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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ACTIVE MEDIA SERVICES, INC., d/b/a ACTIVE INTERNATIONAL Plaintiff,	:	**CIVIL ACTION NO.:**
VS.	:	
ICON INTERNATIONAL, INC. Defendant	:	**FEBRUARY 2, 2006**

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S APPLICATION FOR A PRELIMINARY INJUNCTION

I. PRELIMINARY STATEMENT

Plaintiff Active Media Services, Inc. ("Active") and defendant Icon International, Inc. ("Icon") are competitors. Icon subtly seduced, and ultimately bribed, a high-level Active executive who had worked on one of Active's most valuable accounts, to help Icon steal this account from Active. For almost an entire year, Active's employee surreptitiously gathered Active's confidential Account information and transmitted it to Icon, based on Icon's promise that, when it was finally appropriated the account, it would hire Active's employee, an "expert" on the Account (as a result of her work for Active), to work on the Account. Icon's scheme was a success. On January 23, 2006: the Active employee resigned, the Account announced its termination of the Active contract and its contract with Icon, and Active's employee went to work for Icon as its "expert" on the Account. Plaintiff respectfully requests that the Court prevent Icon from making further use of Active's proprietary information and benefiting from its egregious conduct, which patently violates Conn. Gen. Stat. ' 35-52, Conn. Gen. Stat. ' 42-110g.

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II. FACTUAL BACKGROUND

A. Active's Business

Active is engaged in the business of, among other things, issuing trade credit to clients in exchange for goods and/or assets sold by such clients to Active. The trade credit is useable by Active's clients in connection with the purchase from Active of, among other things, media advertising. The trade credit is useable by the client to pay a negotiated portion of Active's invoices for such media. *See* Affidavit of George Otras ("Otras Aff."), ¶ 5.

Active's purchase price for the media advertising is agreed upon by Active and the client and is based upon the client's established net benchmark price; being the net price the client would otherwise have paid to purchase such media (other than through Active) for 100% cash. Id., ¶ 6.

Active works closely with the client's advertising agencies. The agency provides to Active, on behalf of the client, among other things, the client's relevant net benchmark price and all other media planning specifications so that the advertising placed by Active, on behalf of the client, conforms to what the client would have otherwise purchased and placed (other than through Active) for 100% cash. Id., ¶ 7.

Concurrently, upon Active's and the client's mutual agreement to the relevant purchase price for media advertising, Active advises the client of the applicable cash and trade credit blend – i.e, the percentages of Active's invoices for such media advertising which will be payable by the client to Active in cash and by reduction and application of the trade credit issued by Active to the client. Id., ¶ 8.

Active's actual costs in the media purchased by Active from the media vendors are non-disclosed. In order to permit Active's clients to pay a portion of their benchmark costs for media

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with trade credits, Active utilizes proprietary and confidential formulas and trading techniques and methods to negotiate and arrive at unique trading/barter arrangements, including, without limitation, trading terms, cash/trade blends, rates and ratios, trading discounts and cross purchase obligations, with media publishers to reduce the cash cost to Active. Id., ¶ 9.

Active's trading/barter arrangements, including, without limitation Active's negotiated costs and rates are proprietary, confidential and not disclosed to the client or the client's advertising agency. Id., ¶ 10. Accordingly, Active takes specific steps to safeguard the confidentiality of this type of business information relating to Active's media buys. Active employees are required to enter into an agreement to abide by Active's Code of Conduct/Ethics Policy ("Code of Conduct") which requires that all business information be maintained strictly confidential during and after employment. Active requires employees to execute an annual certification of compliance with the Code of Conduct. Id., ¶ 11.

