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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VINYL INTERACTIVE, LLC, a Delaware
Limited Liability Company,

No. C 09-0987 CW

Plaintiff,

ORDER GRANTING
PLAINTIFF'S MOTION
FOR A PRELIMINARY
INJUNCTION, AS
MODIFIED

v.

ANTHONY GUARINO, an individual; and
EDUCATIONDYNAMICS, LLC, a Delaware
Limited Liabiltiy Company,

Defendants.

_____ /

Plaintiff Vinyl Interactive, LLC, charges Defendants Anthony Guarino and EducationDynamics, LLC (Eddy) with misappropriating its trade secrets. Vinyl now moves for a preliminary injunction prohibiting Defendants from engaging in such misappropriation and from serving Vinyl's clients or using companies that promote Vinyl's product. Defendants oppose the motion. The matter was heard on April 23, 2009. Having considered oral argument and all of the papers submitted by the parties, the Court grants the motion, as modified.¹

¹Vinyl is reminded that General Order 45, which concerns the Electronic Case Filing system, provides, "Documents which the filer has in an electronic format must be converted to PDF from the word processing original, not scanned, to permit text searches and to facilitate transmission and retrieval."

1 BACKGROUND

2 Vinyl is in the business of online "lead generation." "Lead
3 generation" is the process of identifying potential customers for a
4 particular client. Vinyl generates leads for a number of
5 educational institutions such as colleges, universities and trade
6 schools. In this context, a "lead" is information about an
7 individual who is interested in pursuing educational opportunities
8 and may potentially choose to enroll in the client's school.

9 This lawsuit concerns a lead generation operation run by Vinyl
10 called "Free College Scholarships" (FCS). As part of this project,
11 Vinyl maintains a website through which interested individuals may
12 fill out a "lead form" that requests their contact information and
13 asks certain questions designed to gauge the "quality" of the lead.
14 "Quality" refers to the likelihood that the individual will
15 ultimately enroll in the client's school. Vinyl states that
16 quality is a "key metric" in the lead generation business because
17 clients are willing to pay higher rates for high quality leads than
18 for those leads which are not likely to materialize into actual
19 enrollment. In exchange for filling out the lead form, individuals
20 visiting the FCS website are entered into a raffle through which
21 they can win a scholarship.

22 Individuals are directed to the FCS website through
23 advertisements deployed by "publishers" whose services Vinyl
24 purchases. The ads are typically either emails or hyperlinks on
25 other websites. Hyperlinks can take various forms. One is a
26 "banner," a graphic advertisement box located on a particular
27 webpage. Another is a "search ad," a link that appears among a

1 list of search results and relates to the search terms that were
2 entered. In the case of email ads, the publisher is the sender of
3 the email. In the case of banner ads, the publisher is either the
4 website's owner or another entity that pays the owner to display
5 the banner. In the case of search ads, the publisher is generally
6 an entity that has purchased keyword advertising on a search site.

7 In addition to engaging publishers directly to deploy its
8 advertisements, Vinyl also relies on the services of PubNet, a
9 "publisher network."² PubNet maintains relationships with a number
10 of publishers and, for a fee, distributes Vinyl's ads to them.

11 Guarino began working as a marketing analyst for Vinyl's FCS
12 project in July, 2006, shortly after he graduated from college.
13 According to Vinyl, Guarino was a key member of the FCS team who
14 had access to the company's confidential information. As a
15 condition of his employment, Guarino was required to sign a
16 document entitled "Employee Proprietary Information and Inventions
17 Agreement." By signing the document, Guarino agreed to "hold in
18 strictest confident" and not to "disclose, use, lecture upon or
19 publish any of the Company's Proprietary Information." Malach Dec.
20 Ex. 2 ¶ 1.1 The agreement defines "Proprietary Information" as
21 "any and all confidential and/or proprietary knowledge, data or
22 information," including but not limited to:

23 (a) trade secrets, inventions, mask works, ideas,
24 processes, formulas, source and object codes, data,
25 programs, other works of authorship, know-how,
26 improvements, discoveries, developments, designs and
27 techniques . . . (b) information regarding plans for

28 ²"PubNet" is a pseudonym; Vinyl considers the actual identity
of the company to be confidential.

