon information and belief, at the time they made the false representations, MindShare was already planning to use Denizen's trade secrets.

77. Upon information and belief, MindShare made the false representations with the intention that Denizen rely on the statements, and with the intention of inducing Denizen into not taking any adverse action against MindShare, including, but not limited to, taking action to prevent misappropriation of its confidential information and preventing dissemination of its trade secrets.

78. Denizen was reasonable in relying on MindShare's misrepresentations and, as a result, suffered monetary and non-monetary harm.

79. Denizen's monetary harm includes the lost profits and the benefits obtained by brokering and creating the advertising campaign for Unilever and Lifetime Networks.

80. Denizen was harmed because MindShare's misrepresentations allowed it more time in which to misappropriate and convert Denizen's trade secrets, and confidential and proprietary information. MindShare then used the wrongfully obtained information to give it an unfair competitive advantage over Denizen. Because of the nature of the property converted and misappropriated, Denizen will continue to suffer a loss of sales, loss of business reputation and goodwill, and other harm.

COUNT SEVEN: UNJUST ENRICHMENT

81. Denizen repeats and realleges each and every allegation made in the foregoing paragraphs as if fully set forth herein.

82. MindShare received a benefit and unjustly retained and continues to retain that benefit at the expense of and without compensating Denizen.

JURY DEMAND

Denizen hereby demands a jury trial on all issues appropriately triable by jury.

PRAYER FOR RELIEF

WHEREFORE, Denizen prays for judgment against MindShare as follows:

- (1) Restitution;
- (2) An accounting of all profits and revenue generated by MindShare relating to the use of Denizen's trade secrets;
- (3) The greater of actual, compensatory and consequential damages or the value of MindShare's unjust enrichment or a reasonable royalty in an amount to be determined at trial;

- (4) Exemplary damages pursuant to 6 Del. C. § 2003(b);
- (5) Attorneys' fees pursuant to 6 Del. C. § 2004;
- (6) Punitive damages;
- (7) All costs of suit herein incurred, including investigative costs;
- (8) Pre- and post- judgment interest as provided by law; and
- (9) Such other and further relief to which Denizen may be justly entitled as the Court may deem proper.

Dated: October 22, 2009

STAMOULIS & WEINBLATT LLC

/s/ Richard C. Weinblatt

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