

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

ARKANSAS LABELING, INC.

PLAINTIFF

v.

Civil Action No. 4:19-cv-00773-KGB

**TIM PROCTOR and
LABEL EDGE, LLC**

DEFENDANTS

AMENDED COMPLAINT

Comes now the Plaintiff, Arkansas Labeling, Inc. ("ALI"), and for its Amended Complaint against Defendants, Tim Proctor ("Proctor") and Label Edge, LLC ("Label Edge"), states as follows:

1. ALI is an Arkansas corporation with its principal place of business in Saline County, Arkansas.
2. Upon information and belief, Proctor is an individual resident of Texas.
3. Upon information and belief, Label Edge is a Texas corporation with its principal place of business in San Antonio, Texas.
4. That the acts and omissions complained of herein primarily occurred in Arkansas.
5. This Court has diversity of citizenship jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the action is between citizens of different states and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.
6. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial

part of the events or omissions giving rise to the claim occurred in this judicial district.

FACTUAL BACKGROUND

7. Paragraphs 1-6 are incorporated herein by reference as if set forth word for word.

8. ALI has been in business since 1979. It is a complete graphic design business with state-of-the-art equipment to assist its customers with creating designs for the labeling of their products and manufacturing the product labels. ALI's work covers various categories of products, including the designing, labeling, and packaging of baked goods, lunch meats, plastic bottles for beverages, firearms, cooking spices, and many more—almost any type of labeling one can imagine. ALI's customer base is nationwide and international.

9. ALI's business operations rely on its confidential and propriety processes, strategies, designs, documents, product lists, supplier lists, and customer lists, all of which constitute trade secrets. ALI depends, in part, upon Label Traxx, a business management program which allows ALI to maintain its accounting records, orders of raw materials, graphic designs for customers, customer product information, and customer contact information, among other confidential and proprietary information essential to ALI's business operations. ALI's information stored in Label Traxx is accessible only to ALI's graphic designers and management-level employees.

10. In addition, Label Traxx allows ALI to track its confidential and proprietary information about when ALI's designs are created, sent to customers,

approved by customers, ordered by customers, shipped to customers, and, if needed, later revised by customers. This is not limited to only current designs and labels used by ALI's customers, but Label Traxx also stores all prior designs and labeling done by ALI for its customers. Label Traxx contains all of ALI's customer contact information, such as contact names, addresses, telephone numbers, and email addresses.

11. Further, Label Traxx stores ALI's confidential and proprietary information that is critical to ALI's design process for each customer's labeling and packaging. The information includes ALI's technical drawings of its customer's Plate (the "Plate" or "Plates"), the specific tools ALI uses to create Plates for physical printing, the pantone color ALI uses with each Plate to create the customer's label, the calculations for the color scheme for ALI customer's labels, the precise diameters of ALI's design, and the measurements necessary for ALI's equipment to produce the labels. ALI builds upon its foundation of this information to continue servicing customers and maintaining its business relationships.

12. As an analogy, Label Traxx is akin to a physical manila file folder in an attorney's office storing confidential client contact information, privileged communications, and work product relating to a case. A digital comparison would be using a Microsoft Word Document to store this same confidential information. While anyone may purchase the manila folder or Microsoft Word (i.e., Label Traxx) stored within the manila folder or Microsoft Word is confidential information critical to the attorney's law practice. Likewise,

although anyone may purchase Label Traxx, it is the theft and use of ALI's confidential and proprietary information stored within the program, which is password-restricted and limited to ALI's graphic designers and management-level employees, primarily giving rise to this lawsuit.

13. ALI's customer Plates are also confidential and proprietary trade secrets imperative to ALI's business operations. A Plate is a blueprint that allows ALI to create the labeling for its customers. First, ALI designs a digital Plate for a customer (also referred to as a technical drawing). All of the Plates created by ALI contain unique design and registration markings on the "bearer bars" of the Plate. The "bearer bars" are located on the exterior of ALI's Plate designs. All Plates designed by ALI also include a unique date of design, part number, and initials of ALI's graphic designer. The part numbers and randomized placement of the unique markings allows ALI to quickly identify each Plate it designs and attribute the Plate to its customers. The digital copy of all Plates designed by ALI are stored on a private server, which is password-restricted for only ALI's graphic designers and management to access. An example of a Plate designed by ALI is attached hereto as Exhibit A.