1 research, development, new products, marketing and
2 selling, business plans, budgets, and unpublished
3 financial statements, licenses, prices and costs,
4 suppliers and customers; and (c) information regarding
5 the skills and compensation of other employees of the
6 Company.

7 Id. ¶ 1.3.

8 In May, 2008, Guarino decided to move to Seattle from the San
9 Francisco Bay Area, where Vinyl is located. He submitted his
10 resignation on approximately May 19, but Vinyl asked him to
11 continue working for the company remotely from Seattle until he
12 found a new job, apparently to facilitate the transition of his
13 replacement.

14 While searching for employment, Guarino responded to a job
15 advertisement for a position with World Class Strategies, a
16 division of Eddy. Eddy is a competitor of Vinyl's in the online
17 lead generation business. Eddy offered Guarino the position and
18 gave him a \$10,000 signing bonus. Guarino has submitted a
19 declaration stating that Eddy offered him the bonus because he was
20 considering accepting a competing offer from another company that
21 would have paid him a higher salary. However, a declaration
22 submitted by Eddy's Senior Vice President for Media Services states
23 that the bonus "was intended to compensate for a lower salary than
24 Mr. Guarino said he was making for Vinyl." Poraj-Kuczewski Dec.

25 ¶ 9. Guarino asserts that he did not agree to join Eddy and did
26 not meet with any of its employees before he moved to Seattle.
27 Eddy has not clearly identified the dates or substance of its
28 initial contacts with Guarino.

Around the time it hired Guarino, Eddy began developing a new

1 product, JumpStart. Like FCS, JumpStart sells leads to educational
2 institutions, and thus the two products are in direct competition
3 with each other. Moreover, like FCS, JumpStart induces individuals
4 to supply their contact information by offering them the chance to
5 win a scholarship. Defendants consider JumpStart to be
6 distinguishable from FCS because it is ostensibly merit-based, in
7 that scholarship recipients are chosen based on the strength of a
8 100-150 word essay.³ JumpStart was not the first product of Eddy's
9 to offer leads to educational institutions. However, Eddy's
10 previous efforts differed from FCS in material respects. For
11 example, one project of Eddy's generated leads by running
12 advertisements in print publications directing individuals to visit
13 a website where they would enter their identifying information for
14 a chance to win a scholarship. Other projects targeted specific
15 demographic groups as sources of leads. JumpStart was apparently
16 Eddy's first lead generation product that was targeted at a general
17 demographic pool, was based on a scholarship incentive and relied
18 on electronic advertising.

19 On approximately June 23, 2008, Guarino told Vinyl that he had
20 accepted a new job, but he apparently did not identify his new
21 employer. Guarino states that, on approximately June 27, 2008, he
22 told Vinyl that his new position was with Eddy. Although the
23 details are not clear, it does not appear that Eddy informed
24 Guarino before he started that he would be working on a new project

25
26 ³In an instant message exchange with a Vinyl employee, Guarino
27 stated that the essay requirement exists primarily to ensure that
28 only high-quality leads are generated. Evans Dec. Ex. 1 at 1.

1 that was identical in all material respects to FCS. In any event,
2 he did not inform anyone at Vinyl of this fact.