Specifically, the Code of Conduct states:

> **Confidentiality.**
>
> Information is key to our Company's success. **Everyone must protect what is confidential while working at the Company and after leaving the Company. The heading of confidential information includes but is not limited to financial documents, pricing or vendor information, client information, contracts, client lists or proposals, corporate development, the cost of goods, personnel files, manuals and procedures, computer software, design documents, videos and memos.** (Information that has been made public by the Company, such as by press release, advertisement or filed documents, is not considered confidential).
>
> It is the policy of the Company to ensure that the operations, activities, and business affairs of the Company and our clients are kept confidential to the greatest possible extent. If, during the course of your employment, you acquire confidential or proprietary information about the Company and its clients, suppliers, customers or even fellow employees, such information is to be handled in strict confidence and not to be discussed with outsiders. It is imperative that you in no way reveal or divulge any such information and that such information is used only in the performance of your duties at the Company. This means that you are also responsible for the internal

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> security of such information. This means that you should not discuss confidential information with fellow employees unless they have a business need to know such information.
>
> Employees found to be violating this policy are subject to disciplinary action up to and including discharge, and may also be subject to civil penalties for violations of this policy.
>
> If you are unsure whether certain information is confidential, presume that it is. Therefore, it is important to be careful about what is said to friends, business associates and family members, even spouses. Finally, no one should attempt to obtain confidential information that does not relate to his or her employment duties and responsibilities.

Id., ¶ 16.

Additionally, employees receive instructions on the highly confidential nature of Active's information as part of their orientation in the print department. Particular attention is placed upon the highly confidential nature of Active's trading arrangements and rates with media publishers, and confidentiality reminders are made periodically by management. As part of these orientations and periodic reminders, employees are instructed not to disclose Active's confidential information. Further, confidential information that is stored electronically is password protected. Id., ¶ 12.

B. The Theft of Active's Trade Secrets

Between June 2000 to January 2006, Active employed Ms. Moses in a number of senior executive positions. Id., ¶ 13. As an employee of Active, in 2004 Ms. Moses entered into an agreement (the "Agreement") to abide by Active's Code of Conduct requiring her to keep all business information strictly confidential during and after her employment at Active, and to use such information only in the performance of her duties at Active. She was also required to annually confirm her compliance with the Code of Conduct. Id., ¶ 15.

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From June 2000 to about December 2004, Ms. Moses held the position of Vice President of Print Media, in which she served as a media buyer for several client accounts, including one of Active's most important accounts – the Quaker-Tropicana-Gatorade North America Division of PepsiCo ("QTG" or "Quaker") account. Id., ¶ 17. In this capacity, Ms. Moses had access to Active's highly confidential information, including but not limited to the details of trade and cross purchase transactions, cash/trade negotiations, trade discounts, rates, blends and profits for each publication in QTG's print media plan. Id., ¶ 18.

In or about December 2004, as a result of a restructuring at Active, Ms. Moses was promoted to the position of Vice President of Print Trade Development. Id., ¶ 19. This reassignment entailed a change of duties and required Ms. Moses to relinquish to other Active employees her media-buying responsibilities, including those related to the QTG Account. Id. Ms. Moses' new job function was to approach each and every magazine on her assigned list of titles and source or create trading business opportunities for Active. Id., ¶ 20.

Active has now learned that Icon seduced and bribed Ms. Moses to surreptitiously gather Active's information relating to the QTG Account and use the information to aid Icon, and obtain a media-buying position at Icon. Id., ¶¶ 26-44. At least starting mid-year of 2005, Ms. Moses began obtaining from a junior employee documents containing confidential data with regard to the QTG Account – specifically work sheets and summaries of Active's barter terms with each publication, including information relating to the blend of trade credits, cash and trade discounts provided by the publications. Id., ¶ 31. This information reflects Active's proprietary purchase methodologies and formulas. Id. These documents also contain notes that indicate for approximately 180 or so different magazines how Active's buying team went about negotiating and making their buys (*i.e.*, how annual rate increases were handled, how the position of the ads

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were handled; how certain negotiating impasse points were resolved, etc.). Id., ¶ 32. Ms. Moses also obtained from the same junior employee the following information:

- The identity of each publication in which Active was going to be placing QTG advertisements.
- A breakout of the page count by brand of the pages being purchased.
- Grand page total counts by magazine.

