

STATE OF INDIANA)
COUNTY OF MARION)

MARION COUNTY SUPERIOR COURT
CAUSE NO.

FITZMARK, LLC,)

Plaintiff,)

vs.)

MICAH ADKINS and KOOLA LOGISTICS, LLC,)

Defendants.)



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JURY TRIAL DEMANDED

COMPLAINT FOR INJUNCTIVE RELIEF, EQUITABLE RELIEF AND DAMAGES

Plaintiff FitzMark, LLC f/k/a FitzMark, Inc. (“FitzMark”), for its Complaint against Defendants Micah Adkins (“Adkins”) and Koola Logistics, LLC (“Koola”), alleges and states as follows:

1. By this lawsuit, FitzMark seeks to stop a former employee from misappropriating confidential information and trade secrets to interfere with FitzMark’s customer relationships.
2. FitzMark is a logistics broker that facilitates the shipment of large freight for its customers. FitzMark is headquartered in Indianapolis, Indiana, but has offices throughout the United States and provides its customers with logistics brokerage services from coast to coast.
3. Success in the logistics brokerage industry is predicated, among other things, on relationships with customers, price competition, and knowledge of customer processes and preferences. Oftentimes, these relationships are fostered through an individual employee at the logistics broker and an individual shipping manager or other employee at the customer who controls the customer's shipping needs. For this reason, logistics brokers like FitzMark protect their goodwill and customer relationships through confidentiality agreements.
4. Adkins worked at FitzMark as a Logistics Operations Representative.

5. As part of his employment with FitzMark, Adkins signed a Confidentiality & Limited Non-Competition Agreement (the “Agreement”) with FitzMark in which he agreed to treat information confidentially and not use it to compete with FitzMark, among other things. *See* Agreement, attached hereto as Exhibit 1.

6. In June 2020, FitzMark terminated Adkins’ employment for performance issues.

7. Upon information and belief, following his termination from FitzMark, Adkins was hired by Koola.

8. Adkins has breached the Agreement, and Adkins and Koola have misappropriated FitzMark’s trade secrets, and tortiously interfered in FitzMark’s business relationship, through their communications with at least one FitzMark customer.

9. FitzMark now brings this action to stop Adkin’s and Koola’s misconduct and to recover damages.

PARTIES, JURISDICTION AND VENUE

10. FitzMark is a limited liability company formed under the laws of the State of Indiana, with its principal place of business at 950 Dorman Street, Indianapolis, Indiana 46202.

11. Adkins is a former FitzMark employee. In the Agreement, Adkins specifically consented to jurisdiction in Marion County state court in any action brought to enforce the Agreement. Ex. 1 ¶ 12. FitzMark, by and through this action, seeks to enforce the Agreement. Upon information and belief, Mr. Adkins resides in Marion County, Indiana.

12. Koola is a limited liability company formed under the laws of the State of Indiana, with its principal place of business at 630 W Carmel Dr., Suite 255, Carmel, Indiana 46302.

13. This Court has personal jurisdiction over Adkins and Koola and subject matter jurisdiction over this action.

14. Venue is proper in Marion County in this Court under Indiana Trial Rule 75.

FACTUAL BACKGROUND

A. Adkins signs the Agreement with FitzMark and Gains Access to FitzMark's Confidential Information.

15. In September 2017, FitzMark hired Adkins as a Logistics Operations Representative.

16. As part of his employment at FitzMark, on July 24, 2019, Adkins executed the Agreement. *See* Ex. 1.

17. Through the Agreement, Adkins promised, among other things, to maintain the confidentiality of FitzMark proprietary customer information and FitzMark profit margins. Specifically, Adkins agreed that during his employment at FitzMark “**or for any time thereafter**” that he “shall not. . . disclose to anyone. . . or use in competition with [FitzMark], any of [FitzMark’s] (or its parent’s, affiliate’s and/or subsidiaries’) Confidential Information.” Ex. 1 § 1 (emphasis added).

