

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
14 CVS 8372

SOUTHERN FASTENING SYSTEMS, INC.,)
Plaintiff)
)
v.)
)
DUO-FAST CAROLINAS, INC.; JOHN C.)
WATERMAN; JAVIER SANCHEZ, JR.;)
EDGER SANCHEZ; DEVIN TRIPPIE and)
ROY B. COOK, III,)
Defendants)

**ORDER ON MOTION
FOR PROTECTIVE ORDER**

THIS MATTER comes before the Court upon Duo-Fast Carolinas, Inc., Kevin Trippie, and Roy B. Cook, III's Motion for Protective Order and Modification of Discovery Sequence ("Motion"), and;

THE COURT having considered the Motion, the briefs filed by all parties, the pleadings, and other matters of record, concludes that the Motion should be GRANTED in part and DENIED in part, for the reasons stated herein.

Background Facts

1. Defendants John C. Waterman, Javier Sanchez, Jr., and Edger Sanchez (collectively, "Employee Defendants") are former employees of Plaintiff. The Employee Defendants were each parties to Confidentiality and Non-Disclosure Agreements with Plaintiff that, *inter alia*, prohibited them from disclosing Plaintiff's trade secrets and confidential business information.

2. The Employee Defendants resigned from Plaintiff's employment in April 2014 and became employed with Defendant Duo-Fast Carolinas, Inc. Defendant Kevin Trippie is Duo-Fast's Construction Sales Manager, and Defendant Roy B. Cook, III is Duo-Fast's President and CEO. (Duo-Fast, Trippie, and Cook are hereinafter referred to collectively as the "Duo-Fast Defendants").

3. Plaintiff filed this lawsuit on June 25, 2014, alleging several claims against Defendants, including misappropriation of trade secrets. The claims are based primarily on Plaintiff's allegations that the Employee Defendants have misappropriated, disclosed, and improperly used certain information constituting Plaintiff's trade secrets. In the Complaint, Plaintiff alleges that the trade secrets consist of customer names and contact information; customer sales records and reports containing product preferences; customer buying preferences and history; product cost and usual prices charged; vendor information, including Plaintiff's relationship with its vendors; and contact information for potential customers.¹ Plaintiff alleges that Defendants used this information to "call and contact certain current customers of and vendors of [Plaintiff]."² The Complaint attaches and incorporates lists of Plaintiff's customers that Plaintiff alleges the Employee Defendants called or contacted.³

4. On June 25, 2014, Plaintiff also served the Duo-Fast Defendants with a first set of interrogatories and requests for production of documents. On July 30, 2014, the Duo-Fast Defendants served responses to the interrogatories and requests. In their responses, the Duo-Fast Defendants objected to every interrogatory and request at issue in the Motion on the grounds that they were overly broad, unduly burdensome, and not relevant or reasonably calculated to lead to the discovery of admissible evidence. The Duo-Fast Defendants also objected to each of the interrogatories and requests at issue on the grounds that they are "not able to respond fully and evaluate [their] objections until Plaintiff has identified with specificity and particularity all of the trade secrets and confidential information it alleges have been misappropriated by Defendants."⁴ Notwithstanding their

¹ Compl. ¶¶ 39, 41, 43, 65-66, 76-77, 81.

² *Id.* ¶ 79.

³ *Id.* ¶ 80, Exh. D and E.

⁴ Mot. Exh. 14, 15, 16.

objections, the Duo-Fast Defendants stated that they would provide information and documents related to the customers identified by Plaintiff in Complaint Exhibits D, E, and F, and in two emails sent by Waterman to Trippie on April 23, 2014.⁵

5. On October 23, 2014, Plaintiff served Notices of Deposition for all Defendants, including a 30(b)(6) notice of Duo-Fast. The depositions were scheduled for Nov. 13, 14, 19, 20, and 21. On November 12, 2014, the Court entered an order staying all depositions pending resolution of the Motion.⁶

6. The Duo-Fast Defendants filed the Motion, supporting memorandum, and exhibits on November 10, 2014. The Motion seeks “the entry of a protective order (1) requiring Plaintiff to identify its trade secrets with specificity and particularity to the satisfaction of the Court; (2) requiring Plaintiff to narrow the scope of its overly broad requests; (3) stating that under no circumstances should Defendants be required to respond to Interrogatory Nos. 7, 8, and 9 and Document Request No. 8, or submit to depositions on Examination Matters Nos. 7, 15, 16, 17, 19, and 20.”⁷ The Motion has been fully briefed and is ripe for decision.

Discussion

7. The primary question for decision is whether Plaintiff has sufficiently identified the trade secrets at issue such that the Duo-Fast Defendants should be required to respond to Plaintiff’s discovery requests. The Honorable Louis A. Bledsoe, III of this Court recently provided a thorough and compelling analysis of the specificity with which a party must identify allegedly misappropriated trade secrets prior to discovery. *DSM Dyneema, LLC v. Thagard, et al.*, 2014 NCBC LEXIS 51 (N.C. Super. Ct. 2014). Consistent

⁵ *Id.*; Mem. Supp. Mot. at 7.

⁶ Order on Pending Motions.

