

IN THE COURT OF COMMON PLEAS OF WYANDOT COUNTY, OHIO

First Federal Bank of Midwest, ) Case No. 14CV0089  
Plaintiff, ) Judge Handwork  
v. ) **PRELIMINARY INJUNCTION**  
Bosserman Aviation Equipment, *et al.*, )  
Defendants. )

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{¶1} This matter came on for hearing pursuant to the Motion for Preliminary Injunction of SkyMark Refuelers, LLC (“SkyMark”).

{¶2} SkyMark’s motion is supported by the Affidavit of Doug Moskowitz in Support of SkyMark’s Motion for Preliminary Injunction (“Moskowitz Affidavit”).

{¶3} SkyMark’s motion is also supported by a list of Aviation customers (the “Aviation Customer List”) that has been filed by SkyMark under seal in the record of this action.

{¶4} On May 8, 2017, this Court entered judgment granting SkyMark and First Federal the following sanctions against Bosserman Automotive Engineering, LLC (“Automotive”), ProFlo Industries, LLC (“ProFlo”), and Terry N. Bosserman (“Son”) (jointly referred to as the “Defendants”):

1. Pursuant to Civ. R. 37(B)(1)(c), this Court Orders the striking of Defendants' pleadings.

2. Pursuant to Civ. R. 37(B)(1)(f), this Court Grants SkyMark and First Federal default judgment against Defendants, and Orders that this this matter be set for a hearing on damages.
3. Pursuant to Civ. R. 37(B)(1)(a), this Court enters an Order determining for all purposes in this action that the profits from all sales made by Defendants to any person or organization that was a customer of BOSSERMAN Aviation Equipment, Inc., are damages to SkyMark and First Federal that were directly and proximately caused by Defendants' wrongful conduct as described in the pleadings of SkyMark and First Federal.
4. Pursuant to Civ. R. 37(B)(1)(b), this Court Orders that Defendants are barred from opposing the damages evidence introduced by SkyMark and First Federal at the hearing on damages.
5. Pursuant to Civ. R. 37(A)(5) and (B)(3), this Court Grants SkyMark and First Federal final judgment for attorney fees incurred in connection with Defendants' discovery defaults and their violation of and Contempt for the April 28, 2016, Order and Judgment Entry. These Attorney fees will be addressed at the hearing on damages referenced herein.

{¶5} The default judgment entered against Defendants resulted in the admission of all the averments in SkyMark's Amended Complaint and First Federal's Supplemental Complaint, both factual and legal. Having been admitted, those averments may no longer be contested by Defendants.

{¶6} SkyMark and First Federal have been granted default judgment on all of their claims. As to SkyMark, these include claims for trade secret misappropriation, conversion, malicious combination and conspiracy, unfair competitive practices and unfair competition, the imposition of a constructive trust, an accounting, and corrupt activity in violation of R.C. §2923.31, et seq. As to First Federal, these include claims for corrupt activity in violation of R.C. §2923.31, et seq., fraudulent transfers, piercing the veil and punitive damages, misappropriation, and fraud.

{¶7} The now admitted averments in the pleadings of SkyMark and First Federal establish that both are entitled to this preliminary injunction.

{¶8} Those averments establish that Defendants misappropriated trade secrets belonging to Bosserman Aviation Equipment, Inc. (“Aviation”), including Aviation’s customer lists, customer documents, customer information, business opportunities, and technical drawings and information, in violation of their duties to Aviation, the security interests of First Federal, the Order Appointing Receiver entered by this Court on September 30, 2014, and the rights obtained by SkyMark at the Receiver Auction that took place on March 5, 2015.

{¶9} Those averments establish that Defendants Automotive and ProFlo knew that Son wrongfully obtained, retained, and used these trade secrets.

{¶10} Those averments establish that SkyMark and First Federal have no adequate remedy at law.

{¶11} Those averments, and the Moskowitz Affidavit, establish that Defendants will continue to engage in their misconduct unless they are enjoined from doing so.

{¶12} As a result of the default judgment, SkyMark and First Federal have already succeeded on the merits on all of their claims.

{¶13} The issuance of this preliminary injunction will prevent great and irreparable harm and injury that will otherwise be suffered by SkyMark and First Federal.

{¶14} The issuance of this preliminary injunction will cause no injury to Defendants or to the interests of third parties.

{¶15} The public interest will be served by this preliminary injunction. The misconduct engaged in by Defendants is wholly unacceptable. It destroys the value of bank collateral, undermines the value of assets purchased at receivership auctions, and allows Defendants to

build a business based on fraud and misappropriation instead of hard work and *bona fide* investment.

