

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

DELTEK, INC.,)
)
 Plaintiff,)
)
 v.) No. 1:09cv330 (AJT/JFA)
)
 IUVO SYSTEMS, INC., *et al.*,)
)
 Defendants.)
_____)

ORDER

This matter is before the Court on Plaintiff Deltek, Inc.'s Motion for Summary Judgment (Doc. No. 76) and on Defendants' Motion for Summary Judgment (Doc. No. 85). A hearing was held on these motions on November 13, 2009, following which this Court took those motions under advisement. Upon consideration of the motions, it is hereby

ORDERED that Plaintiff Deltek, Inc.'s Motion for Summary Judgment (Doc. No.76) be, and the same hereby is, DENIED. The Court finds, based on the record before the Court, that there are genuine issues of material fact that preclude summary judgment in plaintiffs' favor on each of the claims that is the subject of plaintiff's motion; it is further

ORDERED that Defendants' Motion for Summary Judgment (Doc. No. 85) be, and the same hereby is, GRANTED IN PART and DENIED IN PART as follows:

1. Defendants' Motion for Summary Judgment as to Counts I (infringement of federal registered trademark under 15 U.S.C. §1114 and Lanham Act §32), II (federal unfair competition under 15 U.S.C. §1125(a) and Lanham Act §43(a)), III (common law trademark infringement and unfair competition) and IV (cyber squatting under 15 U.S.C. §1125(d)) be, and the same hereby is, DENIED;

2. Defendants' Motion for Summary Judgment as to Counts IX (tortious interference with business relations and prospective business expectancy), X (breach of fiduciary duty), XII (statutory civil conspiracy), XIII (common law civil conspiracy), XV (conversion) and XVI (violation of the Virginia Trade Secrets Act) be, and the same hereby is, DENIED as to defendants Iuvo, Tom Truong, Hai Truong, and Edward Muldrow.

3. Defendants' Motion for Summary Judgment as to Counts V (pertaining to defendant Muldrow), VI (pertaining to defendant Tom Truong), and VII(B) (pertaining to defendant Hai Truong), be, and the same hereby is, GRANTED as to breach of contract claims based on the non-competition provisions of each defendants' Confidential Information and Noncompetition Agreement ("non-competition agreement") and is otherwise DENIED as to any remaining claims under those Counts. Virginia law controls the enforceability of defendants' non-competition agreements. Under Virginia Law, in order to determine whether a non-competition covenant is enforceable, the court must engage in a balancing of the following considerations: (1) from the standpoint of the employer, whether the restraint is reasonable in the sense that is no greater than necessary to protect the employer in some legitimate business interest; (2) from the stand point of the employee, whether the restraint is reasonable in the sense that it is not unduly harsh and oppressive in curtailing the employee's legitimate efforts to earn a livelihood; and (3) whether the restraint is reasonable from the standpoint of a sound public policy. *Omniplex World Services Corp. v. U.S. Investigations Services, Inc.* 618 S.E. 2d 340 (Va. 2005) *See also Decision Insights, Inc. v. Sentia Group, Inc.*, 311 Fed.Appx. 586, 597 (4th Cir. 2009). Plaintiff Deltek, Inc. ("Deltek") has a legitimate business interest in preventing former employees from competing with Deltek's proprietary software maintenance and consulting services through the use of Deltek's confidential and proprietary information, as well as their Deltek funded training and expertise. For that reason, Deltek's legitimate interest in restricting employment

opportunities to former employees is limited to prohibiting employment activities that directly compete with Deltek products and services in which they were involved as Deltek employees or as to which they had access to confidential and proprietary information. Such a restraint is reasonable from an employee's perspective if it is limited in time, scope and geographic area, given the nature of Deltek's business and useful life of the confidential and proprietary information to which an employee had access, and there remains outside of the prohibited employment activities reasonable opportunities for employment, considered in light of all the circumstances, including, without limitation, an employee's education, training and experience. Such restraints on the employment activities of a former employees is reasonable from a public policy perspective if they are no greater than necessary to achieve an employer's legitimate interests, they do not cause an employee to be unemployable, and commercial activity within the relevant sector is not unreasonably deprived of needed expertise and know-how. In this case, the non-competition provisions in each of the individual defendants' noncompetition agreements, in effect, prohibit defendants from being employed in any capacity by a company that is a Deltek competitor, whether or not their own particular job responsibilities at such a competitor are part of that company's activities competitive to Deltek's business activities and regardless of whether Deltek's proprietary information relate to their employment activities. Defendant Muldrow, Levy, Hai Truong and Tom Truong's non-competition agreement extends that prohibition to any company that is a competitor to a Deltek subsidiary, even though defendants did not work for any such subsidiaries and there is no indication that defendants were involved in any aspect of any business conducted by any such subsidiaries. Defendant Varan's non-competition agreement extends to any company that "intends or proposes to engage in, or has been organized for the purpose of engaging in" business activities competitive to Deltek. Defendant Muldrow and Tom Truong's non-competition agreements prohibit without qualification any consulting