3 Guarino's last day with Vinyl was June 30, 2008. At
4 approximately 4:30 p.m. that day, he had a "final wrap up call"
5 with Vinyl's Director of Marketing. The director testified, "There
6 should have been nothing else for Guarino to do with Vinyl after
7 this." Morrell Dec. ¶ 6. However, at 6:30 p.m., Guarino accessed
8 a file on Vinyl's server that contained a comprehensive set of data
9 concerning Vinyl's publishers. Later that night, Guarino accessed
10 another file containing information about Vinyl's publishers.
11 Vinyl considers the information in both of these files to be
12 confidential. Guarino states in his declaration that he accessed
13 these files

14 entirely within my capacity as a Vinyl analyst.
15 Specifically, I wanted to ensure that the changes I had
16 made to the previous day's traffic had proved beneficial
17 for Vinyl. At no time did I use this information for any
18 other purpose, nor did I retain this information or use
19 it at [sic] any way at Eddy.

20 Guarino Dec. ¶ 15.

21 Although the details are not clear from the record, Guarino
22 became JumpStart's Project Manager shortly after he began his
23 employment with Eddy in July, 2008, if not as soon as he started.
24 Eddy has not explained how Guarino came to be assigned to the
25 JumpStart project rather than to one of the other lead generation
26 projects Eddy claims was the focus of its initial discussions with
27 Guarino. Nor has it clearly addressed the relationship between its
28 decision to develop and launch JumpStart and its decision to hire
Guarino, which apparently took place close in time.

1 On July 21, 2008, after Guarino had begun his new position
2 with Eddy, he initiated an instant message conversation with a
3 Vinyl employee. He asked the employee to send him "the table of
4 competing sites [Guarino had] put together in the Comp Intel
5 database." Hirschorn Dec. Ex. 1. The employee complied with
6 Guarino's request. According to Vinyl, "Comp Intel" stands for
7 "competitive intelligence," and the file, which took over 150 hours
8 to produce, contained highly confidential information about
9 competing sites. The Vinyl employee was later disciplined for
10 sending the file to Guarino. Guarino states that he requested only
11 a portion of the Comp Intel database, and that the table he
12 received did not contain any confidential information. He
13 maintains the table could have been created by an entry level
14 analyst in a few hours using free online tools, and he simply did
15 not want to re-do work he had already done.

16 On August 12, 2008, Guarino had an instant message
17 conversation with another Vinyl employee, during which he remarked
18 that an Eddy manager was "surprised" when Guarino told him that
19 Vinyl generates leads that are sold to Eddy through PubNet. Vinyl
20 explains this disclosure and its significance as follows:

21 In the lead generation business, there are occasions when
22 competitors sell leads to one another; directly, or
23 indirectly through a network. For example, if one of
24 Vinyl's customers -- call it "Metropolis College" --
25 agrees to purchase only 100 leads from Vinyl in a given
26 month, and Vinyl has already filled up that allocation,
27 Vinyl might sell additional leads suitable for Metropolis
28 College to another lead generation company that also has
an agreement with Metropolis College to provide it with
100 leads that month, but which so far has not provided
that many leads.

PubNet is a network of publishers. Lead generation

1 companies like Vinyl and EDDY can develop their own list
2 of publishers with whom they deal directly, and/or deal
3 with a network like PubNet, which in turn has the direct
4 relationship with publishers. It is in PubNet's interest
5 not to reveal its own publisher list, as otherwise the
6 lead generation companies could just go directly to those
7 publishers and cut out PubNet, saving money by avoiding
8 having to pay PubNet's markup.

9 The fact that Vinyl was generating leads for EDDY through
10 PubNet was subject to a confidentiality agreement between
11 PubNet and Vinyl, was not known to EDDY, (as evidenced by
12 Ian's surprise at learning it), and should not have been
13 revealed by Guarino.

14 Pl.'s Mot. at 9-10. Vinyl and Eddy subsequently engaged in
15 negotiations for the sale of leads directly from Vinyl to Eddy.
16 However, the two companies could not reach an agreement. On
17 January 30, 2009, Eddy instructed PubNet not to provide it with any
18 further leads generated by Vinyl.