Id., ¶ 33. Ms. Moses had no valid work-related reason to obtain the information described above. Id., ¶ 35. Indeed, Defendant's supervisor was not aware that she was obtaining these documents. Id., ¶ 36.

However, a forensic investigation of Ms. Moses' computer hard drive has revealed Ms. Moses purpose, disclosing a "smoking gun" email, which and squarely implicates both Icon and Ms. Moses in corporate sabotage. Id., ¶ 37. The e-mail, dated on or about October 3, 2005, is from Ms. Moses to Icon's president, John Kramer, shows that starting in the Spring of 2005, Icon began interviewing Ms. Moses for a position as Icon's "Quaker Expert" and requested in the interview process that Ms. Moses disclose Active's admittedly proprietary information so that Icon could use that information in a business pitch to QTG and its media agent. Specifically, Ms. Moses states in the e-mail:

> Midway during the interview process, the job description that [was] presented to me changed from "Trade Maven" to "Quaker Expert." . . . I was told to be patient, and assured that my employment was not a matter of "if" but "when." . . . I met with Ann Cole [an Icon employee], early Spring and spoke with her before her meeting with Quaker and OMD late in August. She asked me for some proprietary information which I gave her in good faith and said that she would have a better feel for the timing after that meeting.

Id., ¶ 37, Exhibit A.

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This information combined with the confidential barter terms and formulas provided Icon with a step by step "playbook" to replicate Active's media buying strategy and also undercut Active's previous arrangements with media publishers for QTG advertisements. Id., ¶ 34.

Additional evidence beyond Ms. Moses' October 3rd email further corroborates that Icon obtained confidential information from Ms. Moses for the purpose of wining the QTG contract from Active:

- Telephone records establish that throughout 2005, after she was removed from her media buying function, Ms. Moses maintained dialogue with QTG and its media agency, OMD. *See* id., ¶ 38.

- Telephone records further reveal that, during this same time period, Ms. Moses placed numerous phone calls to Icon in Stamford, Connecticut until Active discovered these calls and instructed her to cease contacting Icon in November 2005. Id.

- A review of Ms. Moses emails shows that on or about January 10, 2006, before any public announcement, Ms. Moses learned that QTG had selected Icon to replace Active as media-purchasing vendor. Id., ¶ 39.

- Shortly thereafter and before any official announcement was made by QTG, OMD, without authority from QTG, sent a notice to various publishing companies indicating that QTG had replaced Active with Icon. Id., ¶ 40.

- And on January 23, 2006 – the same day that Ms. Moses resigned from Active – Active received written notice from QTG that it had accepted a proposal from an alternative corporate barter entity and intended to use the trade credits generated from this entity to purchase its print media advertising. That entity, of course, is Icon. Id., ¶ 41.

- On the same day, an OMD employee sent Ms. Moses an e-mail, stating "Call Me!" Id., ¶ 42.

- Shortly thereafter, OMD began instructing Active to cancel its media buys that it had previously replaced for QTG so that Icon could repurchase the very same advertisements, on the ground that QTG had transferred its print buying responsibilities to Icon. Id., ¶ 43.

- Around this time, Ms. Moses commenced her position at Icon servicing its QTG account, and QTG sent a letter to media publishers informing them that it had

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transferred print buying responsibilities from Active to Icon, and referencing Ms. Moses as the contact person *for establishing Icon purchase rates and agreements*. Id., ¶¶ 23, 44.

The "smoking gun" email together with this highly suspicious chain events leave no room for any doubt that Icon was intentionally misappropriating among the most confidential of Active's information from Ms. Moses.

C. Icon Hires Ms. Moses and Assigns Her Media Buying Responsibilities for QTG

On or about January 23, 2006, Ms. Moses resigned her position at Active and joined Icon. Id., ¶ 21. Like Active, Icon offers clients trade credits in exchange for excess or underperforming assets. Icon's trade credits can be used to buy media time, advertising services, corporate travel, merchandise or other products and services through Icon. Id., ¶ 22.

