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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED
AUG 16 2005
CLERK, U.S. DISTRICT COURT
MICHAEL W. DOBENS

ONE POINT SOLUTIONS, INC.,)
an Illinois Corporation,)
)
Plaintiff,)
)
v.)
)
ANTHONY WEBB,)
MICHAEL VIRNIG, and)
TIM YOON,)
)
Defendants.)

Case No. 04 C 3850
Jury Demanded
Judge Holderman
Magistrate Judge
Geraldine Soat Brown

**ANTHONY WEBB'S AND PRINTLIVE, INC.'s MOTION FOR
ENTRY OF PROTECTIVE ORDER**

Now come defendant, Anthony Webb ("Webb") and PrintLive, Inc., by and through their attorney, James K. Horstman of the law firm of Iwan Cray Huber Horstman & VanAusdal LLC, pursuant to F.R.C.P. 26(c), moving this court for the entry of a protective order, and in support thereof state as follows:

1. On July 29, 2005, the Court entered an order requiring Webb and PrintLive, Inc. to produce to Plaintiff's attorney all privilege docs subject to provisional "attorney eyes only" limitation, stating that the "attorney eyes only" limitation would expire unless by August 31, 2005, a protective order is entered.

2. Pursuant to the order entered on July 29, 2005, Webb and PrintLive, Inc. produced many documents marked "confidential" which are entitled to permanent protection with dissemination limited to an "attorney eyes only" (meaning that the documents may be viewed by Plaintiff's attorney, but he may not show them or discuss the content of those documents with others).

3. The documents for which Webb and PrintLive, Inc. seek a protective order and "attorney eyes only" protection are documents Bates numbered P922 through P1651, identified by category on their privilege log as follows:

- a. Invoices, quotes, etc., from PrintLive, Inc., identifying clients and business prospects of PrintLive, Inc. (Bates nos. P922 – P1124);
- b. Invoices, statements, etc., to PrintLive, Inc., identifying clients of PrintLive, Inc. (Bates nos. P1125 – P1332);
- c. Other confidential communications identifying clients of PrintLive, Inc. (Bates nos. P1333 – P1523);
- d. Bank records identifying clients of PrintLive, Inc. and other confidential financial information of PrintLive, Inc. (Bates nos. P1524 - P1624); and
- e. PrintLive, Inc. tax records containing confidential financial information (Bates nos. P1625 – P1651).

4. Under the Illinois Trade Secrets Act (765 ILCS 1065/2(d)), a trade secret is defined as information, including but not limited to, technical or non-technical data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers, that: (a) is sufficiently secret to derive economic value, actual or potential, from not being known to other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality. See *Fisher Investments, Inc. v. Carlson*, 2004 WL 2496474, at *2 (N.D.Ill. 2004); *Cacique, Inc. v. V&V Supremo Foods, Inc.*, 2004 WL 2222270, at *12 (N.D.Ill.,2004).

5. Information meeting "secrecy" criterion of Illinois Trade Secrets Act includes customer information that is not readily ascertainable, pricing, distribution and marketing plans, and sales data and market analysis information. *RKI, Inc. v. Grimes*, 177 F.Supp.2d 859 (N.D. Ill. 2001); *Curtis 1000, Inc. v. Suess*, 843 F.Supp. 441 (C.D.Ill. 1994), *aff'd* 24 F.3d 941.

6. Plaintiff has alleged in documents filed in this action that it is in direct competition with Webb and PrintLive, and it is Plaintiff who now seeks documents divulging the identities of the clients and business prospects of Webb and PrintLive.

7. Webb and PrintLive seek to maintain the secrecy of the documents that identify their clients and business prospects by "attorney's eyes only" protection, which is a common device employed in the Northern District to protect the legitimate interests of producing parties. See, e.g., *U.S. Gypsum Co. v. LaFarge North America, Inc.*, 2005 WL 1799282 (N.D.Ill. 2005) (No. 03 C 6027) (Judge Hart); *Hobley v. Burge*, 2005 WL 256481 (N.D.Ill. 2005) (No. 03 C 3678)(Judge Brown); *Lewis v. City of Chicago*, 2004 WL 2608302 (N.D.Ill. 2004) (No. 04 C 3904)(Judge Schenkier); *Morris v. Swank Educational Enterprises, Inc.*, 2004 WL 1899987 (N.D.Ill. 2004) (No. 04 C 50056)(Judge Mahoney); *Owner-Operator Independent Drivers Ass'n v. Bulkmatic Transp. Co.*, 2004 WL 1212096 (N.D.Ill. 2004) (No. 03 CV 7869)(Judge Coar).

