

ORIGINAL

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MAR 19 2007

MAR 16 2007

LAWRENCE K. BAERMAN, CLERK
ALBANY

LAWRENCE K. BAERMAN, CLERK
Wurth USA, Inc.
ALBANY

Plaintiff,

vs.

TEMPORARY
RESTRAINING ORDER

David Caprio and Tifco Industries, Inc.

Defendants.

Civil Action No.:

07 -CV- 0280

LEK / [Signature]


This matter came to be heard upon Plaintiff Wurth USA, Inc.'s ("Wurth") Verified Complaint, Motion for Temporary Restraining Order, Memorandum in Support thereof, Declaration of Kathy O'Leary attesting to the truth of the facts alleged in the Verified Complaint, and the Certificate of Plaintiff's counsel certifying that she made reasonable efforts to notify the Defendants of the Motion for Temporary Restraining Order and this hearing.

The Court finds that Wurth has satisfied the necessary criteria for issuance of ~~injunctive~~ **TEMPORARY RESTRAINING ORDER.**
~~relief.~~

It appears from the Verified Complaint and the Declaration of Kathy O'Leary that unless Defendants and those agents or other persons acting in concert or participation with them are immediately restrained: (i) Caprio, in violation of the contract between the parties ("Non-Competition, Non-Solicitations, And Non-Disclosure Agreement" dated September 17, 2001), will continue to interfere with relationships between Wurth and its customers including customers that he called on while employed by Wurth, which include Goldstein Chrysler-Plymouth, Lia Infiniti, Leader Automotive Group, Orange Ford, R&D Automotive, Autobahn Centre, Inc., Armory Garage, Rensselaerville Body Shop, Spitzie's Motorcycle, Lia Collision Center, Precision Automotive, and H&V Autobody; (ii) Caprio, in violation of the contract

between the parties ("Non-Competition, Non-Solicitations, And Non-Disclosure Agreement" dated September 17, 2001), will continue to compete against Wurth in counties he serviced while at Wurth including Albany, Columbia, Green, Schenectady, Rensselaer, Franklin, Essex, Clinton, Schoharie and Lewis Counties; (iii) Caprio will continue to divert or solicit or attempt to divert or solicit customers of Wurth; and (iv) that Caprio and Tifco will use and disclose Wurth's Confidential Information and Trade Secrets to solicit Wurth's customers, all of which will result in irreparable harm to Wurth in the form of damaged business relationships with Wurth customers and loss of good will.

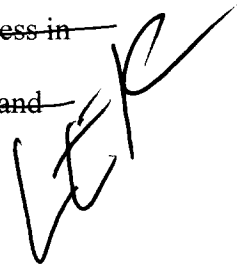
IT IS THEREFORE ORDERED, as follows:

(1) That Caprio and Tifco and their agents, employees, representatives or any person in concert with them are restrained from destroying, editing, modifying erasing, and/or non-preserving in any manner whatsoever Wurth's Confidential Information and Trade Secrets and any other information removed or otherwise obtained ^{from} ~~from~~ or at Wurth; 

(2) That Caprio and Tifco and their agents, employees, representatives or any person in concert with them are restrained from possessing, using, disclosing or disseminating Wurth's Confidential Information and Trade Secrets;

(3) That Caprio and Tifco and their agents, employees, representatives or any person in concert with them are restrained from using Wurth's Confidential Information and Trade Secrets to solicit business;

(4) That Caprio is restrained from soliciting customers he serviced during his employment with Wurth; and

~~(5) That Caprio is restrained from entering or engaging in a competitive business in Albany, Green, Columbia, Rensselaer, Schenectady, Essex, Franklin, Clinton, Schoharie and~~ 

~~Lewis Counties.~~

LEK

The Temporary Restraining Order is upon condition that a bond be filed by Wurth in the sum of \$25,000.00, conditioned that Wurth shall pay to the defendants such damages, not exceeding the sum of \$25,000.00 as they may sustain by reason of the Temporary Restraining Order if it shall be finally decided that Wurth is not entitled thereto.

The Temporary Restraining Order shall remain in effect until 5TH day of APRIL, 2007, by which time a hearing will be set for determination of the questions of the issuance of the preliminary injunction.

A hearing shall be held at Albany, on April 5TH, 2007 at 10:00 a.m. in Court Room No. 1, United States District Court for the Northern District of New York.

DEFENDANTS' RESPONSE SHALL BE FILED ON OR BEFORE MONDAY, MARCH 26, 2007.
PLAINTIFFS REPLY SHALL BE FILED ON OR BEFORE THURSDAY, MARCH 29, 2007.

[Signature]
UNITED STATES DISTRICT COURT JUDGE
HONORABLE LAWRENCE E. KAHN

Entered at: Albany, NY

This 11TH day of March, 2007 at _____, _____ m