14. Once a customer approves the technical drawing of the Plate, then ALI physically prints a single copy of the customer's Plate to use for the labeling-making process at ALI's facilities. The physical copy of a customer's Plate also contains ALI's unique design and registration markings. ALI stores the single physical copy of each Plate in a restricted-access area of its facilities. At no time are the Plates or technical drawings of the Plates provided to ALI's customers, in

either digital or physical form, unless the customer specifically contracts and pays for the Plate and its technical drawing.

15. As a result of ALI's forty years of quality work, time, effort, and goodwill, ALI has developed and maintained numerous business contacts and relationships in the labeling and packaging industry.

16. In February 2001, Proctor was hired as an employee of ALI. He worked as a Pressman and Operations Manager at ALI until approximately August 2013.

17. Proctor was then re-hired as an Operations Manager and in Sales at ALI in May 2015.

18. During Proctor's employment, he had knowledge and access to ALI's confidential and proprietary information, including all of ALI's information stored in Label Traxx and ALI's customer Plates. As a result of Proctor's employment, Proctor was exposed to ALI's customers and business contacts in the labeling and packaging industry. ALI trained, supported, and invested in Proctor as part of his employment with ALI, so that Proctor could develop in the labeling and packaging field in order to further ALI's business interests. As such, Proctor benefited from being exposed to ALI's connections and confidential and proprietary strategies, processes, methods, practices, technologies for nearly 16 years.

19. For 25 years, ALI worked with Garry Parr ("Parr"), owner of GP Labels Unlimited, Ltd. ("GP Labels"). As part of Proctor's employment at ALI, he was exposed to Parr and GP Labels to further ALI's business interests.

20. Upon information and belief, as early as March 2018, Proctor and Parr discussed creating a new label design and printing company in Texas. Proctor and Parr formulated these plans despite expressly acknowledging that the new company would directly compete with ALI, Proctor's then-employer.

21. Upon information and belief, Proctor contacted Parr in early March 2018 about his alleged dissatisfaction at ALI and to set up a confidential meeting in Texas regarding Proctor's plans to steal ALI's confidential and proprietary information, leave ALI's employ, and begin a new business venture in direct competition with ALI.

22. In September 2018, Proctor left his employment with ALI.

23. While employed by ALI, Proctor was given a company laptop to further ALI's business interests. Upon Proctor's termination, ALI demanded the return of his laptop. Investigation into Proctor's laptop revealed that following Proctor's his termination, but prior to returning the laptop to ALI, Proctor uploaded all of ALI's information stored in Label Traxx to a Cloud account, an online-based storage account. Upon further investigation, ALI learned Proctor also transferred ALI's information from Label Traxx to multiple removable USB storage devices.

24. Armed with this information, Proctor can shortcut the extensive time expended by ALI to collect and develop this specialized knowledge to duplicate a customer's Plate file and begin the physical label-making process. It allowed Proctor to directly compete with ALI within months of starting Label Edge by using information it has taken ALI nearly 40 years to build from scratch.

25. After uploading, copying, and stealing ALI's confidential and proprietary information, Proctor attempted to hide evidence of his intentional and malicious conduct by deleting all files, as well as his communications with Parr and GP Labels, from the laptop.

26. Upon information and belief, Proctor took ALI's customer contacts, designs, production specifications, Plates, and other confidential and proprietary information from Label Traxx with the intent of contacting these customers for the benefit of Defendants' newly planned business venture.

27. In December 2018, Rodney Harris, President of ALI, had a meeting with Parr. At this meeting, Parr told Harris their business was good and expected their business together to continue as usual. Shortly thereafter, Harris learned that Proctor and his wife, Sherri Proctor, were operating Label Edge, a label design and printing company, after purchasing Label Edge from Parr in October 2018—one month after Proctor left ALI.

