

STATE OF INDIANA)
)
COUNTY OF ELKHART)

IN THE ELKHART CIRCUIT COURT

CAUSE NO. 20C01-1805-PL-000095

ASA ELECTRONICS, LLC,)
)
Plaintiff,)
)
v.)
)
VINCENT SMITH, RICK CARVER,)
And LIPPERT COMPONENTS, INC.,)
)
Defendants.)

Findings of Fact, Conclusions of Law, and Order

Presently pending before the Court is Plaintiff ASA Electronics, LLC's ("ASA") Motion for Preliminary Injunction. On July 30-31, 2018 and August 13, 2018, the Court held an evidentiary hearing on ASA's Motion. ASA appeared by its attorneys, Mark F. Criniti, Paul E. Harold, and Daniel J. VeNard. Defendant Vincent Smith ("Smith") appeared by his attorney, Joshua D. Hague. Defendant Rick Carver ("Carver") appeared by his attorney, Blake P. Holler. And Defendant Lippert Components, Inc. ("LCI") appeared by its attorneys, David A. Given and Harmony A. Mappes.

On March 8, 2019, with permission from the Court, ASA supplemented the preliminary-injunction record with two declarations, one from Todd Glud (including exhibits A, B, and C attached to that declaration) and the other from Jerry Maffetone. On March 22, 2019, LCI and Smith, with permission from the Court, supplemented the preliminary-injunction record with a declaration from Vincent Smith.

After reviewing all of the pleadings, the evidence and argument presented at the hearing, and the parties' respective Proposed Findings of Fact and Conclusions of Law, the Court now grants Plaintiff's Motion for Preliminary Injunction and enters the following Findings of Fact, Conclusions of Law, and Order on ASA's Motion for Preliminary Injunction.

Findings of Fact

1. Any finding of fact that is more appropriately a conclusion of law shall be interpreted as such, and any conclusion of law that is more appropriately a finding of fact shall be interpreted as such.

2. The Court must determine whether a preliminary injunction in favor of ASA should be entered under Indiana's Uniform Trade Secret Act against any of the Defendants, and if so, the extent the Defendants' actions should be enjoined.

3. ASA develops and supplies electronic products to certain vehicle markets such as RV, marine, heavy truck, and commercial vehicles (Tr. 33).

4. ASA's largest and most competitive market is the RV industry (Tr. 33).

5. One electronic product that ASA developed for the RV industry is called iN-Command® ("iN-Command") (Tr. 37).

6. iN-Command is a control system that allows an RV owner to remotely monitor, through a control panel or smart-phone application, certain systems within the RV, such as tank levels and battery voltages. In addition to monitoring, iN-Command also allows the RV owner to remotely control certain systems within the RV, such as slide-outs, awnings, lights, and heating/cooling (Tr. 37).

7. Vince Smith ("Smith") was ASA's product manager from 2007 until March 2, 2018 (Tr. 150).

8. As product manager, Smith oversaw the development of certain ASA electronic products, including iN-Command.

9. Before joining ASA in 2007, Smith had never worked on a control system like iN-Command (Tr. 152).

10. ASA began developing iN-Command in January 2014 in collaboration with Keystone RV (Tr. 38-39).

11. ASA spent over \$2,000,000 developing iN-Command (Tr. 38).

12. Smith was a key ASA employee involved in this development..

13. Smith spent approximately a year collaborating with Keystone to determine the parameters of the control system, including which Keystone components should be controlled and the electrical requirements needed to do so (Tr. 153).

14. After working with Keystone to define the parameters of the control system, Smith then collaborated with ASA's overseas supplier to make sure the hardware and software for the control system was designed to match the system parameters that he developed with Keystone (Tr. 154).

15. Smith also oversaw quality control of the iN-Command prototypes that were produced during the development process. In particular, Smith was in charge of testing the prototypes, verifying quality control, and making changes and improvements to the product based on that testing (Tr. 158-59).

16. ASA documented all of these development efforts in a project file. The project file for ASA's first generation of iN-Command contains all of the critical information related to the development of iN-Command, including product designs, circuitry information, schematics, software definition documents, product cost documents, strategic plans and roadmaps for future iN-Command developments, and documents (called engineering change orders) showing changes and improvements made to the product based on product testing (Tr. 65-67).

17. The project file for the first generation of iN-Command contains all of the critical information about iN-Command that a competitor would not be able to learn by simply examining the product (Tr. 66-67). It also contains the iN-Command product roadmap, which contains ASA's ideas and plans for how ASA is going to evolve the product going forward (Tr. 68). These planning documents would be valuable to an ASA competitor because it would allow the competition to see product changes before they hit the market, which would help a competitor better compete against ASA (Tr. 68).