Icon has hired Ms. Moses as a media buyer in the same capacity that she worked in when she was a media buyer at Active. Id., ¶¶ 23, 44. Specifically, Icon has assigned Defendant print buying responsibilities for QTG and is working on the same or similar QTG media plans for which she obtained confidential information while still an employee at Active. Id. Based upon Icon's history of competing with Active, it is clear that Icon's primary motive in hiring Ms. Moses is to utilize, to its own advantage, her knowledge of Active's confidential and proprietary information, including, but not limited to the economic terms and structure of Active's transactions relating to the QTG Account. Id., ¶ 23. Indeed, Icon has systematically raided Active's employees for the apparent purpose of gaining access to Active's confidential and proprietary information. Id., ¶ 24. In fact, Ms. Moses is the ninth employee that Icon has hired away from Active. Id. Notably, no less than three of these employees had responsibilities with respect to the QTG Account. Id.

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Moreover, during the two to three months of 2005, Active was competing with Icon for the next QTG barter transaction for 2006. The ability to lure an Active employee with intimate knowledge of Active's negotiations and arrangements with media publishers would prove to be invaluable to Icon, which had little or no experience servicing QTG's media needs. Id., ¶ 25.

There is no possible way that Ms. Moses can carry out her current media-buying function at Icon without misappropriating the confidential information regarding the QTG Account that she obtained as an Active employee. Ms. Moses has knowledge of the confidential information on barter terms that Active has reached with media publishers through negotiations and application of Active's proprietary purchase methodologies and formulas. She cannot artificially ignore this information in her head when negotiating with these same media publishers on behalf of Icon. Id., ¶ 45. Using Ms. Moses' knowledge of every last detail of Active's cash blend, profit, purchase methodology, and page distribution/allocation by title, Icon is now in a position to structure a proposal that would match or undercut Active's previous arrangement with QTG. Id., ¶ 46.

On or about January 26, 2006, Active, through its counsel, sent a cease and desist letter to Ms. Moses advising her of her obligations under the Code of Conduct and requesting that she provide confirmation by 3:00 p.m. on January 27, 2006 that she has not disclosed Active's confidential information to Icon or any other parties. Id., ¶ 47. To date, Ms. Moses has not sent the requested confirmation. Id. On January 26, 2006, Active put Icon on written notice that Ms. Moses obtained Active's proprietary and confidential information by surreptitious means and that Ms. Moses cannot perform her job at Icon without using of disclosing this information. Id., ¶ 48. Icon, however, has failed to take action to maintain the status quo and stop to and/or prevent its use of disclosure. Id. On January 27, 2006, Icon responded by stating they directed

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Moses not to use or disclose Active's confidential or proprietary information. Id., ¶ 49. However, this is an impossibility based on Ms. Moses' knowledge of this information, the position she holds at Icon and the QTG account she works on. Id., ¶¶ 45, 49.

III. ARGUMENT

A. Applicable Standard for Injunctive Relief

1. The Connecticut Uniform Trade Secrets Act

Plaintiff seeks a temporary restraining order and preliminary injunction to prevent Icon=s continuing and inevitable violations of the Connecticut Uniform Trade Secrets Act, ' 35-50 *et seq.* ("CUTSA"). CUTSA provides that "[a]ctual or threatened misappropriation [of trade secrets] may be enjoined upon application to any court of competent jurisdiction." Conn. Gen. Stat. ' 35-52(a). The standard for granting preliminary injunctive relief under CUTSA is significantly less stringent than the standard that would otherwise apply under Fed. R. Civ. P. 65. There is a presumption that the loss of trade secrets causes irreparable injury. Mec-Gar.S.R.L. v. Hard, No. CV020077396S, 2002 WL 31440778, at *7 (Conn. Super. Ct. Oct. 2, 2002) (noting that "[a] trade secret once lost is, of course, lost forever") (citation omitted). A party seeking an injunction to preserve the security of trade secrets is - not required to allege and prove "the absence of an adequate remedy at law." Avery Dennison Corp. v. Finkle, CV010757706, 2002 WL 241284, at *3, n. 12 (Conn. Super. Ct. Feb. 1,2002) ("the finding by the court of actual or threatened misappropriation of trade secrets pursuant to statute, should be grounds for granting the relief requested under the statute."); *see also* LCD Lighting. Inc.. v. Voltarc Inc., No. CV020462839, 2003 WL 1848051, at * 12 (Conn. Super. Ct. March 24,2003)("enactment of the statute by implication

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assumes that no adequate alternative remedy exists and that injury was irreparable. . .") (citation omitted).