19 Vinyl did not learn about JumpStart until September 23, 2008,
20 when it received an email from PubNet advising of JumpStart as a
21 "new offer" for advertising. Vinyl received the email because it
22 has a publisher affiliate that is on the PubNet network of
23 publishers. Eddy apparently did not intend for Vinyl to be
24 informed about JumpStart, as Eddy had directed PubNet to keep the
25 offer "private." On September 23, 2008, a Vinyl employee initiated
26 an instant message conversation with Guarino to determine whether
27 Guarino was involved in JumpStart. The two had the following
28 exchange:

SteveVinylInteractive: JumpStart Scholarship huh?=(

anthony: hah

anthony: i don't know what ur talking about

anthony: hah

1 SteveVinylInteractive: haha RIGHT
2 anthony: where did u hear that
3 SteveVinylInteractive: i have my connections
4 SteveVinylInteractive: =)
5 anthony: does rob know
6 SteveVinylInteractive: haha he does but not sure he put 2 n 2
7 together
8 . . .
9 anthony: hah tell people that ask about me that I took an old
product that we ha[d]

10 Evans Dec. Ex. 1 at 1 (time stamps removed). The two engaged in a
11 brief discussion about some of the differences between CFS and
12 JumpStart. Approximately twenty minutes later, Guarino again
13 inquired about whether people at Vinyl knew of his involvement with
14 JumpStart:

15 anthony: did anyone connect JumpStart to me yet
16 SteveVinylInteractive: no i dont think so
17 anthony: do you think they will be pissed
18 SteveVinylInteractive: nah
19 SteveVinylInteractive: i mean everyone knows you left and work
for a competitor
20 anthony: it wasnt my idea. actually had no idea when i
21 interviewed
22 anthony: the ceo asked me the 1st day about it

23 Id. at 3 (time stamps omitted).

24 The next day, a Vinyl employee discovered that an unknown and
25 unauthorized user was listed among the users with access to Vinyl's
26 Google Analytics account. According to the employee, Google

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1 Analytics is a service that

2 provides a tremendous amount of information about Vinyl's
3 websites, showing, among other things, information about
4 publishers, analysis of the internet traffic to each of
5 Vinyl's websites, which publishers' sites the visitors
were referred from, where the users are located, and so
on. Such information is of great value to Vinyl and
could be of great value to a competitor.

6 Millen Dec. ¶ 2. The employee sent an email to the address that
7 was listed for the unknown user, requesting his or her identity and
8 asking how he or she obtained access to the account. She received
9 no reply.

10 Vinyl management soon learned of Guarino's involvement with
11 JumpStart and, on September 26, 2008, sent Eddy and Guarino a
12 cease-and-desist letter. Eddy, through its counsel, responded a
13 few days later. In its response, Eddy claimed that its hiring of
14 Guarino was proper and denied having misappropriated any of Vinyl's
15 confidential information. It played down Guarino's role with
16 JumpStart, describing him as a client account manager. This
17 appears to have been literally true, in that Guarino's title had
18 been changed to "client account manager" by the time the letter was
19 written, but Eddy failed to mention that Guarino had been the
20 JumpStart Project Manager until shortly after Eddy received the
21 cease-and-desist letter. With respect to the unauthorized access
22 of Vinyl's Google Analytics account, Eddy stated that the account
23 was "tied to Mr. Guarino's personal Google e-mail account and
24 logged him in automatically when he accessed Google mail." Carlin
25 Dec. Ex. 4 at 3. However, in an October 9, 2008 affidavit that
26 Eddy provided to Vinyl, Guarino stated that, after leaving Vinyl,
27 he had intentionally logged in to Vinyl's Google Analytics account

28

1 out of curiosity, in order to determine whether his previous
2 efforts to search "for traffic publishers that were misrepresenting
3 Vinyl's offers" had been continued after his departure. Id. Ex. 5
4 at 2.

5 Vinyl was not satisfied with the explanations contained in
6 Eddy's response to its cease-and-desist letter and in Guarino's
7 affidavit. After attempting to resolve the matter informally,
8 Vinyl filed the present lawsuit in state court, asserting claims
9 for, among other things, breach of contract, interference with
10 contractual relations, misappropriation of trade secrets and unfair
11 competition. Defendants later removed the action to federal court.