18. The project file for the first generation of iN-Command is extremely valuable to ASA and would be valuable to ASA's competitors. ASA would suffer harm if the contents of that file were shared with ASA's competitors.

19. ASA's project file for the first generation of iN-Command resides on ASA's SharePoint system (Tr. 35).

20. ASA's SharePoint system is password protected and only ASA employees with a username and password can access the system (Tr. 36).

21. Once in the SharePoint system, however, not all ASA employees can access the first generation iN-Command project file (Tr. 161). Rather, only ASA's engineers and other authorized employees can access that project file as access is controlled by ASA's head engineer, Jerry Maffetone (Tr. 161).

22. Smith was one of the ASA employees whom ASA trusted with access to the first generation iN-Command project file (Tr. 332). Smith needed access to the iN-Command project file to perform his job (Tr. 332).

23. As a condition of his employment with ASA, Smith signed the Covenant against Competition and Non-Disclosure Agreement admitted as Exhibit A ("Smith Agreement"). Pursuant to paragraph 2 of the Smith Agreement, Smith agreed that, upon leaving ASA, he would return to ASA any and all ASA information (confidential or otherwise) and also promised that he would not use or disclose any ASA confidential information after leaving ASA. Furthermore, in paragraph 5, Smith agreed "that in the event of any breach of this Agreement, the injuries and damages to ASA shall be immediate and irreparable" and further agreed to pay costs incurred by ASA to enforce the Smith Agreement "including the reasonable attorney fees of ASA."

24. In February 2018, Smith was still ASA's product manager and was still working on iN-Command (Tr. 163). In February 2018, Smith also began speaking with LCI's CEO, Jason Lippert ("Lippert"), about leaving ASA and coming to work for LCI's electronics division, Innovative Designs Solutions, Inc. ("IDS") (Tr. 165-77).

25. IDS makes an RV control system called OneControl (Tr. 44-45).

26. iN-Command and OneControl perform the same general functions of remotely monitoring and controlling an RV's electronic components (Tr. 336-337).

27. LCI and ASA are competitors in the market place with each providing their respective RV control-system. (Tr. 458).

28. iN-Command was designed with a single body-control module, meaning that the different electronic components that are to be monitored/controlled are all wired into a single board (Tr. 41-42). ASA designed iN-Command this way because both ASA and its customer, Keystone, preferred to have all wires coming into one location for a cleaner and easier installation (Tr. 42-43). A picture of iN-Command's body-control module is depicted on the first page of Exhibit SS.

29. OneControl was designed as a modular system, meaning that each component to be monitored/controlled has a separate controller, and all controllers speak together through a network (Tr. 42). A picture of OneControl's modular design is depicted on the second page of Exhibit SS.

30. On February 26, 2018, Smith was employed by ASA and participated in a morning meeting with his supervisor, Jerry Maffetone, about the newest version of iN-Command (Tr. 180). Later that day, Smith downloaded the entire first generation iN-Command project file and transferred it to a portable drive (Tr. 181). Smith then took that portable drive home and backed it up onto another external drive (Tr. 184). After doing so, Smith deleted the in-Command project file off of the portable drive (Tr. 184). At some point in March 2018, Smith backed up the in-Command project file a second time to another back-up drive (Tr. 185). Those two back-up drives

containing ASA's entire first generation iN-Command project file remained in Smith's possession for approximately four months, until Smith handed those files over to his lawyers in response to ASA's expedited discovery requests (Tr. 184-85). During this time period, Smith also plugged those two back-up drives into both of his LCI-issued computers (Tr. 185-86).

31. When Smith downloaded the first generation iN-Command project file, he had already made plans to tour IDS's facility in Sterling Heights, Michigan and had no overseas travel plans on his ASA calendar (Exhibit E).

32. Two days later, on February 28, Smith traveled to IDS's facility in Sterling Heights, Michigan, where IDS makes OneControl (Tr. 186-88). Smith spent the day touring the manufacturing facility where OneControl is made and meeting with the engineers that develop and make OneControl (Tr. 187-88).

33. On March 2, 2018, Smith resigned from ASA by handing his letter of resignation to Jerry Maffetone (Tr. 188). When he resigned, Smith told Maffetone that he would be working for LCI but that he would not be working on control systems or anything ASA related (Tr. 72, 189-90).

34. At the time, Maffetone and ASA believed Smith and presumed that LCI would place Smith in one of its several other divisions that do not compete with ASA until the restrictive period in his non-compete expired (Tr. 72).