Thus, the moving party need only establish a likelihood of success on its claim that: (1) it has trade secret; and (2) there is an actual or threatened misappropriation of that trade secret.

2. The Connecticut Unfair Trade Practices Act

Plaintiff also seeks a temporary restraining order and preliminary injunction under the Connecticut Unfair Trade Practices Act, ' 42-110 et seq. ("CUTPA"). CUTPA grants the court discretion to award injunctive relief to "[a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a method, act or practice prohibited by section 42-110b . . . ." Conn. Gen. St. ' 42-110g(a). Section 42-110b(a) prohibits “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” As with CUTSA, the standard for granting a preliminary injunction under CUTPA is far less rigorous than under Fed. R. Civ. P. 65. The plaintiff need show only show that it is likely to prevail on its claim that it has (1) suffered ascertainable loss and (2) that the loss was a consequence of defendant's unfair methods of competition or unfair deceptive acts or practices. *See,* Jacques All Traders Corp. v. Brown, 57Conn. App. 189, 197, 752 A.2d 1098, 1103 (2000) ("if a court determines that a practice is unfair or deceptive [under CUTPA], it may, in its discretion, order. . . injunctive. . . relief').

B. A Preliminary Injunction Is Necessary to Preserve Active’s Trade Secrets

Section 35-51(b) of CUTSA defines "misappropriation" as:

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> (1) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or (2) disclosure or use of a trade secret of another without express or implied consent by a person who (A) used improper means to acquire knowledge of the trade secret; or (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was (i) derived from or through a person who had utilized improper means to acquire it; (ii) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use . . . ; or (iii) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.

Conn. Gen. Stat. ' 35-51(b). Here, as described below, Active's details of trade and cross purchase transactions, cash/trade negotiations, trade discounts, rates, blends and profits for each publication in QTG's print media plan and Active's buyer work sheets and summary charts (collectively "Account Information") constitute "trade secrets," and Icon, through Moses, has misappropriated and used those trade secrets and will continue to do so unless preliminarily enjoined.

1. Active's Account Information Is A Trade Secret

Under CUTSA, "trade secret" means:

> information, including a formula, pattern, compilation, program, device, method, technique, process, drawing, cost data or customer list, . . . that: (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Conn. Gen. Stat. ' 35-51(d); *see also* Robert S. Weiss & Assocs.. Inc. v. Wiederlight, 208 Conn.525, 538, 546 A.2d 216, 223-24 (1988) (defining "trade secret" as a "formula, pattern, device or compilation of information which is used in one's business, which gives him an opportunity to obtain an advantage over competitors who do not know or use it") (citations omitted).

a. The Account Information Affords Active a Competitive Advantage

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Vigorous competition clearly exists in the print trade media business between Active and Icon. Active's Account Information is based on a foundation of unique insights and negotiations that Active has gained over the last 20 years. Otras Aff., ¶ 18. Active has spent many years and millions of dollars creating the Account Information, and that information is impossible to duplicate by competitors unwilling to devote comparable time and expense to the necessary research effort and to negotiations with print publications. Id. Moreover, even if competitors were to make the required effort, there is no guarantee that they would ever achieve the insights and negotiations necessary to make the effort a success. Id. Active's Account Information forms the basis of Active's success in the print and trade media business. Id. Year after year, Active's use of the Account Information in negotiations has resulted in rates of return that exceed those of the industry. Id. Based on those results, Active has been able to attract and retain clients, resulting in impressive growth. Id.

