

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

CIVIL ACTION NO. 1:14-cv-00293-WJM-CBS

POWERSECURE, INC., and  
EFFICIENTLIGHTS, LLC,

Plaintiffs,

v.

MARK WARWICK

Defendant.

---

CONSENT ORDER

---

AND NOW, on this 7 day of April, 2014, upon this Consent Order, being jointly proposed by Plaintiffs, PowerSecure, Inc. ("PowerSecure") and EfficientLights, LLC ("EfficientLights"), and Defendant, Mark Warwick ("Mr. Warwick"), (collectively the "Parties"), for good cause shown, and the Court having determined that this Consent Order should be entered for the reasons and on the terms set forth herein, the Court hereby finds and orders as follows:

FINDINGS

1. In consideration for his employment, Mr. Warwick entered into and agreed to be bound by the terms of the Non-Competition, Confidentiality and Proprietary Rights Agreement (the "Proprietary Rights Agreement") attached to Plaintiffs' Verified Complaint as Exhibit B.

2. During his employment with PowerSecure's EfficientLights division as its National Accounts Sales Manager, Mr. Warwick acquired access to certain of Plaintiffs' trade secrets and confidential information.

3. Plaintiffs have taken reasonable measures to protect the secrecy of their trade secrets by, among other things, requiring employees with access to their trade secrets to sign confidentiality and non-disclosure agreements. Plaintiffs' trade secrets are valuable to Plaintiffs and provide them with a competitive advantage in the marketplace.

4. Were Mr. Warwick to undertake and/or continue employment with a competitor of Plaintiffs in substantially the same type of position he had with Plaintiffs and in the same national territory that he previously covered for Plaintiffs calling upon many of the same customers and prospective customers he solicited on behalf of Plaintiffs, Mr. Warwick necessarily and inevitably will access, use, and/or disclose Plaintiffs' trade secrets.

5. Additionally, such employment would, for a period of one year from the date of his termination, violate the Proprietary Rights Agreement that Mr. Warwick signed and agreed to as a condition of his employment with PowerSecure.

6. Plaintiffs do not have an adequate remedy at law, and, in the absence of injunctive relief, Plaintiffs will suffer immediate and irreparable harm.

7. Greater injury would be inflicted upon Plaintiffs by the denial of injunctive relief than would be inflicted upon Mr. Warwick by the granting of such relief.

8. The public interest will be served by the granting of such relief.

MATERIAL REPRESENTATIONS BY MR. WARWICK

9. By signing this Consent Order, Mr. Warwick represents to Plaintiffs, and to this Court, the following:

a. To the extent that Mr. Warwick retained or possessed any of Plaintiffs' data, property, confidential, trade secret or proprietary information (whether in hard copy or electronic form) after his employment with PowerSecure ended, as of Mr. Warwick's execution of this Consent Order, Mr. Warwick has already returned all such data, property, and information to Plaintiffs' counsel.

b. Mr. Warwick has neither retained, nor knowingly allowed any other individual or entity to retain or possess, and he does not continue to possess, any of (i) Plaintiffs' confidential, trade secret or proprietary information (whether in hard copy or electronic form), or (ii) summaries of any of Plaintiffs' confidential, trade secret or proprietary information (whether in hard copy or electronic form).

c. Mr. Warwick responded fully and truthfully to Plaintiffs' counsel in his deposition concerning any and all use or disclosure by Mr. Warwick, if any, of Plaintiffs' confidential, proprietary, and/or trade secret information (whether in hard copy or electronic form).

d. To the extent that Mr. Warwick stored or transmitted any of Plaintiffs' data, files, or confidential, proprietary, and/or trade secret information on any computer, email, or cloud or computer media storage device, location, program, or service, Mr. Warwick has provided a forensic image of the same to Plaintiffs' counsel and thereafter destroyed any such

data, files, or confidential, proprietary, and/or trade secret information such that none remains in his possession, custody or control.

**IT IS HEREBY ORDERED AND DECREED THAT:**

1. Plaintiffs' request for injunctive relief is **GRANTED**.
2. Mr. Warwick shall comply and abide in all material respects with the Non-Competition, Confidentiality, and Proprietary Rights Agreement attached as Exhibit B to the Verified Complaint, including but not limited to, by:

- a. refraining from accessing, using, disclosing, or revealing any confidential information or trade secrets belonging to Plaintiffs;

- b. refraining for a period of one year after his employment with PowerSecure ended from, directly or indirectly, alone, or in association with others, whether as owner, shareholder, employee, officer, director, partner, manager, member, lender, investor, consultant, principal, agent, independent contractor, co-venturer or in any other capacity, working for, investing in, engaging in, having a financial interest in, in any way connecting or affiliating with, or rendering advice or service to, any Person that is in competition with PowerSecure's EfficientLights division or related LED lighting business in any capacity whatsoever in the United States or in any other country in which PowerSecure's EfficientLights division or related LED lighting business does a material amount of business or otherwise has material operations;<sup>1</sup> and

---

<sup>1</sup> For purposes of this Section 2.b. of this Consent Order, a business shall be deemed to be in competition with PowerSecure's EfficientLights division or related LED lighting business if it is engaged in any business activity or has products or services that are the same or similar to the business activities, products, or services of PowerSecure's EfficientLights division or related LED lighting business while Mr. Warwick was employed by PowerSecure, Inc.

c. refraining from directly or indirectly, or in any other capacity whatsoever, inducing or attempting to induce any person employed, retained, contracted, or otherwise engaged by Plaintiffs to: (1) terminate such employment or engagement, (2) accept employment or engagement with any person or entity other than Plaintiffs; (3) interfere with the business of Plaintiffs; or (4) disparage the business or reputation of Plaintiffs or any of their directors, officers, employees or other agents.