35. On March 8, 2018, ASA sent Smith a letter reminding Smith of his ongoing non-competition and non-disclosure covenants under the Smith Agreement (Exhibit G). In response, on March 12, 2018, Smith sent an email to ASA stating that

he had “delivered all personal property to ASA Electronics” and that he “[did] not have any other materials, equipment, documents or electronically stored information that belongs to ASA Electronics.” (Exhibit VV).

36. On March 12, 2018, LCI’s corporate counsel, Shawn Lewis, also responded to ASA’s March 8 letter and represented to ASA that Smith would not be working on control systems (Exhibit J). LCI also sent ASA a New Employee Acknowledgement (“Acknowledgement”) signed by Smith, pursuant to which LCI had instructed Smith to abide by his non-compete agreement and to not use or disclose any ASA documents or information (Exhibit J). In the Acknowledgement, Smith again affirmed that he “[did] not possess any confidential or proprietary documents or other materials belonging to any prior employers (including, without limitation, ASA)” (Exhibit J).

37. After receiving Smith’s March 12 email (Exhibit VV) and LCI’s March 12 email with the Acknowledgement (Exhibit J), ASA believed that Smith did not have any ASA information and would not be working on control systems for LCI (Tr. 531-532).

38. It is undisputed, however, that at the time Smith and LCI made these representations to ASA, Smith had ASA’s first generation iN-Command project file in his possession. Furthermore, at the time Smith and ASA made these representations to ASA, the evidence suggests that Smith had already begun working, at least in some capacity, with OneControl.

39. On March 7, 2018—the day before ASA’s March 8 letter—Smith had already been added to the 120k OneControl group, which is a team of LCI employees whose goal is to increase the sales of OneControl (Tr. 194-95 & Exhibit F).

40. On March 9, 2018—the day after the letter—Smith was texting with Jason Lippert about telling Keystone how “fired up” Smith was to be working on OneControl (Tr. 218-20 & Exhibit I).

41. On March 13, 2018—the day after LCI sent ASA the Acknowledgment in Exhibit J—Smith traveled up to IDS’s facility in Sterling Heights, Michigan, and spent the next four days participating in meetings related to OneControl. During Smith’s visit:

- a. IDS engineers demonstrated OneControl to Smith;
- b. IDS engineers showed Smith the product roadmap for OneControl; and
- c. Smith spent a “couple hours” with each of IDS’s engineers discussing OneControl, including OneControl apps, cloud integration, and how OneControl could control certain components like awnings, leveling systems, and garage doors.

(Tr. 228-29).

42. In March and April 2018, Smith was helping LCI connect components manufactured by Furrion (a supplier to LCI) to OneControl (Tr. 244-46 & Exhibits O and P).

43. In April 2018, Smith was helping LCI connect RVP Coleman’s HVAC unit with OneControl using the RV-C communication protocol. At the time, IDS could

not connect an RVP Coleman unit to OneControl using RV-C (Tr. 89, day 2). On April 9, 2018 Smith emailed IDS engineer Tony Di Perna certain documents related to RVP-Coleman's RVC gateway and interface specifications (Exhibit Q). Smith pulled these RVP Coleman specifications from one of his back-up drives that also contained the first generation iN-Command project file that Smith took on February 26 (Tr. 256, 328-29). At the time, these RVP Coleman specifications had not been publicly released and were not on RV-C's website (Tr. 256, 338-39). When Smith emailed these specifications to Di Perna, he directed him to "[k]eep these to yourself" because Smith believed that RVP Coleman's specifications should be kept confidential and not shared with anyone else (Tr. 256, 328-29).

44. In mid-April 2018, ASA learned that Smith was working on control systems for LCI. Later in April 2018, ASA learned that Smith had taken the first generation iN-Command project file the week before he resigned.

45. ASA filed this lawsuit on May 16, 2018.

46. Smith continued to work on OneControl after ASA filed this lawsuit. On June 13, 2018, Smith participated in a OneControl presentation for Midwest Automotive Design Group (Tr. 266-267 & Exhibit U).

47. In 2017 and 2018, LCI was prototyping a version of OneControl that—like iN-Command—controls more devices through a single body-control module, as opposed to separate control modules (Tr. 269-70). LCI was prototyping this version of OneControl because LCI's customers requested this type of system (Tr. 95, 99-100, day 2).

48. In August 2018, LCI began making and selling to at least one RV manufacturer, Grand Design, a version of OneControl that controls more devices through a single body-control module (Tr. 78, day 2).

49. Jerry Maffetone testified that if an ASA competitor was going to design a control system with an all-in-one body control module like iN-Command, then the first generation project file would be most valuable file to have because “it’s where [ASA’s] entire learning curve occurred. Much of the changes that we made, both during the development and also after we launched the product, are carried over into the later generations. But in those later generation files, that history does not exist.” (Tr. 65).