services to any Deltek customer, no matter what the subject matter. Defendant Muldrow and Tom Truong's non-competition agreements impose a two year restriction, whereas a one year restriction is imposed under the other individual defendants' non-competition agreements, suggesting that Deltek itself recognizes that a two year restriction is longer than its legitimate business interests require. Based on the above, the Court finds that Plaintiff's non-competition agreements are broader than its legitimate business interests require, are not reasonable from the individual defendants' perspective and are not reasonable as a matter of public policy.

4. Defendants' Motion for Summary Judgment as to all remaining claims against defendant Sandra Levy, as set forth in plaintiff's Second Amended Complaint (Doc. No. 43), including specifically Counts VII(A) (breach of contract), VIII (tortious interference with contract), IX (tortious interference with business relations and prospective business expectancy), X (breach of fiduciary duty), XII (statutory civil conspiracy in violation of Va. Code, §§18.2-499-500, XIII (common law civil conspiracy), XV (conversion) and XVI (violation of the Virginia Trade Secrets Act), be, and the same hereby is, GRANTED and the Second Amended Complaint (Doc. No.43) is DISMISSED with prejudice against defendant Levy. Defendant Levy's non-competition agreement is unenforceable for the reasons stated above and there is an absence of evidence to support a claim that she violated any other provisions of her employment agreement. As to the remaining claims against defendant Levy, other than the fact of her employment with Iuvo, plaintiff relies primarily on the evidentiary contentions that after leaving Deltek and while employed by Iuvo she told certain Deltek customers that Iuvo's prices were lower than Deltek's and that she took with her and used after leaving Deltek a Statement of Work form that was used to describe work for potential or actual customers. There is no evidence that her alleged statements to customers represented anything more than disclosing what the customers could determine themselves; and the plaintiff has not come forward with evidence that the Statement of

Work form contains any Deltek proprietary information or that it was even considered proprietary or confidential by Deltek. The Court therefore finds that plaintiff has not come forward with evidence sufficient to support any of the claims against defendant Levy, including that she breached any enforceable agreements with Deltek, engaged in any of the tortious conduct alleged against her, or participated in any of the conspiracies alleged against her.

5. Defendants' Motion for Summary Judgment as to all remaining claims against defendant Lynn Varan, as set forth in plaintiff's Second Amended Complaint (Doc. No. 43), including specifically Count VII (Breach of contract), VIII (tortious interference with contract), IX (tortious interference with business relations and prospective business expectancy), X (breach of fiduciary duty), XII (statutory civil conspiracy in violation of Va. Code, §§18.2-499-500), XIII (common law civil conspiracy), XV (conversion) and XVI (violation of the Virginia Trade Secrets Act), be, and the same hereby is, GRANTED and the Second Amended Complaint (Doc. No.43) is DISMISSED with prejudice against defendant Varan. For the reasons stated above, Defendant Varan's non-competition agreement is not enforceable and there is an absence of evidence to support any other claims against her, including that she otherwise breached any enforceable agreements with Deltek, engaged in any of the tortious conduct alleged against her or participated in any of the conspiracies alleged against her.

6. Defendants' Motion for Summary Judgment as to Count VIII (tortious interference with contract) be, and the same hereby is, GRANTED as to all defendants. For the above reasons, this Court has found the individual defendants' non-competition agreements unenforceable and any breach of those agreements by the individual defendants, even if induced by other defendants, is not actionable, and there is an absence of evidence to support a claim that any defendants otherwise induced a breach of any valid Deltek contract.

The Clerk is directed to forward a copy of this Order to all counsel of record.



Anthony J. Trenga
United States District Judge

Alexandria, Virginia
November 16, 2009