Indeed, the lengths to which Icon has gone to obtain Active's confidential information, described herein, the fact that Icon sought to obtain that information for its "pitch" meeting with the QTG account, and that, having obtained this information, Icon was suddenly able to win the account away from Active, provides compelling evidence that this information created, and continues to create, a competitive advantage to the holder of the information.

b. Active Zealously Guards the Secrecy of Account Information

In determining whether an employer has made reasonable efforts to maintain the secrecy of the information at issue, the courts look to the following factors: "(1) the extent to which the information is known outside the business; (2) the extent to which it is known by

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employees and others involved in the business; (3) the extent of the measures taken by the employer to guard the secrecy of the information; (4) the value of the information to the employer and his competitors; (5) the amount of effort or money expended by the employer in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others." Town & Country House & Home Serv. Inc. v. Evans, 150 Conn. 314, 319, 189 A.2d 390, 393 (1963) (citation omitted); *see also,* AveryDennison Corp., No. CV010757706, 2002 WL 241284, at *3 (Conn. Super. Ct. Feb. 1,2002) (an employer's requirement that employees (1) sign agreements to protect, (2) keep logs of the products they work on, and (3) sign a "check-out form" when they leave employment proves a reasonable effort at security); LCD Lighting. Inc. v. Voltarc. Inc., No. CV020462839, 2003 WL184805, at *7 (Conn. Super. Ct. March 24, 2003) (an employer who restricted access made reasonable efforts to protect security). However, it is not necessary that only one person in a company have exclusive possession of special information for that information to constitute a trade secret. Rather, it need only be shown that "a substantial element of secrecy . . . exist[s]." Town & Country House & Home Serv, 150Conn. at 319, 189 A.2d at 393.

Here, Active has carefully guarded the confidentiality of its Account Information. For example, Active restricts access to this information to specific employees with only a need to know. Furthermore, its computer systems are protected by multiple layers of security that includes specific passwords, specific user access control and auditing. Otras Aff., ¶¶ 10-12. Ms. Moses was one of a limited number of select employees who garnered enough trust to obtain access to Actives trade secrets while working on the QTG account. Id., ¶ 18. As a further precaution to maintain the secrecy of its Account Information, Active has required all

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employees, including Ms. Moses, to sign agreements containing confidentiality covenants. Id., ¶¶ 15-16; *See*, Wese1ey Software Dev. Corp. v. Burdette, 977 F. Supp 137, 146 (D. Conn. 1997).

All the other factors to be examined by the court support a finding of "trade secrets" protection here. The Account Information value is confirmed by its success in consistently yielding rates and returns that exceed the industry. Those returns have garnered Active substantial growth and high customer rankings. Otras Aff., ¶ 18. In addition, Active's Account Information was not created overnight, but represents the culmination of many years of effort and negotiations by Active employees. Id. It also would be extremely difficult for anyone else to recreate Active's Account Information. Indeed, even if a competitor were willing to devote the required time and investment associated with such an effort, there would be no guarantee of success – Active's unique insights might well never be obtained. Id. In sum, Active has amply demonstrated that its Account Information is a trade secret.

2. Icon Has Misappropriated Active's Trade Secrets and Will Continue to Do So Unless Enjoined

There is direct evidence in this case that Icon actually and knowingly misappropriated Active's trade secret information - namely Ms. Moses' October 3rd e-mail to Icon. Moreover, Icon fully intended to, and will continue to, use Active's Account Information in its performance of the QTG contract. As stated in the e-mail, Icon interviewed, and hired, Ms. Moses for the specific purpose of using her as a "Quaker expert" when it obtained the anticipated QTG account. Ostras Aff., ¶ 37. Ms. Moses' "expertise" regarding Quaker is exclusively the result of the Account Information she gained while

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working at Active. Id., ¶¶ 17-18. Despite its protestations to the contrary, now that Icon has obtained the QTG Account, it intends to make full use of this "expertise," having assigned Ms. Moses as its senior level media buyer on that QTG account, to negotiate rates, discounts, pages and trades for Icon. Id., ¶ 23. Ms. Moses plainly cannot perform these tasks without using the Account Information she garnered from the same QTG account at Active and from Account Information that she surreptitiously and improperly gathered while she was at Active. Id, ¶¶ 23, 45, 46. It is impossible for Moses to disregard this Account Information while conducting the same negations for Icon and Icon is acutely aware of what Ms. Moses knows –and which she will inevitably use at Icon. Id..