50. LCI has approximately 66 divisions besides IDS (Tr. 451).

51. IDS makes and sells the following electronic components outside the RV industry: (i) linear power modules for the automotive industry; (ii) pain meters and neuro-stimulation devices for the medical industry; (iii) oil-pressure gauges and data-collection systems for military vehicles; and (iv) several safety products for the construction industry (Tr. 64-66, day 2). LCI has not considered having Smith work with any of these products or business lines and has only considered having Smith work on OneControl or electronics that integrate with OneControl (Tr. 498-99).

52. Carver, like Smith, was a long-time ASA employee.

53. As of 2018, Carver was a sales manager for ASA in charge of managing and servicing ASA’s West-coast RV manufacturers and entire aftermarket business

(Tr. 348). Carver developed goodwill with ASA's West-coast RV and aftermarket customers while being employed and paid by ASA (Tr. 348-49).

54. As a condition of his employment with ASA, Carver also signed the Covenant against Competition and Non-Disclosure Agreement admitted as Exhibit V ("Carver Agreement"). Pursuant to paragraph 2 of the Carver Agreement, Carver agreed that, upon leaving ASA, he would return to ASA any and all ASA information (confidential or otherwise) and also promised that he would not use or disclose any ASA confidential information after leaving ASA. Pursuant to paragraph 3(C), Carver agreed that, for a period of one year after leaving ASA, he would refrain from soliciting or aiding anyone in soliciting away "any employee, customer or supplier of ASA to any new or existing business in competition with ASA in relation to any supplier or customer [that Carver] solicited or had contact with during [Carver's] employment with ASA." Lastly, in paragraph 5, Carver agreed "that in the event of any breach of this Agreement, the injuries and damages to ASA shall be immediate and irreparable" and further agreed to pay costs incurred by ASA to enforce the Carver Agreement "including the reasonable attorney fees of ASA."

55. Carver also resigned from ASA in March 2018 and shortly thereafter began working as a sales representative for LCI. Carver understood that LCI was hiring him "to use the goodwill that [he] generated while [he was] employed at ASA with [his] OEM's on the West Coast and aftermarket clients" and "would be meeting with the same clients that [he] sold equipment to on behalf of ASA." (Tr. 353).

56. While working for LCI, Carver met with Camping World, an important aftermarket customer with whom Carver worked with while at ASA (Tr. 354). Carver met with Camping World to “secure that account” for LCI (Tr. 354).

57. While working for LCI, Carver also visited with West-coast RV customers that he had developed relationships with while at ASA, including Forest River (CA), Eclipse, and Lance RV (Tr. 355-59). Carver’s meetings with these customers concerned the same electronic products that he sold them on behalf of ASA (Tr. 355-59).

58. Carver also retained ASA confidential information after leaving ASA, including ASA’s usage reports and sales summary reports showing the sales and margins Carver had made on a per-customer basis (Tr. 364-65 & Exhibit Z). Carver admitted this information was not publicly available and “was information that [he] wouldn’t want in [a] competitor’s hands.” (Tr. 365). Carver also retained ASA’s “2018 RVA WD/DEALER/MSRP/MAP” that showed ASA’s landed cost on a per-product basis for the products that Carver had sold while at ASA (Tr.368-69 & Exhibit AAA). Carver also admitted that this information was not publicly available, that ASA would not want this information in the hands of the competition, and that knowing this information would be helpful to compete against ASA (Tr. 368-69). At least one time, LCI requested that Carver share ASA’s cost information so that LCI could better understand “product positioning in the market versus ASA and others.” (Exhibit WW).

59. ASA provided the Court with the declaration of Todd Glud (including exhibits A, B, and C) and the declaration of Jerry Maffetone (collectively, the “Supplemental Forensic Evidence”) to supplement the preliminary-injunction record with this Supplemental Forensic Evidence.

60. The Supplemental Forensic Evidence consists of usage information from Vince Smith’s LCI-issued Dell laptop computer. Mr. Glud testified in his declaration that a jump list is a list of files that have been recently opened in a particular computer program, like Microsoft Word or Adobe Acrobat. These lists help users open recently accessed files without having to go to the folder on the computer where those files are stored. Mr. Glud prepared a spreadsheet (Exhibit C to his declaration) showing all of the files that were on the jump lists on Smith’s computer that either matched an ASA file name or hit on a search term that the parties provided.