18. Under the Agreement, “Confidential Information” includes, without limitation:

all materials and information (whether written or not) about [FitzMark’s] contracts, business plans, business partners, **customers and prospective customers (including their requirements and payment terms)**, suppliers, current and prospective products and services, sales, marketing, **pricing, costs**, budgets, financing, promotions, techniques and processes, purchasing, finances, accounting, research, improvements, discoveries, inventions, experimental works-in-progress, formulae, software, licenses, business methods and tactics, quality control parameters and techniques, internal communications, production, output, specially designed equipment and machinery, **profit margins, and/or any other aspect of [FitzMark’s] business or operations** (including, but not limited to, information concerning, relating to, or arising out of relationships with suppliers, customers, lenders, sales and distribution networks or other business affiliates) **which are not generally known by the public at large and/or which provide [FitzMark] with a competitive advantage.**

Ex. 1 § 1 (emphasis added).

19. Adkins also promised to return to FitzMark its equipment and property, provided to him in the course of his employment, upon termination of his employment. Specifically, under the Agreement, Adkins agreed that “all information, however stored or memorialized, and all. . . customer, supplier and other lists. . . which [FitzMark] provides to me or makes available to me are the sole property of [FitzMark],” and that “[u]pon the cessation of [Adkins’] employment with [FitzMark] and without prior request, [Adkins] shall [] refrain from taking any such property from [FitzMark’s] premises. . . ” Ex. 1 § 2.

20. Adkins further agreed that FitzMark would be entitled to injunctive relief and specific performance for any breach of the Agreement. The Agreement acknowledges that “it would be difficult to measure damages to [FitzMark] from any breach of covenants contained in this Agreement, but that such damages from any breach would be great, incalculable, and irremediable, and that damages would be an inadequate remedy.” Ex. 1 § 8.

21. Adkins additionally expressly agreed and acknowledged that FitzMark “is entitled to recover its costs, expenses and attorneys’ fees incurred in obtaining enforcement of this Agreement or relief from [Adkins’] breach of this Agreement or in any litigation involving this Agreement in which [FitzMark] prevails in any respect.” Ex. 1 § 14(k).

B. FitzMark Terminates Adkin’s Employment; Adkins Breaches the Agreement, and Adkins and Koola Tortiously Interfere with FitzMark’s Business Relationships

22. On June 11, 2020, FitzMark terminated Adkins’ employment for performance issues.

23. Upon information and belief, in or around December 2024, Adkins accepted a position at Koola, a competitor to FitzMark.

24. Despite his contractual obligations to FitzMark, Adkins, in his capacity as an employee of Koola, has been disclosing and/or using FitzMark’s Confidential Information (as

defined in the Agreement) in order to compete with FitzMark, including using and/or disclosing customer information, FitzMark's rates charged to customers, FitzMark's profit margins, and proprietary information concerning FitzMark's business organization and operations.

25. On January 8, 2025, Adkins left a voicemail with an employee of a current FitzMark customer (the "Customer"), seeking to solicit freight shipping business from the Customer for Koola.

26. In the voicemail, Adkins made numerous references to FitzMark's Confidential Information, proprietary information and trade secrets, including assertions that:

- a. Adkins was familiar with the Customer's business and shipping needs based on his experience working on the Customer's account while employed at FitzMark;
- b. Adkins knew the rates that FitzMark was charging the Customer, as well as the margins that FitzMark was making; and
- c. Adkins and Koola could provide a better quality of service at a cheaper price than FitzMark, including based on his understanding of FitzMark's departmental organization and operational management as compared to Koola.

27. FitzMark brings this action to abate Adkins' and Koola's misconduct, and to recover damages and fees.

28. FitzMark is entitled to injunctive relief and specific performance of the Agreement, as explicitly agreed to between FitzMark and Adkins.

29. Adkins is further responsible for the full amount of damages resulting from his breaches of the Agreement, along with FitzMark's costs and attorneys' fees, as provided by the Agreement.

30. Koola and Adkins are also liable for misappropriation of trade secrets, tortious interference with business relationships, and FitzMark is entitled to injunctive relief, damages, costs, attorneys' fees, and all other just and proper relief.