8. The identities of the clients and business prospects Webb and PrintLive are entitled to "attorney's eyes only" protection, because the clients and business prospects Webb and PrintLive are not generally known outside of their business; Webb and PrintLive expend significant efforts to maintain the confidentiality of the identities of those clients and business; the identities of those clients and business prospects are of significant value to Webb and PrintLive and their competitors; Webb and PrintLive have expended a great deal of effort and expense over a period of several years to develop these clients and business prospects; and the list of clients and business prospects of Webb and PrintLive could not easily be recreated absent discovery of the confidential sources from Webb and PrintLive. See *Strata Marketing, Inc. v. Murphy*, 317 Ill. App. 3d 1054, 740 N.E.2d 1166 (1st Dist. 2000). See also Affidavit of Anthony Webb, attached hereto as Exhibit 1.

9. If the principals of the Plaintiff in this action are permitted to learn the identities of the clients and business prospects of Webb and PrintLive through discovery, they would obtain an unfair competitive advantage and inflict irreparable harm on Webb and PrintLive.

WHEREFORE, defendant Anthony Webb and PrintLive, Inc. request the Court to enter the attached "attorney's eyes only" protective order with respect to the documents designated as Bates numbered documents P922 through P1651.

Respectfully submitted,

IWAN CRAY HUBER HORSTMAN
& VanAUSDAL LLC

By: 

JAMES K. HORSTMAN, Attorney
for ANTHONY WEBB and PrintLive, Inc.

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ONE POINT SOLUTIONS, INC.,)	
an Illinois corporation,)	
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Plaintiff,)	No. 04 C 3850
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v.)	Jury Demanded
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ANTHONY WEBB,)	Judge Holderman
MICHAEL VIRNIG, and)	
TIM YOON,)	Magistrate Judge
)	Geraldine Soat Brown
Defendants.)	

PROPOSED PROTECTIVE ORDER

1. The Court finds that discovery in this case will involve production of trade secrets and confidential proprietary information and orders that any such trade secrets and/or confidential proprietary information shall not be used for any purpose other than this lawsuit. The Court further orders that any such confidential proprietary information shall not be made public, or be otherwise disseminated, except as set forth in this Protective Order.

2. Confidential Information. "Confidential Information" shall consist of (a) documents, materials or other information designated or marked "CONFIDENTIAL" containing confidential information or trade secrets which are produced, disclosed or exchanged during the course of pre-trial discovery in the above-captioned matter by a party that consists of or pertains to:

- (i) The business, banking, accounting or tax records of any party or PrintLive, Inc.;
- (ii) Any identification of a current or prospective client of any party or PrintLive, Inc.;
- (iii) Trade secrets of any party or PrintLive, Inc.;

3. Marking of Confidential Documents. Whenever any party produces a document or thing containing confidential information that the party wishes to be subject to this Order, the party shall mark or designate each page of the document or thing that contains such information as "CONFIDENTIAL". The other party shall in

turn mark any copy made of such page or any abstract, summary or memorandum containing the Confidential Information as "CONFIDENTIAL".

4. Claims of Confidentiality at Depositions. A designating party may designate all or part of a deposition relating to documents, information, things or other material designated as "CONFIDENTIAL" and request the court reporter to insert a statement regarding the confidentiality of the testimony into the deposition transcript. Alternatively, such designating party may designate all or part of the deposition as "CONFIDENTIAL" no later than twenty-one calendar (21) days after receipt of the completed deposition transcript in question. All materials in a deposition transcript will be treated as confidential until the foregoing time period has expired or any designation of confidentiality is made.

5. Objections to Confidential Designation. Within thirty (30) days following receipt of any material designated "CONFIDENTIAL," any entity or person may, in writing, advise counsel for the party that produced material designated "CONFIDENTIAL" that it challenges such a designation. The entity or person seeking the disclosure of the material marked "CONFIDENTIAL" shall state in writing the reason(s) for seeking the removal of the "CONFIDENTIAL" designation, the name(s), business title(s) and business address(es) of those persons to whom the materials designated "CONFIDENTIAL" might be disclosed, so that the producing party can assess the possible removal of the "CONFIDENTIAL" designation. The party originally designating the material as "CONFIDENTIAL" shall respond in writing to the request and shall describe the nature of the producing party's interest in a manner that will enable the challenger to assess the need for continued secrecy. If the challenger does not agree, the challenger may apply to the Court for relief. If no written objection is received by the challenger seeking disclosure within, the producing party shall be deemed to have consented to disclosure. The burden of establishing the confidential designation rests with the producing party.

6. Disclosure of Documents or Information Designated as Confidential. Disclosure of any document marked "CONFIDENTIAL" or information derived from such a document is strictly limited to the attorneys of a party. Otherwise, disclosure to any party, his or its agents, experts, consultants or employees is prohibited. Notwithstanding the foregoing, any person may disclose a document marked "CONFIDENTIAL" or information derived from such a document to the judge(s) before whom this case is pending and court personnel working with the judge(s);

7. Notice of Order. Prior to the time that any person other than the court or counsel is allowed to view any document or information produced pursuant to this Order, counsel shall inform those persons of this Protective Order and of their obligation to keep the contents of such documents confidential, and each such person shall agree in writing to abide by the provisions of this Order. The parties and counsel for each party undertake to abide by and be bound by its provisions and to use due care to see that its provisions are known and adhered to by those under their supervision or control and will abide by and be bound by this Protective Order even prior to Court approval.

