

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
BUSINESS LITIGATION SESSION

NEWS AMERICA MARKETING IN-
STORE, LLC,

Plaintiff,

v

ROBERT FIREMAN and ANN RAIDER,

Defendants.

Civil Action No.

RECORDED
INDEXED
FILED
2021 MAR 29 11:23
CLERK OF SUPERIOR COURT
SUFFOLK COUNTY
MASSACHUSETTS

VERIFIED COMPLAINT

News America Marketing In-Store, LLC (formerly known as News America Marketing In-Store, Inc.) ("News America"), by and through its counsel, for its complaint against defendants Robert Fireman ("Fireman") and Ann Raider ("Raider") states as follows:

Introduction

1 News America brings this action to enforce the nondisclosure provisions of the employment agreements of Fireman and Raider.

Parties

2 Plaintiff News America is a Delaware limited liability company with its principal place of business at 1211 Avenue of the Americas, New York, New York. News America has a local office at the John Hancock Building, 200 Clarendon Street, 60th Floor, Boston, Massachusetts.

3 Fireman is an individual who resides at 241 Perkins Street, No. D-104, Jamaica Plain, Massachusetts. Fireman was employed as the General Manager of News America's Smart Source Direct ("SSD") division.

4 Raider is an individual who resides at 46 Ivy Road, Wellesley, Massachusetts. Raider was employed as the Senior Vice President of Sales and Marketing of News America's SSD division.

Statement of Facts

News America

5. News America is a national marketing services company. Its customers are large retailers (such as grocery store chains) and consumer packaged goods manufacturers.

6. As part of its business, News America develops overall marketing strategies for prospective and current customers; establishes and maintains strategic business relationships; and implements such strategies through the sale of marketing products such as free standing inserts in newspapers, coupon dispensers on store shelves, and other forms of in-store marketing to customers.

News America Hires Fireman and Raider

7. On August 13, 1999, News America entered into a stock purchase agreement of Consumer Card Marketing, Inc. ("CCMI"). CCMI specialized in developing consumer loyalty programs for supermarket chains, drug chains, and specialty retail chains. CCMI was founded by Fireman and Raider. Fireman and Raider sold all their stock in CCMI to News America in connection with the stock purchase agreement.

8. In connection with the acquisition of CCMI, on August 13, 1999, News America agreed to employ Fireman and Raider as senior executives for an initial period of five years.

9. On August 13, 1999, News America and Fireman entered into an employment agreement ("Fireman Employment Agreement"). A true and accurate copy of the Fireman Employment Agreement is attached at Exhibit A.

10 Paragraph 7(b) of the Fireman Employment Agreement states, in relevant part, that "[y]ou shall keep in confidence and shall not use for yourself or others, or divulge to others, any information concerning the business not publicly available and which is obtained by you as a result of your employment, including but not limited to, trade secrets or processes and information deemed by the Company to be proprietary in nature, unless disclosure is permitted by the Company or required by law."

11 On August 13, 1999, Raider and News America entered into an employment agreement ("Raider Employment Agreement"). A true and accurate copy of the Raider Employment Agreement is attached at Exhibit B

12 Paragraph 7(b) of the Raider Employment Agreement states, in relevant part, that "[y]ou shall keep in confidence and shall not use for yourself or others, or divulge to others, any information concerning the business not publicly available and which is obtained by you as a result of your employment, including but not limited to, trade secrets or processes and information deemed by the Company to be proprietary in nature, unless disclosure is permitted by the Company or required by law "

13 In April 2004, Raider and News America entered into an Amendment to Employment Agreement, which amended the Raider Employment Agreement. A true and accurate copy of the Amendment to Raider Employment Agreement is attached at Exhibit C. The Amendment to Raider's Employment Agreement did not change or otherwise modify Raider's nondisclosure obligations.

14 The Fireman Employment Agreement and Raider Employment Agreement expressly incorporate by reference News Corporation's Standards of Business Conduct, a true copy of which is appended as Exhibit D. News Corporation is the ultimate parent company of

News America. The Standards of Business Conduct is a manual that by its terms applies to each and every employee of any News Corporation affiliated company, including News America.

("The Company intends that the spirit, as well as the letter of, these Standards of Business Conduct shall be followed by every employee.")

15 The Standards of Business Conduct state, in relevant part, as follows. "The Company's employees are responsible for protecting the Company's confidential and proprietary information. No employee shall disclose confidential or proprietary information to a third-party without proper authorization or use such information for his or her own personal benefit, or in any manner inconsistent with the Company's interest. Confidential information includes, without limitation, information or data relating to the Company's planning, business strategy, projects, existing or potential customers, competitors or suppliers, financial results or operations, or any other information that is not generally known to the public. This prohibition also applies to the confidential information of the Company's customers, suppliers and other parties with whom the Company does business." *Id.* Section II.C.