12 Vinyl now seeks a preliminary injunction prohibiting
13 Defendants from:

- 14 1. Using any of Vinyl's publishers or networks who
15 promote FCS, in connection with the promotion,
16 advertising or marketing of JumpStart, directly or
17 indirectly;
- 18 2. Generating leads through JumpStart for any
19 advertisers for whom Vinyl generates leads through
20 FCS; and
- 21 3. Using, disclosing, or attempting to use or disclose,
22 either directly or indirectly, any and all Vinyl trade
23 secrets or confidential information.

24 Pl.'s Mot. at 1.

25 LEGAL STANDARD

26 "A plaintiff seeking a preliminary injunction must establish
27 that he is likely to succeed on the merits, that he is likely to
28 suffer irreparable harm in the absence of preliminary relief, that
the balance of equities tips in his favor, and that an injunction
is in the public interest." Winter v. Natural Res. Def. Council,

1 Inc., ___ U.S. ___, 129 S. Ct. 365, 374 (2008). "[T]he required
2 showing of harm varies inversely with the required showing of
3 meritoriousness." Indep. Living Ctr. of S. Cal., Inc. v. Shewry,
4 543 F.3d 1047, 1049 (9th Cir. 2008) (quoting Rodeo Collection, Ltd.
5 v. W. Seventh, 812 F.2d 1215, 1217 (9th Cir. 1987)). "When the
6 balance of harm 'tips decidedly toward the plaintiff,' injunctive
7 relief may be granted if the plaintiff raises questions 'serious
8 enough to require litigation.'" Id. (quoting Benda v. Grand Lodge
9 of the Int'l Ass'n of Machinists & Aerospace Workers, 584 F.2d 308,
10 315 (9th Cir. 1978)).

11 DISCUSSION

12 I. Likelihood of Success on the Merits

13 To state a claim for misappropriation of trade secrets under
14 California law, a plaintiff must allege:

15 (1) Acquisition of a trade secret of another by a person
16 who knows or has reason to know that the trade secret was
acquired by improper means; or

17 (2) Disclosure or use of a trade secret of another
18 without express or implied consent by a person who:

19 (A) Used improper means to acquire knowledge of the
trade secret; or

20 (B) At the time of disclosure or use, knew or had
21 reason to know that his or her knowledge of the
trade secret was:

22 (i) Derived from or through a person who had
utilized improper means to acquire it;

23 (ii) Acquired under circumstances giving rise
24 to a duty to maintain its secrecy or limit its
use; or

25 (iii) Derived from or through a person who owed
26 a duty to the person seeking relief to maintain
its secrecy or limit its use; or
27

1 (C) Before a material change of his or her position,
2 knew or had reason to know that it was a trade
secret and that knowledge of it had been acquired by
3 accident or mistake.

4 Cal. Civ. Code § 3426.1(b). The term "improper means" is defined
5 as "theft, bribery, misrepresentation, breach or inducement of a
6 breach of a duty to maintain secrecy, or espionage through
7 electronic or other means." Id. § 3426.1(a). The term "trade
secret" is defined as:

8 [I]nformation, including a formula, pattern, compilation,
9 program, device, method, technique, or process, that:

10 (1) Derives independent economic value, actual or
11 potential, from not being generally known to the
12 public or to other persons who can obtain economic
value from its disclosure or use; and

13 (2) Is the subject of efforts that are reasonable
under the circumstances to maintain its secrecy.

