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MERCER COUNTY
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DICK'S SPORTING GOODS, INC.,
Plaintiff,

vs.

MITCHELL MODELL and MODELL'S
SPORTING GOODS, INC.,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY
DOCKET NO. MER-L- 362-14

Civil Action

**COMPLAINT, JURY DEMAND,
DESIGNATION OF TRIAL
COUNSEL AND RULE 4:5-1
CERTIFICATION**

Plaintiff, Dick's Sporting Goods, Inc., by way of Complaint against the defendants, says:

The Parties

1. Plaintiff Dick's Sporting Goods, Inc. is a Delaware corporation with its principal place of business in Coraopolis, Pennsylvania.
2. Upon information and belief, defendant Mitchell Modell is a citizen of the State of New York.
3. Upon information and belief, defendant Modell's Sporting Goods, Inc. is a citizen of the State of New York.

4. At all times relevant to this Complaint, defendant Mitchell Modell was employed as the President and Chief Executive Officer of defendant Modell's Sporting Goods, Inc., and was acting to further the interests of his employer.

5. This Court has personal jurisdiction over the defendants as their conduct, as described in detail herein, included both defendant Mitchell Modell's physical presence and active participation in a scheme to trespass on the premises of the Dick's Sporting Goods store in Princeton, New Jersey (hereinafter "the Princeton Store"), and to fraudulently obtain non-public and/or proprietary information therein in order to further the business interests of defendant Modell's Sporting Goods, Inc. in New Jersey and elsewhere.

Facts Common To All Counts

6. At all times relevant to this Complaint, Dick's Sporting Goods, Inc. has owned and operated the largest and most profitable chain of sporting goods stores in the United States.

7. The success of Dick's Sporting Goods is largely due to the specific and proprietary operations and processes that the company has implemented at each of the more than 550 stores it operates in the United States. Such operations and processes include: the monitoring of key customer metrics and profitability drivers; the frequent monitoring of, and adjustments to, the types and quantities of inventory maintained at each Dick's store; and the implementation and execution of various omni-channel initiatives such as its "Ship from Store" online fulfillment method.

8. Dick's Sporting Goods, Inc. has gone to great lengths to prevent competitors from obtaining non-public information concerning its operations and processes, including: the handling of inventory; the planned pricing and quantity of inventory in each store; key store-level metrics and other areas of focus such as overall customer satisfaction scores, the marketing

of its private label credit card program and add-on sales such as warranty programs; and the specific manner in which Dick's executes at the store level on its omni-channel initiatives such as "Ship from Store" fulfillment.

9. Due to the success of Dick's Sporting Goods, Inc. in protecting its proprietary information from disclosure to competing sporting goods chain stores, Dick's has built an unrivaled store experience, transformed itself into a leading omni-channel retailer and continued to distance itself from its competitors.

10. Upon information and belief, defendant Modell's Sporting Goods, Inc. is one of the secondary competitors in the sporting goods retail industry.

11. Upon information and belief, defendant Modell's Sporting Goods, Inc. operates approximately 150 sporting goods primarily in the northeastern and mid-Atlantic regions of the country. A substantial majority of those stores are in the same trade areas with Dick's Sporting Goods stores and are thus in direct competition with Dick's Sporting Goods.

12. At all times relevant to this Complaint, the chief executive officer of Modell's Sporting Goods, Inc. was Mitchell Modell. Upon information and belief, Mitchell Modell has worked in the Modell's business for approximately 36 years.

13. Upon information and belief, in or about February 2014, defendant Mitchell Modell and at least one other individual devised a plan to trespass upon and to wrongfully acquire non-public and/or proprietary information concerning Dick's Sporting Goods' operations and processes.

14. Carrying out his plan, on February 8, 2014, defendant Mitchell Modell and an unidentified woman entered the Dick's Sporting Goods store located in Princeton, New Jersey.

15. Upon being approached by the sales support manager in the store, defendant falsely identified himself using the first name “Joseph” and garbled a last name. Furthermore, he misrepresented himself to the manager as a Senior Vice President of Dick’s Sporting Goods. Defendant Modell has never been employed by Dick’s Sporting Goods.

