

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Retail Service Systems, Inc., :
 :
Plaintiff : Civil Action 2:13-cv-00994
 :
v. : Judge Smith
 :
Carolina Bedding Direct, LLC, *et al.*, : Magistrate Judge Abel
 :
Defendants :

Scheduling Conference Order

On February 7, 2014, counsel for the parties participated in a telephone scheduling conference with the Magistrate Judge. During the conference, the Magistrate Judge ordered that the parties may proceed with discovery now without holding a Rule 26(f) conference of the parties. Rule 26(d), Fed. R. Civ. P.

Allegations in the complaint. Retail Service Systems, Inc. ("RSS") brings this action asserting defendants Carolina Bedding Direct, LLC, Mattress By Appointment, LLC, and Doe Defendants 1 through 50 violated Ohio's Uniform Trade Secrets Act, Ohio Revised Code §§ 1333.61 *et seq.*, and engaged in a civil conspiracy. Jurisdiction is alleged under 28 U.S.C. § 1332.

The complaint (doc. 1) alleges the following facts. PMD and PMD Furniture Direct, Inc. (collectively "PMD") developed a unique, comprehensive marketing program for the sale of bedding and furniture through small warehouses, using classified advertising, detailed telephone and sales scripts, and specific marketing

techniques and sales approaches. Complaint, ¶ 11. In June 2013, PMD sold all its licenses, accounts receivable, judgments, and intellectual property (including trade secrets) to RSS. *Id.*, ¶ 3

From early 2000 to April 2003, Darren Conrad was first an assistant to PMD's president and, later, a PMD dealer, manager, and dealer trainer. *Id.*, ¶ 13. When he left PMD in April 2003, Conrad signed a 3-year non-compete. *Id.*, ¶ 15. Nonetheless, he went into business in competition with PMD, using PMD's confidential materials to train his dealers. *Id.*, ¶¶ 18-20.

In February 2004, PMD sued Conrad in the Franklin County Common Pleas Court for breach of a license agreement and separation agreement. *Id.*, ¶ 22. The Common Pleas Court issued a preliminary injunction and, later, a permanent injunction *Id.*, ¶¶ 23 and 32-34. The judge found that Conrad violated the non-compete and the Uniform Trade Secrets Act. *Id.*, ¶¶ 32-23. The non-compete was extended an additional 15 months from the date of the 2009 judgment. *Id.*, ¶ 35. During the course of that litigation and after, Conrad continued to operate his businesses in violation of the injunctions and final judgment. *Id.*, ¶¶ 27 and 37.

Additional information provided by counsel during the February 7 telephone conference. Counsel said there were three entities RSS believes have violated the Ohio Trade Secrets Act: Carolina Bedding Direct of North Carolina, LLC, Carolina Bedding Direct of Florida, LLC, and Mattress By Appointment, LLC. Further, Carolina Bedding Direct of North Carolina, LLC filed a dissolution with the North Carolina Secretary of

State before this lawsuit was filed. RSS asserts that Carolina Bedding Direct of Florida, LLC and/or Mattress By Appointment, LLC are successor limited liability companies of Carolina Bedding Direct of North Carolina, LLC. A judgment against Carolina Bedding Direct of North Carolina, LLC would be good against them.

Plaintiff's counsel said that the 2009 judgment against Conrad now amounts to more than \$650,000. RSS seeks money damages and a permanent injunction against defendants enjoining them from use its "play book," *i.e.*, its marketing program, advertising, scripts, and other confidential information.

Service of process. Defendants maintain that plaintiff has not obtained service on them. (January 30, 2014 motion to set aside default judgment (doc. 18)). Defendants' counsel offered to accept service of summons and complaint for their clients. Plaintiff's counsel responded that RSS believes it has good service on defendants and that any judgment against Carolina Bedding Direct of North Carolina, LLC may be executed on against Carolina Bedding Direct of Florida, LLC and/or Mattress By Appointment, LLC.

Discovery. Plaintiff's December 31, 2013 motion to compel discovery (doc. 14) was denied because a Rule 26(f) conference had not been held, the parties had not agreed to the discovery, and the court had not ordered it. Rule 26(d), Fed. R. Civ. P. (January 31, 2014 Order (doc. 19).) Plaintiff RSS seeks leave to take discovery. It is ORDERED that the parties may proceed with merits discovery, including third-party discovery, and discovery related to whether the court has personal jurisdiction over

defendants. Defendants who assert lack of personal jurisdiction may be served with requests for merits discovery by subpoenas under Rule 45. They are, however, required to respond to any party discovery regarding personal jurisdiction. Plaintiff RSS is ORDERED to serve on defendants' all subpoenas previously served on third parties and all responses made to those subpoenas.

Rule 16 scheduling conference. Counsel should consult about their availability for a Rule 16 scheduling conference and advise me at the February 14 hearing on plaintiff's motion for default judgment against defendant Carolina Bedding Direct, LLC the dates they are available for the conference.

s/Mark R. Abel
United States Magistrate Judge