{¶16} This preliminary injunction gives effect to the default judgment already granted to SkyMark and First Federal. It prohibits Defendants from continuing to engage in conduct this Court has already determined, for all purposes in this proceeding, to be improper, unlawful, and in violation of statute.

{¶17} Defendants treat ProFlo Latam, S.A.S, as an extension of Defendant ProFlo, and ProFlo Latam, S.A.S. is acting in concert with Defendants.

{¶18} In light of Defendants past disregard for the Orders of this Court, and to ensure that this preliminary injunction is given effect, it is necessary for Defendants and those acting in concert with Defendants to publish this preliminary injunction on their web sites and social media pages.

{¶19} SkyMark and First Federal have already prevailed on their claims. The truth of the averments in their pleadings, including those relating to the granting of equitable relief, have been determined to be true for all purposes in this proceeding. Those averments unequivocally establish that SkyMark and First Federal are entitled to the equitable relief granted by this preliminary injunction. Accordingly, the Court finds under Civ.R. 65(C) that a bond in the amount of \$500.00 provides sufficient security for this preliminary injunction.

{¶20} Accordingly, for good cause shown, it is hereby

{¶21} ORDERED, Defendants shall not contact or do business of any nature or kind with any person or organization on the Aviation Customer List. It is further

{¶22} ORDERED, Defendants shall not access use, disclose, or transfer, to any other person or organization, including, but not limited to, ProFlo Latam, S.A.S., any documents,

records, electronically stored information, information, or other things that refer or relate to any person or organization on the Aviation Customer List. It is further

{¶23} ORDERED, Defendants shall not transfer or disclose to any other person or organization, including, but not limited to, ProFlo Latam, S.A.S., any information about or concerning any business opportunity, of any nature or kind, with or involving any person or organization on the Aviation Customer List. It is further

{¶24} ORDERED, Defendants shall gather and segregate all documents, records, electronically stored information, information, and other things that concern, refer to, or relate to any person or organization on the Aviation Customer List. Defendants shall also prepare a comprehensive inventory thereof which shall be filed with the Court within seven days of the date of the entry of this preliminary injunction. It is further

{¶25} ORDERED, Defendants may fulfill their warranty obligations under any contract entered into prior to the date SkyMark served its motion for preliminary injunction, even though it may be with a person or organization on the Aviation Customer List. Defendants shall not charge such persons or organizations for any warranty goods or services provided. It is further

{¶26} ORDERED, Defendants may complete work on aircraft refuelers already under construction prior to the date SkyMark served its motion for preliminary injunction, even though the persons or organizations purchasing the aircraft refuelers are on the Aviation Customer List. Five days prior to proceeding with such work, however, Defendants must disclose to and provide SkyMark with a copy of the contract or agreement pursuant to which the work is being performed, and Defendants must also provide SkyMark a detailed description of the work performed on the aircraft refueler prior to the date SkyMark served its motion for preliminary injunction. Also, prior to commencing any work, Defendants must give SkyMark five business

days to inspect the work that Defendants wish to complete pursuant to this exception so SkyMark can confirm whether Defendants' disclosures are accurate. It is further

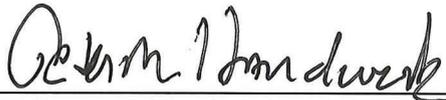
{¶27} ORDERED, that a bond in the amount of \$500 shall be submitted by SkyMark as security for this preliminary injunction. It is further

{¶28} ORDERED, this preliminary injunction is binding upon Defendants, the other parties to the action, ProFlo Latam, S.A.S., all of their respective officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them who receive actual notice of the order whether by personal service or otherwise. It is further

{¶29} ORDERED, that ProFlo and ProFlo Latam shall publish a copy of this preliminary injunction on their web sites, with a link thereto as the first item on their home pages containing the following text: "Preliminary Injunction issued against ProFlo Industries, LLC, and Terry N. Bosserman." ProFlo and ProFlo Latam shall publish a copy of this preliminary injunction on their Facebook pages like their other business-related postings thereto. Son shall publish a copy of this preliminary injunction on his LinkedIn and Facebook pages like his other business-related postings thereto. These social media postings shall include the following text at the beginning of the postings: "Preliminary Injunction issued against ProFlo Industries, LLC, and Terry N. Bosserman." It is further

{¶30} ORDERED, that this preliminary injunction shall remain in force and effect until the entry of final judgment in this action.

Date: September 11, 2017

  
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Judge Peter M. Handwork