61. Mr. Glud’s jump list spreadsheet, when reviewed alongside Jerry Maffetone’s declaration, establishes the following:

- a. On March 27, 2018, Smith opened 18 files containing ASA’s proprietary information related to its iN-Command system;
- b. Between March 27, April 9, April 19, April 24, May 15, and May 30, 2018, Smith opened at least 16 files containing design information, product specifications, and other product information for ASA’s products, including iN-Command; and
- c. On April 9, April 24, and May 15, 2018, Smith opened several files that appear to have information on ASA’s production costs.

(Glud Decl., ¶¶ 4-10 and Exhibit C; Maffetone Decl. ¶¶ 5-7;).

62. On March 8, 2019, Defendants submitted evidence in response to the Supplemental Forensic Evidence. In their supplemental designation, Defendants did not submit any rebuttal testimony from a forensic expert or otherwise challenge Todd Glud's findings, but instead submitted the declaration of Vince Smith. In his declaration, Smith did not deny opening, accessing, or reviewing ASA's files, as set forth in the Supplemental Forensic Evidence. Rather, Smith only testified that he did not "utilize that iN-Command information for any substantive work purposes for LCI." Smith Decl., ¶ 3. The Court does not find Smith to be credible in light of the misrepresentations he made to ASA and the misrepresentations he admitted to the Court.

Conclusions of Law

63. The Court may issue a preliminary injunction under Indiana Trial Rule 65.

64. The purpose of a preliminary injunction is to "preserve the status quo"—the "last actual, peaceful and noncontested status which preceded the pending controversy"—until the case has been fully adjudicated. *Kozuch v. CRA-MAR Video Ctr., Inc.*, 478 N.E.2d 110, 115 (Ind. Ct. App. 1985).

65. A preliminary injunction should be granted if: (1) there is likelihood of success on the merits of the case; (2) no adequate remedy at law exists; (3) granting the injunction would not disserve the public interest; and (4) the injury to the plaintiff outweighs the harm to the enjoined defendants. *Central Indiana Podiatry, P.C. v.*

Krueger, N.E.2d 723, 727 (Ind. 2008); and *Norlund v. Faust*, 675 N.E.2d 1142, 1149 (Ind. Ct. App. 1997), *decision clarified on denial of reh'g*, 678 N.E.2d 421 (Ind. Ct. App. 1997).

The Trial Court has a duty to weigh the evidence and determine the credibility of witnesses in making findings to determine whether a preliminary injunction should or should not be issued. *Zimmer, Inc. v. Davis*, 922 N.E.2d 68 (Ind. Ct. App. 2008).

66. ASA asserts a claim against Smith for misappropriation of trade secrets under the Indiana Uniform Trade Secrets Act (the "IUTSA"). The IUTSA defines "trade secret" 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 (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Ind. Code § 24-2-3-2.

67. The IUTSA defines "misappropriation" in relevant part as the "[a]cquisition 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." Ind. Code § 24-2-3-2.

68. The IUTSA further provides that "actual or *threatened* misappropriation may be enjoined" and that "the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation." Ind. Code § 24-2-3-3(a) (emphasis

added). The IUTSA “grants a trial court broad discretion to fashion injunctive relief to ‘eliminate commercial advantage that otherwise would be derived from the misappropriation [of trade secrets].” *Ackerman v. Kimball Int’l*, 652 N.E.2d 507, 510 (Ind. 1995) (quoting the IUTSA).

69. In the case at bar, the Court concludes that ASA is likely to succeed on the merits of its trade-secrets claim against Smith.

70. First, the Court concludes that the iN-Command project file that Smith took on February 26, 2018 is a trade secret under the IUTSA. In that project file, ASA documented all of its product development efforts for the first generation of iN-Command. The file contains all of the critical information related to the development of iN-Command, including product designs, circuitry information, schematics, software definition documents, product cost documents, plans and roadmaps for future iN-Command developments, and documents (called engineering change orders) showing changes and improvements made to the product based on product testing. A competitor would not be able to recreate this information by examining or reverse-engineering iN-Command. The Court further finds that this project file is valuable to ASA, would be valuable to ASA’s competitors, and that ASA would suffer harm if the contents of that file were shared with ASA’s competitors.

71. Second, the Court concludes that ASA has taken reasonable measures to keep this information secret and confidential. The evidence demonstrates that the project file at issue is located on a secure, password protected server. Access to these sensitive files is further regulated and controlled by ASA’s head of engineering, Jerry

Maffetone, and only provided on a need-to-know basis. ASA also takes reasonable measures to safeguard and protect its physical offices (Tr. 37). Furthermore, ASA has taken the additional measure of requiring its employees, like Smith, to sign agreements not to disclose this sensitive information. Therefore, the Court concludes that the first generation iN-Command project file is a trade secret under the IUTSA.