COUNT I - BREACH OF CONTRACT (AGAINST ADKINS)

31. FitzMark incorporates by reference paragraphs 1 through 30.

32. FitzMark and Adkins entered into a valid, binding, and enforceable contract in the form of the Agreement, which is attached hereto as Exhibit 1.

33. FitzMark performed all of its obligations under the Agreement.

34. Adkins breached the Agreement by using or disclosing FitzMark's Confidential Information, for the benefit of himself and/or Koola, in competition with FitzMark. Ex. 1 § 1.

35. Adkins further breached the Agreement by retaining FitzMark's Confidential Information following the termination of his employment at FitzMark. Ex. 1 § 2.

36. FitzMark has suffered damages from Adkins' breaches of the Agreement, including but not limited to, lost profits and other amounts to be proven at trial.

37. FitzMark is further entitled to recover its costs and attorneys' fees arising from Adkins' breaches of the Agreement.

WHEREFORE, FitzMark requests that the Court enter judgment in its favor and against Micah Adkins on its breach of contract claim and award FitzMark its damages established at trial, specific performance of the Agreement, prejudgment interest, costs, attorneys' fees, and all other just and proper relief.

**COUNT II – TORTIOUS INTERFERENCE
WITH BUSINESS RELATIONSHIP (AGAINST ADKINS AND KOOLA)**

38. FitzMark incorporates by reference paragraphs 1 through 37.

39. Adkins and Koola were aware of FitzMark's business relationship with the Customer

40. As detailed above, Adkins and Koola intentionally interfered with FitzMark's business relationships, including with FitzMark's relationship with the Customer, using Confidential Information to solicit customers in direct competition with FitzMark.

41. Adkins' and Koola's interference was not justified, did not advance a legitimate business purpose, and was based, at least in part, upon malice and desire to harm FitzMark and to improperly compete against FitzMark, in violation of the Agreement, rather than fairly competing with FitzMark.

42. Adkins' and Koola's interference has caused and will continue to cause harm to FitzMark, including with respect to the deterioration of customer relationships and other fallout resulting from interference and conduct described in this Complaint.

WHEREFORE, FitzMark requests that the Court enter judgment in its favor and against Adkins and Koola on its tortious interference claim and award FitzMark its damages established at trial, prejudgment interest, attorneys' fees, costs and all other just and proper relief.

**COUNT III – VIOLATION OF THE
INDIANA UNIFORM TRADE SECRETS ACT (AGAINST ADKINS AND KOOLA)**

43. FitzMark incorporates by reference paragraphs 1 through 42.

44. FitzMark's confidential customer information, the rates charged to FitzMark customers, and FitzMark's proprietary operational processes, among other information, are FitzMark assets and constitute protectable trade secrets ("Trade Secret Information").

45. At all times, FitzMark has maintained its Confidential Information as trade secrets.

46. FitzMark invested a significant amount of time, resources and funds to research, develop and protect its Trade Secret Information, and FitzMark derives independent economic

benefit from its Trade Secret Information being not generally known to, and not being readily ascertainable by proper means by, other persons who could obtain economic value from access to FitzMark's Trade Secret Information.

47. FitzMark undertook specific measures to protect the dissemination or misappropriation of its Trade Secret Information, including, but not limited to, requiring its employees to enter into agreements protecting such information from misuse and disclosure, and maintaining a culture where FitzMark's employees understood their obligation to maintain FitzMark's Trade Secret Information as confidential.

48. Under the circumstances, Adkins had a duty to maintain the secrecy of FitzMark's Trade Secret Information by virtue of his employment with FitzMark. Koola knew or had reason to know that its knowledge of FitzMark's trade secrets were acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use.

49. Adkins and Koola knew or had reason to know that the Trade Secret Information that it received was FitzMark's trade secrets when they acquired it.

50. Adkins and Koola misappropriated FitzMark's Trade Secret Information by acquiring it when they knew, or had reason to know, that it was acquired by improper means, as alleged herein. Adkins and Koola further misappropriated FitzMark's Trade Secret Information by using and disclosing it when they knew, or had reason to know, that it was (i) derived from a person who had utilized improper means to acquire it; (ii) acquired under circumstances giving rise to a duty to maintain its secrecy; and/or (iii) derived from or through a person who owed a duty to FitzMark to maintain the secrecy of its Trade Secret Information, as alleged herein.