⁷ Mem. Supp. Mot. at 15.

with Judge Bledsoe’s reasoning and conclusion in *DSM Dyneema*, the Court concludes that a party alleging misappropriation of trade secrets must identify the trade secrets at issue with “sufficient particularity before [the adverse party is] required to produce their confidential information and trade secrets [] in discovery.” *Id.* at *21. The identification must be sufficiently particular to put the adverse party on notice of the specific nature of trade secrets at issue, and to permit the court to determine the relevance of the requested discovery. *Id.* at *23-25.

8. In this case, the Court concludes that Plaintiff has met this burden of specificity such that Defendants must provide discovery responses. In its Complaint, Plaintiff has identified the trade secrets allegedly misappropriated by Defendants as, *inter alia*, compilations of customer names and contact information, sale records, and specific customer purchase histories, including the customer’s product preferences and the costs charged to those customers. The courts of this State have held that this type of information can constitute trade secrets. *Sunbelt Rentals, Inc. v. Head & Engquist Equip., LLC*, 174 N.C. App. 49, 55 (2005) (“[O]ur courts have found the following to constitute a trade secret: cost history information; price lists; and confidential customer lists, pricing formulas and bidding formulas.” (internal citations omitted)); *Byrd’s Lawn & Landscaping, Inc. v. Smith*, 142 N.C. App. 371, 375-76 (2001) (finding that historical cost information may constitute a trade secret, because “someone with access to these records could use the information to underbid plaintiff on any of its contracts”); *Koch v. Armke*, 2013 NCBC LEXIS 45 (N.C. Super. Ct. 2013) (upholding a claim in the face of a 12(b)(6) motion that alleged trade secrets comprised of: “all facets of [Plaintiff’s] business, including [Plaintiff’s] confidential and proprietary business information, such as the names, contact persons, addresses and phone number of [Plaintiff’s] customers and vendors, its customers’ ordering habits, history and needs, [Plaintiff’s] marketing policies, pricing and inventory management strategies,

and other confidential business information of [Plaintiff]" (*Koch v. Armke* Am. Compl. ¶ 18)); *Philips Electronics North Am. Corp. v. Hope*, 631 F. Supp.2d 705, 721 (M.D.N.C. 2009) (finding that evidence forecast regarding business plans, customer preferences, the internal calculator to determine profitability, new packaging plans, product costs, and customer pricing information sufficient to grant a motion for preliminary injunction).

9. Here, Plaintiff has gone a step further and has identified the specific customers at issue. While a list of Plaintiff's customer names alone is not proprietary, records or compilations of the history and mix of the products purchased by that customer from Plaintiff, the dates on which they made those purchases, and the price paid by the customer, is highly valuable business information that can be used by a competitor to unfairly compete. Here, Plaintiff has alleged that Defendants have misappropriated this type of compilation or record of specific information regarding its customers and used this information to solicit those customers. For purposes of proceeding with discovery, these allegations are sufficient to identify the specific type of trade secret information at issue.

10. Plaintiff has sufficiently identified the trade secrets on which its claims are based to require Defendant to provide responses consistent with such identification.

Accordingly, the Court concludes as follows:

a. Duo-Fast Defendants' motion requesting that the Court order Plaintiff to more specifically identify the trade secrets that it alleges have been misappropriated is DENIED.

b. Duo-Fast Defendants' motion asking the Court to require Plaintiff to narrow the scope of its discovery requests is GRANTED in part and DENIED in part. Duo-Fast Defendants shall respond to Plaintiff's first interrogatories and requests for production of documents on or before March 11, 2015. The responses shall be limited to the time period from January 1, 2014, to present, and the

responses shall be limited to information and documents regarding or related to only the customers identified in Exhibits D, E, and F of the Complaint, and the customers identified in the emails sent from Waterman to Trippie, or through conversations with Waterman, J. Sanchez, and E. Sanchez as referred to in Duo-Fast Defendants' Responses to Plaintiff's First Interrogatories and Request for Production of Documents.

c. Duo-Fast Defendants' motion that the Court order that it not be required to provide any response to Interrogatory Nos. 7, 8 and 9 and Document Request No. 8 is DENIED.

11. With regard to Duo-Fast's request that they should not be required to submit to depositions on Examination Matters Nos. 7, 15, 16, 17, 19, and 20, the Court concludes as follows:

a. As to Examination Matter No. 7, the Motion is DENIED;

b. As to Examination Matter No. 15, the Motion is GRANTED in part and DENIED in part. Duo-Fast shall be required to make a witness available to testify regarding this Examination Matter No. 15, but such testimony shall be limited to the time period January 1, 2014 to present, and the responses shall be limited to information and documents regarding or related to only the customers identified in Complaint Exhibits D, E, and F, and the customers identified in the emails sent from Waterman to Trippie, or through conversations with Waterman, J. Sanchez, and E. Sanchez as referred to in Duo-Fast Defendants' Responses to Plaintiff's First Interrogatories and Request for Production of Documents;

c. As to Examination Matter No. 16, the Motion is DENIED;

d. As to Examination Matter No. 17, the Motion is GRANTED;

e. As to Examination Matter No. 19, the Motion is GRANTED, and;

f. As to Examination Matter No. 20, the Motion is GRANTED.

THEREFORE, IT IS ORDERED that the Motion is GRANTED in part and denied in part, as reflected in this Order.

This the 9th day of February, 2015.

/s/ Gregory P. McGuire
Gregory P. McGuire
Special Superior Court Judge
for Complex Business Cases