8. Procedures for Filing Confidential Information. In the event a party desires to file "CONFIDENTIAL" information with the Court, it shall only do so under seal. In motions to the Court, all submissions of "CONFIDENTIAL" information shall be filed with the Court in sealed enclosures on which shall be affixed the title of the particular action, an indication of the nature of their contents, the word "CONFIDENTIAL" and a statement substantially in the following form:

THIS ENVELOPE CONTAINS MATERIALS SUBJECT TO A PROTECTIVE ORDER ENTERED IN THIS ACTION. IT IS NOT TO BE OPENED NOR ARE ITS CONTENTS TO BE DISPLAYED, REVEALED OR MADE PUBLIC, EXCEPT BY ORDER OF THE COURT.

The submission shall indicate clearly which portions are designated confidential and the applicable level of confidentiality.

9. Inadvertent Disclosure. Inadvertent disclosure of material designated "CONFIDENTIAL" to an opposing party without identifying the same as carrying such designation shall not be deemed a waiver of confidentiality with regard to the material inadvertently disclosed, nor shall it be deemed a waiver of confidentiality with regard to similar material. Any such material inadvertently disclosed and designated "CONFIDENTIAL" shall be returned to the disclosing party promptly upon receipt by the receiving party of notice of the inadvertent disclosure, and the receiving party shall keep no copies or reproductions and shall make no use whatsoever of the material inadvertently disclosed.

10. Use of Confidential Documents. All discovery materials, information, documents, things or other materials produced by any party or any third-party subpoena recipient, whether designated "CONFIDENTIAL" or not so designated, together with all reproductions, copies, abstracts, indices or summaries of those materials, shall be used solely and exclusively for the prosecution or defense of the claims in this action and shall not be used for any business, commercial, competitive, personal or any other purpose.

11. Return/Destruction of Confidential Documents. Within forty-five (45) days after the conclusion of this litigation, including all appeals, each party shall return all documents and information designated as "CONFIDENTIAL" provided by or obtained from any other party in the litigation, together with all copies thereof to the party from which the documents were obtained. Alternatively, all such documents not returned shall be destroyed. Counsel for the parties are responsible for securing and returning to the party all materials designated as "CONFIDENTIAL" supplied or provided to all non-party experts or consultants. Counsel for each Party shall certify in writing to the other party its compliance with these requirements within forty-five (45) days of the conclusion of this litigation.

12. Compelled Production. If any third-party subpoenas or seeks to compel production of any confidential documents or information from the party who has received them under the terms of this Protective Order, the party who receives such

subpoena or who is sought to be compelled to produce shall immediately give notice to the other parties of this action. Any motion relating to such a subpoena or compelled production shall be filed in and decided by this Court, and no production in compliance with any subpoena shall occur until this Court has so ruled.

13. Duration. This Protective Order shall survive any settlement, judgment, dismissal or other disposition or conclusion of this Lawsuit and all appeals therefrom.

14. Confidential Documents Not To Be Filed. The parties are ordered to retain copies of all documents containing confidential information which are provided in discovery under the protective order. Documents containing confidential information shall **NOT** be filed with the Clerk of Court. Documents requiring the court's review shall be submitted to chambers in camera in a sealed envelope bearing the caption of the case, case number, the title of the motion or response to which the submitted confidential information pertains, and the name and telephone number of counsel submitting the documents. The producing party shall maintain the original documents in tact for any further review. A redacted copy of the pleading shall be filed with the Clerk of Court for the record.

IT IS SO ORDERED.

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AFFIDAVIT OF ANTHONY WEBB

Affiant, Anthony Webb, being first duly sworn, deposes and states that, if called to testify, he could competently testify to the following based on his personal knowledge:

1. I am a defendant in the above-captioned cause.
2. Since the commencement of this action, and for several months before, I have been without a paycheck.
3. I have depleted virtually all of my assets in efforts to develop the plaintiff corporation, efforts to develop another business after leaving the plaintiff corporation (PrintLive, Inc.), and the costs of the instant litigation.
4. I no longer have the ability to fund this litigation and must either promptly settle this case or file for bankruptcy protection.
5. As of the date of this Affidavit, my net worth is a negative number. (See Exhibit A.)
6. As of the date of this Affidavit, the net worth of the company in which I have an ownership interest, PrintLive, Inc., has a negative net worth. (See Exhibit B.)
7. If the case filed against me by One Point Solutions does not settle by September 15, 2005, it is my intention to seek bankruptcy protection.

Further affiant sayeth not.

Dated: 8/15/05


Anthony Webb