51. Adkins and Koola were unjustly enriched through their acquisition, use and disclosure of FitzMark's Trade Secret Information.

52. FitzMark has suffered and will continue to suffer damages as a result of Adkins' and Koola's misappropriation of FitzMark's Trade Secret Information in an amount to be determined at trial.

53. Because the conduct described above was willful, malicious and in reckless disregard for FitzMark's rights, FitzMark is entitled to exemplary damages and attorneys' fees.

WHEREFORE, FitzMark requests that the Court enter judgment in its favor and against Adkins and Koola on its claim for misappropriation of trade secrets, and award FitzMark its damages established at trial, exemplary damages, prejudgment interest, attorneys' fees, costs and all other just and proper relief.

COUNT IV – INJUNCTIVE RELIEF (AGAINST ADKINS)

54. FitzMark incorporates by reference paragraphs 1 through 53.

55. Adkins' conduct violates the Agreement.

56. Adkins agreed that FitzMark could seek specific performance of the Agreement and obtain injunctive relief, in addition to other remedies, in the event he breached the Agreement.

57. FitzMark's available remedies at law are inadequate to fully protect FitzMark's legitimate business interests.

58. FitzMark has suffered and will continue to suffer immediate and irreparable harm if Adkins is not enjoined from his unlawful behavior.

59. The threatened and continued injury to FitzMark absent injunctive relief outweighs the prospective harm, if any, to Adkins if an injunction is granted because Adkins has no legal right to breach his contractual duties to FitzMark and because Adkins specifically agreed to injunctive relief in the Agreement.

60. FitzMark has performed all of its obligations under the Agreement and has not waived or excused Adkin's conduct.

61. The public interest will not be harmed if an injunction is granted.

62. FitzMark is entitled to an injunctive relief to enjoin further breaches of the Agreement.

63. FitzMark is further entitled to recover its costs and attorneys' fees arising from Adkins' breaches of the Agreement.

WHEREFORE, FitzMark requests that the Court enter a preliminary and permanent injunction enjoining Adkins from breaching the Agreement; ordering Adkins to return any and all FitzMark property in his possession, custody, or control; and awarding FitzMark its attorneys' fees, costs and all other just and proper relief.

COUNT V – INJUNCTIVE RELIEF (AGAINST ADKINS AND KOOLA)

64. FitzMark incorporates by reference paragraphs 1 through 63.

65. Adkins' and Koola's conduct constitutes tortious interference with FitzMark's business relationships, and the misappropriation of FitzMark's Trade Secret Information.

66. FitzMark has suffered and will continue to suffer immediate and irreparable harm if Adkins and Koola are not enjoined from their unlawful behavior.

67. The threatened and continued injury to FitzMark absent injunctive relief outweighs the prospective harm, if any, to Adkins and Koola if an injunction is granted because Adkins and Koola have no legal right to misappropriate FitzMark's trade secrets, nor to tortiously interfere with its business relationships.

68. FitzMark's available remedies at law are inadequate to fully protect FitzMark's legitimate business interests.

69. The public interest will not be harmed if an injunction is granted.

70. FitzMark is entitled to an injunctive relief to enjoin any continued instances of tortious interference with its business relationships and misappropriation of its trade secrets by Adkins or Koola.

WHEREFORE, FitzMark requests that the Court enter a preliminary and permanent injunction enjoining Adkins and Koola from (a) interfering with FitzMark's business relationships without a legitimate business purpose, including but not limited to by using FitzMark's Confidential Information and Trade Secrets and (b) using or disclosing FitzMark's Trade Secrets for any purpose, including but not limited to competing with FitzMark; and awarding FitzMark its attorneys' fees, costs and all other just and proper relief.

JURY DEMAND

FitzMark hereby demands a trial by jury on all claims so triable.

Dated: January 16, 2025

Respectfully submitted,

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