72. The Court also concludes that Smith misappropriated this trade secret. Smith admitted that he took the first generation iN-Command project file on February 26, 2018. Furthermore, Smith testified that it was a mistake for him to take the file (Tr. 181-82), which confirms that he acquired the trade secret by improper means. In addition, the Supplemental Forensic Evidence submitted by ASA shows that, at a minimum, Smith accessed and opened several of ASA's proprietary iN-Command files in March of 2018 around the same time that he was meeting with LCI's OneControl engineers and working, at least in some capacity, on the competing OneControl product.

73. For all of the foregoing reasons, the Court concludes that ASA is likely to succeed on the merits of its trade-secret claim against Smith and on its claim that Smith violated the non-disclosure covenants contained in paragraph 2 of the Smith Agreement.

74. Likewise, the Court concludes that ASA is likely to succeed on the merits of its claim that Carver breached the non-solicitation covenants contained in the Carver Agreement.

75. Paragraph 3(C) prohibited Carver for a period of one year from competitively soliciting customers in which he had representative contact while at ASA. The Court finds that this is a reasonable covenant that protects the goodwill Carver generated on behalf of ASA. In addition, the fact that this covenant lacks a geographic restriction is not fatal because the covenant is otherwise reasonably limited to customers in which Carver had representative contact. Furthermore, the evidence at this stage suggests that Carver breached this covenant when he assisted LCI to solicit customers to move their business from ASA to LCI. As a result, the Court finds that ASA is likely to succeed on its claims against Carver as well.

76. In addition, the Court concludes that ASA will suffer irreparable harm for which there would be no adequate legal remedy if a preliminary injunction is not entered. The IUTSA expressly provides that “threatened misappropriation may be enjoined” because even the threat of misappropriation poses irreparable harm to a plaintiff like ASA under this set of facts and circumstances. Accordingly, the IUTSA “grants a trial court broad discretion to fashion injunctive relief to ‘eliminate commercial advantage that otherwise would be derived from the misappropriation [of trade secrets].” *Ackerman*, 652 N.E.2d at 510.

77. In *Ackerman*, an employee took the employer’s trade secrets (customer and supplier lists) the day before leaving to work for a competitor. The employer filed suit for misappropriation of trade secrets and asked the trial court to enjoin the defendant employee from working for plaintiff employer’s competitor. The trial court granted the injunction, and our Supreme Court affirmed. Because of the employee’s

“pre-departure harvesting” of trade secrets, the Supreme Court determined that, enjoining the defendant employee from working for plaintiff’s competitor was “necessary to meet the threat of disclosure of [plaintiff’s] trade secrets.” Our Supreme Court reasoned that were the trial court not permitted to enter such an injunction, then the plaintiff might “have a right without a remedy” under the IUTSA and [w]e cannot believe that this is what the legislature intended.” *Ackerman*, 652 N.E.2d at 510-11.

78. In *Toyota Indus. Equip. Mfg. v. Land*, 2014 U.S. Dist. LEXIS 99070 (S.D. Ind. 2014), Judge Magnus-Stinson in the Southern District of Indiana enjoined the defendant employee from working for plaintiff employer’s competitor under the IUTSA. As in *Ackerman*, the defendant in *Toyota* stole the employer’s trade secrets right before leaving to go work for a competitor. The court entered an injunction finding:

Here, like the former employee in *Ackerman*, Land engaged in pre-departure harvesting of [his former employer’s] property. Given the significant amount of confidential and trade secrets to which Land had access, and his failure to convince the Court that he no longer has that access, the Court concludes that this case presents similar circumstances to *Ackerman*. Specifically, given the significant threat of misappropriation and the inadequacy of Plaintiff’s remedy at law should such misappropriation occur, the Court finds it appropriate to enjoin Land from working for Linde at this time.

Toyota, 2014 U.S. Dist. 99070, 21.

79. This case is similar to both *Ackerman* and *Toyota*. Like the defendants in both of those cases, Smith took ASA’s trade secrets shortly before leaving ASA to go work for a competitor, LCI. Furthermore, the evidence at this point demonstrates