28. Since December 2018, ALI's business conducted with Parr and GP Labels has significantly decreased. As of February 2019, business greatly slowed. By September 2019, business between ALI and GP Labels has come to a complete halt, except for minor work for a Bolner Fiesta.

29. Upon information and belief, Proctor and Label Edge are utilizing the stolen trade secrets, including the designs, production specifications, and Plates to make labels for GP Labels instead of ALI. ALI believes this is not the only ALI customer Defendants have solicited or attempted to solicit.

30. As a specific example, on May 31, 2018, Parr approved ALI's design

of “Coffee Cake” labels for Hill Country Bakery LLC (also referred to as “FGF”). The “Coffee Cake” Plate was finalized on or about June 22, 2018, by a graphic designer at ALI. See Exhibit A. Upon information and belief, Proctor and Label Edge utilized ALI’s trade secrets to immediately begin competing with ALI by producing identical “Coffee Cake” labels for FGF as of February 3, 2019, if not earlier. A technical drawing of a Plate discovered from Label Edge, is attached hereto as Exhibit B.¹ The only differences between Exhibit A and Exhibit B are that Defendants altered the unique registration markings from ALI’s “Coffee Cake” Plate, changed the date of initial, and changed the initials from “vs,” a graphic designer at ALI, to “TP” (Tim Proctor). Upon information and belief, Label Edge is using the Plate designed by ALI to produce “Coffee Cake” labels for FGF to directly compete with ALI. *Compare Exhibit A with Exhibit B.*

31. A second example occurred on September 23, 2019, when Parr directly emailed April Fowler, a former office manager and graphic designer at ALI, at her ALI email address, requesting her assistance in revising a “Red Velvet” label for FGF, a Plate previously designed and prepared by ALI in September 2018. Upon information and belief, Fowler has been periodically assisting Proctor with designs for Label Edge.

32. Also, as part of Proctor’s position as Operations Manager, he had privileged building access to the storage area for employee files; Proctor supervised most human resources duties for ALI. The employee files contain,

¹ For comparison purposes, ALI attached its unique registration markings found on the “bearer bars” of Exhibit A above the “bearer bars” of Exhibit B.

among other information, non-compete agreements signed by ALI employees over the past several years.

33. All ALI employees, including Proctor, signed a non-compete agreement each year during their annual employment evaluation, which typically occurred each January. Thus, Proctor would have signed a non-compete agreement with ALI for the years of 2016, 2017, and 2018. Proctor's most recently signed non-compete agreements, as well as many other former ALI's employees' non-compete agreements, are missing from ALI's files. Upon information and belief, Proctor improperly utilized his privileged access prior to returning his keys to steal and/or destroy many of ALI's current non-compete agreements.

34. Proctor strategically accessed and stole ALI's confidential and proprietary information to immediately and directly compete with ALI through his new business venture, Label Edge.

35. Upon information and belief, Defendants are soliciting employees of ALI to leave ALI and work for Label Edge, either as employees or independent contractors.

36. Proctor is using information and business contacts gained exclusively through his employment with ALI to directly and immediately compete with ALI to further Defendants' own business interests.

37. In addition to the direct theft of ALI's confidential and proprietary information, the conduct of Defendants has resulted in immediate loss of profits, future lost profits, destruction of ALI's customer relationships and trust.

CLAIM I – CONVERSION

38. Paragraphs 1-37 are incorporated herein by reference as if set forth word for word.

39. ALI has an ownership interest in its confidential and proprietary information, including information maintained in Label Traxx, and its private server containing Adobe Illustrator files.

40. Defendants intentionally seized control over ALI's confidential and proprietary information, including but not limited to ALI's customer lists, designs, production specifications, Plates, and more in violation of and contrary to ALI's property rights.

41. Defendants' interference with ALI's rights in its confidential and proprietary information has deprived ALI of its valuable business assets. Further, Defendants have intentionally and maliciously converted ALI's assets for their own use, benefit, and profit, including but not limited to further their own business interests through Label Edge.

42. Defendants are liable to ALI for damages proximately caused by their wrongful interference and control over ALI's confidential and proprietary information in an amount to be proven at trial.