16 News America compensated Fireman and Raider generously.

17 During the last two full years of their respective employment agreements, Fireman and Raider were each paid approximately \$200,000 in compensation, including salary, bonus and car allowance.

News America's Confidential Information

18 Fireman's and Raider's responsibilities included the sales and marketing of SSD products to national retailers and consumer product manufacturers.

19 During the course of their employment, Fireman and Raider were entrusted with confidential information.

20 This confidential information included business and financial methods and practices, marketing strategies, pricing, operating margins, selling techniques and sales information, customer lists, and details of customer agreements.

21 This confidential information is generally not available to the public

22 This confidential information derives independent economic value because it is not publicly available or ascertainable through proper means to competitors

23 Fireman and Raider both served on the Executive Committee of SSD.

24 As members of the SSD Executive Committee, Fireman and Raider had access to sensitive and confidential information of News America.

25 News America took care to protect its confidential information.

26 News America required Fireman, Raider, and other key employees to sign employment agreements in which they promised not to disclose confidential information

27 All employees are required to sign the Standards of Business Conduct.

28 Computers and other electronic devices (e.g., Blackberries) are password protected

29 Access to News America's offices, records, and databases is restricted

Fireman's Employment and Raider's Employment End

30 On September 30, 2004, Fireman's employment agreement with News America ended

31 On April 8, 2005, Raider voluntarily terminated her employment with News America.

32 The Fireman Employment Agreement and Raider Employment Agreement, by their terms, provide that the obligation not to disclose confidential information survives termination of employment. Agreements, ¶7 (d);

33 The non-disclosure provisions set forth in the Fireman Employment Agreement and Raider Employment Agreement are not limited in duration.

Disclosure of News America's Confidential Information

34 News America is engaged in two pending litigation matters that are relevant to the allegations in this case. In 2004, Floorgraphics, Inc., an in-store retail advertiser and competitor of News America, filed a lawsuit against News America in the United States District Court for the District of New Jersey (*Floorgraphics, Inc. v News America Marketing In-Store Services, Inc.*, C.A. No. 04-CV-3500, United States District Court for the District of New Jersey). In August 2005, Fireman and Raider filed a lawsuit in Massachusetts Superior Court against News America. That suit was subsequently removed to the United States District Court for the District of Massachusetts (*Fireman et al. v News America Marketing In-Store, Inc.*, C.A. No. 05-CV-11740-MLW, United States District Court for the District of Massachusetts) (the "earn out litigation")

35 On Thursday, May 24, 2007, Fireman provided deposition testimony in the earn out litigation.

36 Fireman testified, among other things, that approximately four or five months ago, he spoke with representatives of Floorgraphics

37 The Floorgraphics representatives informed him that Floorgraphics was in litigation against News America.

38 They asked Fireman to speak with one of their attorneys

39 Fireman, who had already initiated a lawsuit against News America, said he "would be happy to" do so. See Depo Tr., at p. 18, Exhibit E, hereto

40 Fireman subsequently met with Floorgraphics' counsel, Attorney William Isaacson, about three to four months ago. *Id.* at p. 22.

41 Attorney Isaacson is a partner at the law firm, Boies, Schiller & Flexner. See Exhibit F, hereto

42 Raider accompanied Fireman to the meeting. *Id.* at p. 12

43 The meeting took place at the Newton Marriott. *Id.*

44 At the meeting, Fireman said that it would be good if “we could share some information” and “help each other.” *Id.* at p. 13.

45 Fireman testified that he proceeded to disclose to Attorney Isaacson non-public information concerning News America’s business

46 The discussion focused on non-public negotiations with Ahold (an international supermarket company and owner of the Stop & Shop chain), and Safeway Stores, another large retail grocery chain.

47 Both Ahold and Safeway are customers of News America.

48 Fireman testified that he told Attorney Isaacson of at least one meeting he had with Safeway while employed by News America, and of a situation where News America was considering a business project with Ahold.

49 With respect to the meeting with Safeway, Fireman discussed SSD’s purpose in the Safeway meeting as “getting the Floorgraphics business [with Safeway] back” to SSD. *Id.* at p. 18-19.

50 Fireman testified that he told Attorney Isaacson “everything he knew about the Ahold and Safeway situation.” *Id.* at p. 23.