3. Mr. Warwick is enjoined from directly or indirectly, or in any other capacity whatsoever, (a) soliciting, consummating, or accepting lighting or lighting-related business from any customer about which he accessed, copied, and/or otherwise removed confidential or trade secret information from Plaintiffs; or (b) accessing, deleting, or otherwise modifying any documents, files, or other information gained through access of Plaintiffs' computer(s), computer network(s), and/or computer system.

4. By the date of entry of this Consent Order by this Court, Mr. Warwick shall:

a. return all documents, files, or other property (and any copies thereof) that Mr. Warwick obtained from Plaintiffs or in connection with his employment with Plaintiffs, including but not limited to, such property gained through access of Plaintiffs' computer system, to Plaintiff's counsel of record;

b. provide Plaintiffs counsel of record with access and an opportunity to copy, forensically copy, and inspect all personal and business computers, computer storage media, and other devices in his or its possession, custody, or control, including all personal and business computers, laptops, USB flash drives, PDAs, Smartphones, email accounts, and Dropbox accounts, on which Mr. Warwick sent, viewed, stored, or

otherwise accessed any of Plaintiffs' data, files, or other information in order for Plaintiffs to review and preserve the devices and/or confirm deletion of Plaintiffs' proprietary, confidential, and/or trade secret information, including but not limited to information gained through access of Plaintiffs' computer(s), computer network(s), and/or computer system;

c. provide Plaintiffs with copies of and electronic access to all personal and business e-mails by which Mr. Warwick sent, stored, or otherwise accessed any of Plaintiffs' information, including but not limited to, e-mails to and from Mr. Warwick's mwarwick@powerconceptsled.com e-mail and to and from Mr. Warwick's markwarwick@q.com email, in order for Plaintiffs to preserve evidence and to review the extent to which Mr. Warwick used or disclosed Plaintiffs' proprietary, confidential, and/or trade secret information, including without limitation, information gained through access of Plaintiffs' computer(s), computer network(s), and/or computer system.

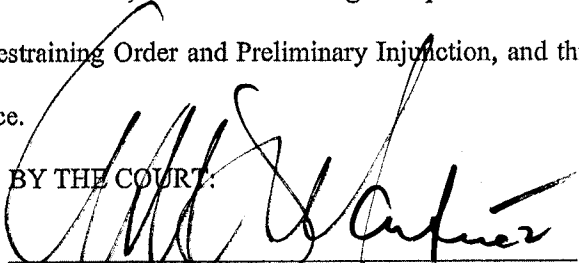
5. Mr. Warwick shall immediately cease and desist and is further enjoined for the remainder of the one-year restricted time period in his Proprietary Rights Agreement from: (a) undertaking any and all activities on behalf of himself, Power Concepts, or any other individual or entity involved in the sale or promotion of products which directly compete with PowerSecure's LED lighting business in the United States and with the customers included within it; (b) having any contact with any customer of PowerSecure's LED lighting business for whom he had responsibility for or knowledge of during his employment with PowerSecure; and, (c) disclosing or using any of Plaintiffs' confidential, proprietary, or trade secret information.

6. To the extent that he recalls or continues to be aware of Plaintiffs' confidential, proprietary, and trade secret information, Mr. Warwick shall hold Plaintiffs' confidential, proprietary, and trade secret information in the strictest of confidence, and Mr. Warwick shall not divulge, disclose, or reveal said information to any third party or use any such information for any purpose, including but not limited to, any business in which Mr. Warwick has an interest or by which he is employed or may become employed.


7. This Court retains jurisdiction to enforce the terms of this Order upon the entry of any voluntary dismissal, without prejudice, of this action.

8. In light of this Consent Order, Plaintiffs no longer require a hearing upon Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, and this action is hereby dismissed, without prejudice.

BY THE COURT:

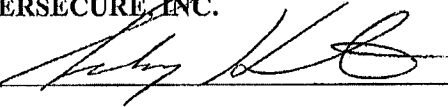
  
United States District Court Judge Presiding

AGREED AND CONSENTED TO BY:

  
MARK WARWICK

DATE: 3-31-14

POWERSECURE, INC.


By: 

DATE: 3/27/14

Printed Name: Steven Horton

Title: CEO

EFFICIENTLIGHTS, LLC

By:   
Printed Name: Siobhan Hurson  
Title: CEO

DATE: 3/27/14