**CLAIM II – TORTIOUS INTERFERENCE WITH A CONTRACTUAL
RELATIONSHIP OR BUSINESS EXPECTANCY**

43. Paragraphs 1-42 are incorporated herein by reference as if set forth word for word.

44. ALI had valid contractual relationships or business expectancies with its established customers.

45. Proctor had knowledge of ALI's contractual relationships or business expectancies through his nearly 16 years of employment with ALI.

46. Proctor shared this information to ALI's direct competitors. More specifically, Proctor intentionally and improperly diverted existing customers away from ALI to Label Edge.

47. Defendants' intentional and improper interference induced or caused a disruption or termination of ALI's contractual relationships or business expectancies.

48. Defendants' conduct has resulted in damages to ALI in an amount to be proven at trial.

CLAIM III – THEFT OF TRADE SECRETS

49. Paragraphs 1-48 are incorporated herein by reference as if set forth word for word.

50. ALI's confidential and proprietary information, including customer lists, designs, product lists, supplier lists, production specifications, and Plate designs are "trade secrets" because these constitute information from which ALI derives independent economic value from the information which is not generally known to or readily accessible by proper means by other persons who could obtain economic value from its disclosure or use. ALI has taken reasonable efforts to maintain its secrecy by limiting access to such information only to its employees, in some cases only to graphic designers and/or management. See Ark. Code Ann. § 4-75-601(4). ALI has compiled this vast collection of proprietary and confidential information over the course of more than forty years

of business.

51. By intentionally converting ALI's confidential and proprietary information, including the information contained in Label Traxx and Adobe Illustrator, Defendants have acquired through improper means and misappropriated ALI's trade secrets. *See* Ark. Code Ann. § 4-75-601.

52. The confidential and proprietary information illegally taken is information used in interstate commerce by ALI. This information was willfully and maliciously misappropriated by the Defendants, and, therefore, all Defendants are liable for all damages caused by the misappropriation pursuant to the Federal Protection of Trade Secrets Act. *See* 18 U.S.C. § 1836.

53. This information derives independent economic value for ALI. ALI has devoted substantial time, effort, and resources in establishing such confidential and proprietary information.

54. Based on Defendants' conduct of misappropriating ALI's trade secrets, as well as an existing, continuing threat of future misappropriation, ALI seeks an immediate injunction to eliminate ALI's ongoing damages and the commercial advantage wrongfully gained by Label Edge from Defendants' misappropriation. *See* Ark. Code Ann. § 4-75-604.

55. In addition to injunctive relief, ALI seeks damages, including unjust enrichment, for Defendants' theft of ALI's trade secrets. *See* Ark. Code Ann. § 4-75-606.

56. Also, ALI seeks its attorneys' fees for Defendants' willful and malicious theft of trade secrets. *See* Ark. Code Ann. § 4-75-607.

CLAIM IV – BREACH OF FIDUCIARY DUTY AND DUTY OF LOYALTY

57. Paragraphs 1-56 are incorporated herein by reference as if set forth word for word.

58. As Operations Manager and generally as an employee of ALI, Proctor was entrusted with confidential and proprietary information, thus he owed a duty of loyalty to, as well as a fiduciary duty to act in good faith and in the best interest of, ALI.

59. Proctor breached these duties when he provided ALI's confidential and proprietary information to Label Edge, and potentially others, to improperly gain an unfair competitive advantage on ALI, including but not limited to stealing and utilizing ALI's Plates and designs, but also soliciting ALI's customers.

60. Also, Proctor breached these duties when he intentionally and maliciously destroyed or stole information belonging to ALI in conjunction with leaving his employment with ALI, such as its employee's files.

61. But for Proctor's employment with ALI, he would not have had access to ALI's confidential and proprietary information that he is now using to directly compete against ALI.

62. Proctor's conduct has damaged ALI in an amount to be proven at trial.

63. As a result of Proctor's conduct, ALI is entitled to compensatory damages and its attorneys' fees.

CLAIM V – UNAUTHORIZED COMPUTER PROGRAM ACCESS AND THEFT

64. Paragraphs 1-63 are incorporated herein by reference as if set forth

word for word.