16. In addition to falsely identifying himself, defendant Modell falsely asserted that he and the woman were at the store to keep an appointment with Edward Stack, the Chairman and Chief Executive Officer of Dick’s Sporting Goods. Defendant Modell further falsely asserted that he was awaiting the arrival of Mr. Stack, who was allegedly supposed to arrive at that store “a half hour ago.”

17. Having lied about the reason for his presence at the Princeton Store, defendant Modell sought to obtain non-public and/or proprietary information from the sales support manager about the store’s operation and processes and to gain access to the private area in the rear of the store where various proprietary information and activities are stored or conducted.

18. While walking with the sales support manager to the rear of the store and impersonating a Senior Vice President of Dick’s Sporting Goods, defendant Modell obtained information concerning certain key metrics on which store management focuses, such as overall customer satisfaction, marketing of the Dick’s Sporting Goods private label credit card and add-on sales such as warranty plans.

19. Defendant Modell further used his false identity to obtain general information concerning “opportunities” in the Princeton Store.

20. Additionally, defendant Modell used his false identity to obtain general information concerning Dick’s Sporting Goods’ “ship from store” program. While the fact that

Dick's is utilizing ship from store as a method for online fulfillment is public, the details of how Dick's has implemented and executed on this program is confidential and highly proprietary.

21. Finally, by falsely identifying himself to the sales support manager as a senior official of Dick's Sporting Goods, defendant Modell was able to gain access to the non-public area of the Princeton Store where certain specific items of inventory are maintained and where the store in part executes on its ship from store program. In doing so, defendant Modell was able to learn confidential information concerning certain sales and inventory practices at the Princeton Store, including a more accurate sense of the store's current inventory position. Inventory management is another essential and proprietary aspect of Dick's success over the years.

22. Upon information and belief, defendant Modell intended, and still intends, to misuse the information he fraudulently obtained from the Princeton Store to further the operations and processes of defendant Modell's Sporting Goods, Inc.

23. As he was in the process of exiting the non-public area of the Princeton Store, defendant Modell advised the sales support manager that he would return to the store.

24. Upon information and belief, defendant Modell, having improperly gained access to the non-public area of the Princeton Store, if not permanently enjoined by a court of law from doing so, will repeat his improper conduct by attempting to enter, and entering, other Dick's Sporting Goods stores for the improper purpose of acquiring non-public and/or proprietary information concerning the operations and processes of Dick's Sporting Goods.

25. Upon information and belief, defendant Modell, having improperly gained access to the non-public area of the Princeton Store, if not permanently enjoined by a court of law from doing so, will utilize Dick's Sporting Goods' non-public and/or proprietary information for the

improper purpose of promoting the business of defendant Modell's Sporting Goods and unfairly competing with Dick's Sporting Goods.

COUNT I
(Civil Conspiracy)

25. Plaintiff Dick's Sporting Goods, Inc. repeats and realleges the allegations contained in Paragraphs 1 through 24 of the Complaint as if the same were set forth at length herein.

26. Upon information and belief, defendants Mitchell Modell and Modell's Sporting Goods, Inc. did knowingly and willfully combine, conspire, confederate and agree with an unidentified woman to trespass onto the premises of the Princeton Store for the purpose of obtaining and converting to their use, non-public information belonging to Dick's Sporting Goods, Inc.

27. In furtherance of said conspiracy, defendant Mitchell Modell did travel to the Princeton Store on February 8, 2014, did falsely identify himself, did fraudulently claim to be an official of Dick's Sporting Goods, did fraudulently gain access to the non-public area of the Princeton Store and did fraudulently acquire non-public and/or proprietary information concerning the operations and processes of Dick's Sporting Goods in general, and the Princeton Store in particular.

28. As a direct and proximate result of defendant Mitchell Modell's wrongful actions, plaintiff has suffered, and will suffer in the future, both economic and non-economic damages.

WHEREFORE, plaintiff seeks judgment in its favor for the following relief:

1. Compensatory damages;
2. Punitive damages;
3. Injunctive relief;

4. Attorneys' fees;
5. An accounting for all information acquired by the defendant; and
6. Such other relief as the Court may deem proper.

COUNT II
(Trespass)

29. Plaintiff Dick's Sporting Goods, Inc. repeats and realleges the allegations contained in Paragraphs 1 through 28 of the Complaint as if the same were set forth at length herein.