Even if Moses and Icon had the best of intentions (and Moses' concealment of her new job from Active and the surreptitious gathering of Account Information shows that she does not), it is well-established that a preliminary injunction should issue to prevent an actual or threatened disclosure of trade secrets. See ' ' 355l(d), 35-52; Weseley Software Dev. Corp., 977 F. Supp. at 147 (violation found when harm to the employer could not be avoided even by an employee's "scrupulous efforts to avoid disclosure") (citation omitted); Avery Dennison Corp., 2002 WL 241284, at *2 n. 6 (invoking the inevitable disclosure doctrine and noting that Connecticut law forbids both "[a]ctual and threatened misappropriation") (citation omitted).

The district court's ruling in Branson Ultrasonics Corp. v. Stratman, 921 F. Supp.909 (D. Conn. 1996), is particularly instructive here. In Branson, the defendant, Stratman, had been employed as an engineer by the plaintiff, Branson Ultrasonic Corp. ("Branson"). Branson engineered products that used high energy vibration to produce heat and create welds to join plastics and other materials. Branson hired Stratman to develop computerized

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controls for a new line of joining equipment known as the 1000 series. Branson's offer of employment letter emphasized that Stratman would be working with trade secrets and highly confidential information and that release of that information to competitors would cause irreparable injury to Branson. In addition, Stratman was required to sign a confidentiality agreement. After two years, Stratman left Branson to work for a competitor, Dukane. At Dukane, Stratman was not involved with plastics, but instead was responsible for developing Dukane's metal welding products. The court, however, found that "[t]he Dukane equipment. . .in metal welding is substantially similar to the [Branson] equipment that is used to join plastics." Id. at 912. The court accordingly enjoined Stratman from working at Dukane even though Stratman was instructed by his supervisor not to have any direct contact with Dukane's engineers.

In issuing its injunction, the court in Branson recognized that:

> In the course of his new employment at Dukane, opportunities will arise for Stratman to use and disclose confidential information he gained while at Branson. His familiarity with the controls of the 1000 series will enable him to evaluate and compare the relative strengths and weaknesses of the controls made by Dukane . . . [additionally, Branson would have] opportunities to use and disclose Branson's trade secrets and confidential information. Stratman's use and disclosure of this information might well be unintentional. Nevertheless, it is likely, if not inevitable, that such use and disclosure will occur.

Id. at 912-13. Here, like the situation in Branson, Active required Ms. Moses to agree to not to disclose or communicate any matters concerning Active's business. Ms. Moses accessed Active's confidential Account Information even after she was taken off the QTG account, though by surreptitious means for the entire period of time she was off the account. During this same period, Moses repeatedly contacted Icon and coincidentally left her job at Active on the same day this account was lost to Icon. Even more so than in Branson, it is inevitable

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that Moses will divulge and use Active's trade secrets concerning the Account Information in managing the same or similar position on the QTG account at Icon. An injunction is required here, as in Branson, to prevent that result.

IV. CONCLUSION

For the reasons set forth above, Active respectfully requests that the Court (A) enjoin Icon from: 1) obtaining, using or disclosing any portion of Active's trade secrets; 2) employing Ms. Moses in any capacity; 3) performing on the QTG account; and 4) using or disclosing information obtained directly or indirectly from Active's trade secrets; (B) order Icon to immediately turn over to the Plaintiff any and all documents or information in any tangible form in its possession, custody, or control, which contain trade secrets or confidential information of Active; (C) authorize discovery on an expedited basis; and (D) enjoin Icon from taking any action to destroy or otherwise remove any evidence relevant to this lawsuit, including any documentation of any communication between Icon and any current or former Active employee, including Ms. Moses.

Plaintiff,

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