that Smith was not honest with ASA about what ASA information he possessed and the work he would be doing for LCI. Smith told Jerry Maffetone the day that he resigned that he would not be working on control systems for LCI, and the evidence shows that Smith did. Furthermore, Smith told ASA on March 12, 2018 that he had “delivered all personal property to ASA Electronics this morning” and that he did “not have any other materials, equipment, documents or other electronically stored information that belongs to ASA Electronics.” (Exhibit VV). Those statements are also contradicted by the evidence. Moreover, on March 12, 2018, LCI’s in-house counsel, Shawn Lewis, also confirmed to ASA that Smith would not be working on control systems for LCI (Exhibit J). That same day, LCI provided ASA with the Acknowledgment, signed by Smith, where he affirmed, among other things, that he did “not possess any confidential or proprietary documents or other materials belonging to any prior employers (including, without limitation, ASA).” (Exhibit J). Smith’s statement in the Acknowledgment was not true because at the time Smith signed that Acknowledgment, he had in his possession at least two copies of the entire project file for ASA’s first-generation iN-Command product. Smith even admitted at the preliminary-injunction hearing that his repeated representations to ASA in March of 2018 that he did not have ASA documents and information were not true (Tr. 342).

80. Additionally, the Supplemental Forensic Evidence suggests that Smith was less than candid about whether he used ASA’s trade secrets while working for LCI. At the preliminary injunction hearing, Mr. Smith testified that he had never

used ASA's iN-Command information while at LCI. (Tr. 296, 341). The Supplemental Forensic Evidence, however, contradicts this testimony and shows that Smith opened several of ASA's proprietary files related to iN-Command while he was employed by LCI and working, at least in some capacity, on LCI's competing OneControl product. In his declaration, Smith does not deny that he reviewed these proprietary files while at LCI, but only that he did not "utilize that iN-Command information for any substantive work purposes for LCI." While the Court appreciates the distinction Smith is trying to make, the Court does not find Smith's explanation credible.

81. Furthermore, Smith pulled the RVP Coleman specifications from one of the drives containing ASA's proprietary files, a control-system document that he believed to be confidential, and shared that document with LCI to help LCI further develop its OneControl product. Although this document Smith shared with LCI may not be an ASA trade secret, this evidence shows Smith's willingness to access and share documents that he *believed* to be confidential with LCI, thereby making it more likely that he would disclose other ASA confidential information and trade secrets contained on his back-up drives with LCI.

82. LCI and Smith make essentially two arguments for why an injunction is unnecessary. First, they claim that the trade secrets Smith took—the first generation iN-Command file—is of no value to Smith or LCI due to the design differences between iN-Command (which uses a body-control module) and LCI's OneControl (which uses a modular system). However, LCI has recently been prototyping a version of OneControl that—like iN-Command—controls more devices

through a single body-control module, as opposed to separate control modules (Tr. 269-70). In August of 2018, LCI began making and selling to RV manufacturer Grand Design a version of OneControl that controls more devices through a single body-control module (Tr. 78, Day 2). Therefore, the first generation project file that Smith took was and would be valuable to LCI should LCI continue to move towards an “all-in-one” design more like iN-Command (Tr. 65). In addition, the trade secrets taken by Smith included strategic plans and roadmaps for future product development (Tr. 68). Regardless of product design, this proprietary information would be valuable to a direct competitor like LCI, who would now know where ASA is spending its development efforts to plan accordingly (Tr. 68).

83. Defendants also argue that Smith testified that he has not used or disclosed ASA’s trade secrets and that ASA has presented no evidence to contradict that testimony. Defendants’ argument is only as strong as the credibility of Smith. The evidence calls into question Smith’s credibility. Smith admitted at the preliminary-injunction hearing that he made misrepresentations to ASA, and that he can appreciate why ASA may not believe him (Tr. 342-43). The Supplemental Forensic Evidence contradicts Smith’s hearing testimony that he has not used ASA’s iN-Command information while at LCI.

84. Just as in *Toyota*, the Court concludes that the irreparable harm that Plaintiff will suffer because of actual or threatened misappropriation if the injunction is denied greatly outweighs any harm that [defendant] will suffer by not being able to work for [the competitor].” *Toyota*, 2014 U.S. Dist. 99070 at 18-19.

85. Due to Smith's misappropriation of ASA's trade secrets, his misrepresentations to ASA, his review of proprietary ASA files while working for LCI, and his less-than-candid hearing testimony, the Court finds that an injunction is necessary and appropriate here. Smith's amended testimony that he has not "utilized that iN-Command information for any substantive work purposes for LCI" is not enough, at this stage, to satisfy the Court that Smith no longer possesses or has access to these trade secrets. Until a proper showing is made by Defendants to substantiate Smith's testimony, the Court concludes that an injunction should be issued.