14 Id. § 3426.1(d).

15 Vinyl asserts that the following information represents its
16 trade secrets: 1) the identity of the publishers it uses; 2) the
17 rates it pays to its publishers; 3) the quality of leads and
18 conversion rates for each of its publishers; 4) the prices it gets
19 for leads from its advertiser clients; 5) the identity of
20 advertisers that support FCS; 6) the questions it places on lead
21 forms to produce better results from certain publishers; 7) its
22 profit margins for various advertisers; 8) the methods it uses to
23 identify publishers; 9) its methods for reporting and tracking the
24 quality of leads produced by its publishers; 10) its methods for
25 deciding how much volume it seeks from each publisher, i.e., its
26 "mix of high quality low volume publishers" and "low quality high
27 margin publishers"; and 11) its data on and analysis of its

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1 competitors' products. Pl.'s Mot. at 17; Poynter Dec. ¶ 6.

2 Through the declarations it has submitted to the Court, Vinyl
3 has established that most, if not all, of this information is
4 likely protectable as a trade secret. Eddy could use this
5 information, which is not generally available, to identify ways in
6 which JumpStart could better compete against FCS. The information
7 thus has independent economic value.⁴ There is also direct
8 evidence that Guarino accessed some of this information after
9 starting work with Eddy. Moreover, the circumstances surrounding
10 Guarino's hiring and the genesis of the JumpStart program -- and
11 Eddy's failure to explain these matters fully -- is circumstantial
12 evidence that Eddy intended to rely on Guarino's knowledge of
13 Vinyl's confidential information in order to obtain an unfair
14 advantage in its development of a product to compete with FCS.

15 Defendants argue that the information that Vinyl seeks to
16 protect is not a trade secret. They note that the "identities of
17 publisher entities are and always have been within the knowledge of
18 companies in the lead generation industry." Defs.' Opp. at 14.
19 This may be the case, but Vinyl seeks to protect not the identities
20 of publishers generally, but rather the identities of the
21 publishers it has chosen to rely upon, as well as a host of

22 _____
23 ⁴In addition, Vinyl has also taken reasonable measures to
24 prevent the information from being disseminated, as it is required
25 to do. See Cal. Civ. Code § 3426.1(d)(2). Defendants fault Vinyl
26 for "allowing" Guarino to continue to access its Google Analytics
27 account after he left the company. But the record reflects that
28 Guarino accessed the account without Vinyl's knowledge, and Vinyl
made reasonable efforts to determine the identity of the
unauthorized user and prohibit the user from accessing the account
once it learned of the breach.

1 information about the rates it pays to those publishers and the
2 quality of leads the publishers generate. And although Defendants
3 contend that "lead generation companies [are] aware of each other's
4 costs and pricing through general methods of doing business," they
5 have not submitted a declaration from a knowledgeable individual
6 stating as much. Instead, they rely on conclusory attorney
7 argument. To support their position, they point to the efforts
8 between Vinyl and Eddy to negotiate Eddy's direct payment for leads
9 generated by Vinyl, and to the informal exchanges that took place
10 between Guarino and Vinyl employees after Guarino left Vinyl. But
11 the negotiations do not evidence the broad proposition Defendants
12 advance, and the exchanges do not demonstrate that the information
13 Vinyl seeks to protect is generally known in the lead generation
14 business.⁵

15 Defendants also argue that Vinyl is not likely to succeed on
16 the merits because there is no evidence that they have used any of
17 the information they may have obtained, for their own pecuniary
18 gain or to Vinyl's pecuniary disadvantage. Even accepting
19 Defendants' characterization of California law, however, discovery
20 has not yet commenced, and it would be unreasonable to require
21 Vinyl to demonstrate in connection with the present motion the
22 precise ways in which Defendants may have used Vinyl's trade
23 secrets, given that Defendants are the only ones who possess such

24
25 ⁵Nor do the exchanges demonstrate that Vinyl did not take
26 reasonable efforts to maintain the secrecy of its proprietary
27 information. There is no indication that Vinyl management ever
28 approved the dissemination of the information that is the subject
of this motion. Moreover, the employee who sent Guarino the Comp
Intel file was disciplined for doing so.