51 “I gave him a general sense of . . . the situation that [SSD] had between Ahold and Safeway,” said Fireman at his deposition. *Id.* at p. 22

52. According to Fireman, this "situation" was that SSD gave up business from Ahold in order to obtain other business from Safeway. *Id.* at p. 9.

53. Fireman further testified that he proceeded to explain to Attorney Isaacson his current litigation against News America to see if there was anything Attorney Isaacson could add to help him.

54. Fireman testified that Attorney Isaacson stated that he might have evidence of unspecified "bad conduct" by News America, which he might share with Fireman. *Id.* at p. 20

55. The meeting among Fireman, Raider, and Attorney Isaacson lasted approximately 45 minutes. *Id.* at p. 11.

56. On information and belief, during the course of the Newton Marriott meeting, Fireman and Raider disclosed other non-public information concerning News America to Attorney Isaacson.

57. Prior to his deposition testimony, News America had no knowledge whatsoever that Fireman and Raider were breaching their confidentiality obligations to News America.

58. No one from News America gave Fireman or Raider permission to disclose nonpublic information to anyone outside of News America

59. On May 25, 2007, the day after the deposition, counsel for News America informed counsel for Fireman and Raider that News America intended to seek immediate injunctive relief to enforce Fireman's and Raider's nondisclosure obligations (so as to prevent additional wrongful disclosures in the future) and requested that Fireman and Raider agree to a consent order regarding their employment agreements' nondisclosure obligations. Fireman and Raider have rejected News America's request

Count I
(Breach of Contract Against Fireman)

60 News America realleges and incorporates by reference its allegations in paragraphs 1 through 59 above.

61 The Fireman Employment Agreement is a valid and binding contract

62 Fireman has breached and continues to breach his obligations to News America by using and disclosing News America's confidential information, including through his disclosure of confidential information to Floorgraphics

63 Fireman's breach of the Fireman Employment Agreement presents an immediate threat of irreparable harm to News America

64 Fireman's breach of the Fireman Employment Agreement has also caused News America damages in an amount to be determined at trial.

Count II
(Breach of Contract Against Raider)

65 News America realleges and incorporates by reference its allegations in paragraphs 1 through 64 above.

66 The Raider Employment Agreement is a valid and binding contract.

67 Upon information and belief, Raider has breached and continues to breach her obligations to News America by using and disclosing News America's confidential information, including through her disclosure of confidential information to Floorgraphics

68 Raider's breach of the Raider Employment Agreement presents an immediate threat of irreparable harm to News America

69 Raider's breach of the Raider Employment Agreement has also caused News America damages in an amount to be determined at trial.

Count III
(Misappropriation of Confidential Information
and Trade Secrets Against Fireman and Raider)

70 News America realleges and incorporates by reference its allegations in paragraphs 1 through 69 above.

71 Fireman and Raider were entrusted with and had access to News America's confidential information.

72 News America took precautionary measures to prevent the disclosure of News America's confidential information.

73 Fireman intentionally and without the knowledge or consent of News America appropriated confidential information and disclosed that information in an attempt to gain an advantage in a litigation matter

74 Upon information and belief, Raider intentionally and without the knowledge or consent of News America appropriated confidential information and disclosed that information in an attempt to gain an advantage in a litigation matter

75 Fireman and Raider have disclosed and will continue to disclose News America's confidential information.

76 News America has suffered, and will continue to suffer, damages as a result of the misappropriation of its confidential information

RELIEF

WHEREFORE, plaintiff News America respectfully requests that the Court grant it the following relief:

1 Schedule hearings on News America's Motion for a Temporary Restraining Order and Preliminary Injunction;

2. Issue a temporary, preliminary, and permanent judgment and order (a) enjoining Fireman and Raider, and all persons acting in concert with him, her, or them, from using, disclosing, or profiting from any confidential information and documents of News America to anyone, including, but not limited to, Floorgraphics or its representatives (including counsel for Floorgraphics); and (b) directing Fireman and Raider to return to News America any and all documents, software, and things obtained during their employment with News America (and all copies thereof), including without limitation, any and all customer files or compilations of customer-related information.

3. Award News America its damages, attorneys' fees, costs, and interest; and

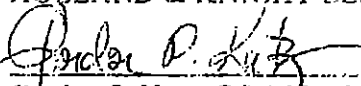
4. Award such other relief as may be just and proper.

Respectfully submitted,

NEWS AMERICA MARKETING
IN-STORE, LLC,

By its attorneys,

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... for all parties in this case on
5/30/07 