86. In addition, the Court concludes that ASA will also suffer irreparable harm if Carver is allowed to continue violating the non-solicitation provisions contained in the Carver Agreement. *See Gleeson v. Preferred Sourcing, LLC*, 883 N.E.2d 164, 178 (Ind. Ct. App. 2008)(holding that "even if a specific dollar amount for lost business could be calculated, thereby making a remedy at law sufficient, losses to [an employer's] goodwill as a result of [the former employee's] current and future violations of the Agreement warrant a finding of irreparable harm."); *see also Norlund v. Faust*, 675 N.E.2d 1142, 1149-50 (Ind. Ct. App. 1997) ("When a covenant not to compete of this nature is breached, it follows that the employer will suffer harm."); *see also Robert's Hair Designers, Inc. v. Pearson*, 780 N.E.2d 858, 865 (Ind. Ct. App. 2002) (finding that loss of goodwill resulting from former employees' current and future violation of non-compete warranted finding of irreparable harm).

87. As stated above, the risk that Smith will use or disclose ASA's trade secrets and that Carver will continue to violate his non-solicitation covenant poses irreparable harm to ASA for which there is no adequate legal remedy.

88. In comparison, Smith will suffer little harm, if any, by reason of this injunction. The Court is not enjoining Smith from working in any capacity for all LCI divisions. LCI is free to employ Smith, and Smith is free to work in any of the other 66 non-electronics divisions that do not compete with ASA. Because ASA and LCI only compete in the RV industry, there is also ample opportunity for Smith to work for LCI on non-competitive electronic products, including: (i) linear power modules for the automotive industry; (ii) pain meters and neuro-stimulation devices for the medical industry; (iii) oil-pressure gauges and data-collection systems for military vehicles; and (iv) several safety products for the construction industry (Tr. 64-66, day 2).

89. Carver will not be harmed by this injunction either. Rather, he will only be required to abide by the agreement that he signed with ASA.

90. Additionally, LCI conceded at the December 31, 2018 hearing that LCI would "gladly comply" with an injunction prohibiting Smith and LCI from using any of the ASA files and documents that Smith took with him when he left ASA for LCI.

91. Finally, because Smith does not have a right to possess, use, or disclose ASA's confidential information or trade secrets, the public will not be harmed if Smith is enjoined. The public will also not be harmed if Carver is required to abide by the reasonable non-solicitation covenants that he made to ASA.

ORDER

Accordingly, based on the findings of facts and conclusions of law set forth above, this Court grants ASA's Motion for a Preliminary Injunction and enters the following ORDER:

Smith is enjoined from working for LCI (including IDS or any other LCI division) with respect to the following business lines: control systems for the recreational vehicle industry, including but not limited to Lippert's OneControl system and any derivatives of that system ("Prohibited Products"). Specifically, Smith is enjoined from: (a) assisting LCI in overseeing, managing, researching, developing, planning, marketing, selling, troubleshooting, field testing, responding to customer complaints or issues about, offering opinions or reviews about, or in any way supporting the development, sale, implementation, or marketing of the Prohibited Products; and (b) communicating with any LCI employee, customer, prospective customer, supplier, vendor, or business partner about the Prohibited Products.

Smith is also enjoined from communicating with, or assisting anyone else to communicate with, any employee, customer, or supplier of ASA if the purpose of the communication is to either leave ASA or compete against ASA.

In addition, Smith and LCI are enjoined from copying, opening, reviewing, using, disseminating, or disclosing any of the files, documents, or information that Smith took from ASA concerning ASA's products, customers, suppliers, costs, pricing, business plans, and other proprietary or trade secret information. Those files,

documents, and information include, but are not limited to, the files, documents, and information about ASA's iN-Command control system in ASA's project file that Smith downloaded before he left ASA; the files listed on Exhibit C to Todd Glud's declaration; and any other ASA file on the two back-up drives that Smith plugged into his LCI-issued computers.

Carver is enjoined from: (a) communicating with, or assisting anyone else to communicate with, any employee, customer, or supplier of ASA if the purpose of the communication is to either leave ASA or compete against ASA; and (b) using or disclosing any documents, information, or data relating to ASA, including confidential information about ASA's products, customers, suppliers, costs, pricing, business plans, and other trade secret information, including but not limited to documents and information about ASA's iN-Command control system.

Smith and LCI are ordered to present the terms of this Order to LCI's legal and human resources departments and are ordered to seek their cooperation in notifying all relevant LCI employees of the terms of this Order and of Smith's duties under this Order.

Smith and LCI are ordered to report to this Court any contact with any LCI employees that violates this Order, whether inadvertent or not.

Pursuant to T.R. 65(c), ASA is ordered to post a bond with the Clerk of the Court in the amount of \$200,000.00 cash or corporate security bond.

This Order shall remain in full force and effect until further order of this Court.

SO ORDERED this 30th day of October, 2019.

William A. Christopher
Judge, Elkhart Circuit Court