30. On or about February 8, 2014, defendant Mitchell Modell did trespass upon, and gain access to, the non-public premises of the Princeton Store through fraud, including by falsely identifying himself and by fraudulently claiming that he was there to conduct a store inspection with the Chairman and Chief Executive Officer of Dick's Sporting Goods.

31. Defendant Mitchell Modell's wrongful actions enabled him to obtain and to convert to his and defendant Modell's Sporting Goods, Inc.'s use non-public and/or proprietary information belonging to Dick's Sporting Goods, Inc.

32. As a direct and proximate result of defendant Mitchell Modell's wrongful actions, plaintiff has suffered, and will suffer in the future, both economic and non-economic damages.

WHEREFORE, plaintiff seeks judgment in its favor for the following relief:

1. Compensatory damages;
2. Punitive damages;
3. Injunctive relief;
4. Attorneys' fees;
5. An accounting for all information acquired by the defendant; and
6. Such other relief as the Court may deem proper.

COUNT III
(Unjust Enrichment)

33. Plaintiff Dick's Sporting Goods, Inc. repeats and realleges the allegations contained in Paragraphs 1 through 32 of the Complaint as if the same were set forth at length herein.

34. Defendant Mitchell Modell's actions on February 8, 2014 resulted in him and defendant Modell's Sporting Goods, Inc. being unjustly enriched.

35. As a direct and proximate result of the wrongful actions of defendants Mitchell Modell and Modell's Sporting Goods, Inc., plaintiff has suffered, and will suffer in the future, both economic and non-economic damages.

WHEREFORE, plaintiff seeks judgment in its favor for the following relief:

1. Compensatory damages;
2. Punitive damages;
3. Injunctive relief;
4. Attorneys' fees;
5. An accounting for all information acquired by the defendant; and
6. Such other relief as the Court may deem proper.

COUNT IV
(Injunctive Relief)

36. Plaintiff Dick's Sporting Goods, Inc. repeats and realleges the allegations contained in Paragraphs 1 through 35 of the Complaint as if the same were set forth at length herein.

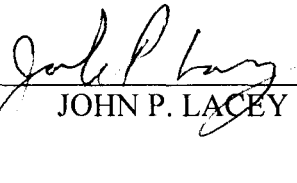
37. On February 8, 2014, defendant Mitchell Modell stated that he planned to return to the Princeton Store.

WHEREFORE, plaintiff seeks the following relief:

1. An injunction permanently prohibiting the defendants and their agents from entering the non-public area of the Princeton Store;
2. An injunction permanently prohibiting the defendants from using any non-public or proprietary information they obtained from the Princeton Store on February 8, 2014; and
3. An injunction permanently prohibiting the defendants and their agents from entering the non-public area of any other Dick's Sporting Goods store, or from posing as a Dick's Sporting Goods employee.

CONNELL FOLEY LLP
Attorneys for Plaintiff
Dick's Sporting Goods, Inc.

Dated: February 20, 2014

By 
JOHN P. LACEY

JURY DEMAND

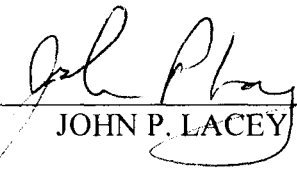
Plaintiff Dick's Sporting Goods, Inc. demands a trial by jury as to all issues herein.

DESIGNATION OF TRIAL COUNSEL

Plaintiff Dick's Sporting Goods, Inc. designates John P. Lacey, Esq., and Connell Foley LLP as his trial counsel pursuant to R. 4:25-4.

CONNELL FOLEY LLP
Attorneys for Plaintiff
Dick's Sporting Goods, Inc.

Dated: February 20, 2014


By 
JOHN P. LACEY

RULE 4:5-1 CERTIFICATION

Pursuant to Rule 4:5-1, Plaintiff hereby certifies that to the best of Plaintiff's knowledge, there are no other actions pending or contemplated in any court or other proceeding regarding the subject matter of the controversy herein.

CONNELL FOLEY LLP
Attorneys for Plaintiff
Dick's Sporting Goods, Inc.

By



JOHN P. LACEY

Dated: February 20, 2014