1 information. At this point, it is sufficient for Vinyl to
2 demonstrate a fair likelihood that, through Guarino, Eddy acquired
3 proprietary information of Vinyl's that could be used to Vinyl's
4 disadvantage. Vinyl has made such a showing.⁶ The success-on-the-
5 merits factor thus supports granting Vinyl's motion.

6 III. Irreparable Harm, Balance of Hardships and the Public Interest

7 The Court presumes that Vinyl will suffer irreparable harm if
8 its proprietary information is misappropriated. See Lillge v.
9 Verity, 2007 WL 2900568, at *7 (N.D. Cal.) ("[T]he risk of losing
10 established customers to defendants' new business due to
11 defendants' improper use of plaintiff's proprietary information
12 would obviously create lasting, irreparable harm.") However, the
13 Court agrees with Defendants that the relief requested in the first
14 and second prongs of the injunction Vinyl seeks is overbroad. To
15 prohibit Eddy from using any of the publishers or publishing
16 networks that promote FCS, or from generating leads for any of
17 Vinyl's educational clients, would go beyond simply preventing Eddy
18 from gaining an unfair advantage. Instead, it would effectively
19 eliminate Eddy's ability to compete with Vinyl. This would be
20 against the public interest, which favors competition. It would
21 also result in hardship to Eddy, which would effectively be forced
22 to shut down its JumpStart operations.

23 _____
24 ⁶As Vinyl notes, the evidence supports the conclusion that
25 Guarino's disclosure to Eddy that PubNet was providing Eddy with
26 leads generated by Vinyl ultimately resulted in Eddy deciding no
27 longer to accept such leads from PubNet. Although Defendants
28 maintain that Eddy's decision was based on the low quality of leads
generated by Vinyl, there are at least serious questions concerning
whether Vinyl was damaged by Guarino's disclosure.

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For the Northern District of California

1 In contrast, the third prong of the requested injunction,
2 which simply enjoins Eddy from using Vinyl's proprietary
3 information, would further the public's interest in prohibiting
4 unfair competition. In addition, it would not work any hardship on
5 Eddy, which has no right to use the information in the first place.
6 Accordingly, the Court will grant this relief.

7 CONCLUSION

8 For the foregoing reasons, the Court GRANTS Vinyl's motion for
9 a preliminary injunction (Docket No. 13), as modified.⁷ Defendants
10 and their agents, servants, employees and attorneys, as well as
11 entities working in concert with them, are hereby enjoined, pending
12 the resolution of this action, from directly or indirectly
13 accessing, viewing, using, relying upon, maintaining in their
14 files, disseminating or disclosing the following types of
15 information, to the extent the information is not demonstrably
16 available to anyone in the lead generation business who seeks it:

- 17 1. The identity of the publishers Vinyl uses;
- 18 2. The rates Vinyl pays to its publishers;
- 19 3. The quality of leads and the conversion rates for each of
20 Vinyl's publishers;
- 21 4. The rates Vinyl is paid for leads from its advertiser
22 clients;
- 23 5. The identity of advertisers that support Vinyl's FCS

24
25 ⁷To the extent that the Court relied upon evidence to which
26 the parties objected, the objections are overruled. The Court did
27 not rely on any inadmissible evidence in reaching its decision. To
the extent the Court did not rely on evidence to which the parties
objected, the objections are overruled as moot.

United States District Court
For the Northern District of California

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project;

- 6. Vinyl's profit margins associated with its advertisers;
- 7. The methods Vinyl uses to identify publishers;
- 8. Vinyl's methods for reporting and tracking the quality of leads produced by its publishers;
- 9. Vinyl's methods for deciding the volume it seeks from each of its publishers; and
- 10. Vinyl's data on and analysis of its competitors' products.

This preliminary injunction will take effect upon Vinyl's posting a bond in the amount of \$10,000.

IT IS SO ORDERED.

Dated: 5/1/09



CLAUDIA WILKEN
United States District Judge