65. ALI maintains years of confidential and proprietary information in Label Traxx, which is accessible only to ALI's graphic designers and management for the business benefit of ALI. Label Traxx is critical to ALI's business success.

66. As early as March 2018, and continuing through September 2018, Proctor accessed Label Traxx through his ALI employee login to secretly take ALI's confidential and proprietary information. This conduct was in furtherance of Proctor's plan to steal ALI's confidential and proprietary information for the business benefit of Label Edge. Therefore, Proctor, without authorization, accessed ALI's confidential and proprietary information through Label Traxx outside of the course and scope of his employment with the specific intent to harm ALI's business operations and customer relationships.

67. The action taken by Proctor constitutes felonious criminal conduct under federal and Arkansas law, including:

- (a) Fraud and related activity in connection with computers. *See* 18 U.S.C. § 1030.
- (b) Theft of property. *See* Ark. Code Ann. § 5-36-103;
- (c) Computer trespass. *See* Ark. Code Ann. § 5-41-104;
- (d) Unlawful act regarding a computer. *See* Ark. Code Ann. § 5-41-202;
- (e) Unlawful interference with access to computers or unlawful use or access to computers. *See* Ark. Code Ann. § 5-41-203.

68. Based on Proctor's felonious conduct, ALI is entitled to recover its attorneys' fees and costs pursuant to Arkansas Code Annotated § 16-118-107.

69. Based on Proctor's conduct, ALI is entitled to recover all of its damages, including loss of profits, and costs of suit. *See* Ark. Code Ann. § 5-41-

106.

CLAIM VI – UNAUTHORIZED ACCESS TO PROPERTY

70. Paragraphs 1-69 are incorporated herein by reference as if set forth word for word.

71. Proctor knowingly accessed ALI's business property, his employer, in a nonpublic area without authorization to capture and remove ALI's data, records, documentation, and to use the information contained in this data, records, and documentation to intentionally harm ALI. *See* Ark. Code Ann. § 16-118-113(a)-(c)(1). Label Edge is jointly liable by knowingly directing or assisting Proctor. *See* Ark. Code Ann. § 16-118-113(d).

72. Based on Defendants' conduct, ALI is entitled to equitable relief, compensatory damages, its costs, and attorneys' fees. *See* Ark. Code Ann. § 16-118-113(e)(1)-(3). If compensatory damages cannot be quantified, then ALI is entitled to recover up to \$5,000 per day that each Defendant engaged in conduct violating Arkansas Code Annotated § 16-118-113(b), an amount to be proven at trial. *See* Ark. Code Ann. § 16-118-113(e)(4).

CLAIM VII – BREACH OF CONTRACT

73. Paragraphs 1-72 are incorporated herein by reference as if set forth word for word.

74. On January 11, 2011, Proctor executed a Non-Compete Agreement with ALI. A true and accurate copy of this agreement is attached hereto as Exhibit C.

75. The 2011 Non-Compete Agreement provided that Proctor would not

“compete against Arkansas Labeling, Inc. in any manner after leaving their employ for any reason” for a period of one year.

76. More specifically, the 2011 Non-Compete Agreement stated the following:

I understand that I cannot divulge the clients, customers, vendors, or contacts that I have learned while employed at Arkansas Labeling to anyone in the label or labeling business. I will not give anyone information regarding the business practices and procedures of this company or any trade secrets that I learned while at this company pursuant to the time and distance limitations listed above of one year or one hundred miles.

I understand that I cannot directly, or indirectly, contact the current clients or customers of this business and solicit them as customers of a label or labeling business that I plan to start or that someone else is planning to start, until I have been out of the employ of Arkansas Labeling for at least one year.

77. When Proctor returned to ALI's employ in 2015, he would have executed a non-compete agreement annually. Thus, Proctor's most recent non-compete agreement with ALI would have been signed in January 2018. The 2018 non-compete agreement contained similar terms as the 2011 Non-Compete Agreement, including a provision on stating Proctor would not compete with ALI for a period of one year after leaving his employ with ALI.

78. Shortly after Proctor left ALI in September 2018, ALI discovered that Proctor's non-compete agreements from 2016 to 2018 were missing from ALI's files. Therefore, ALI contends that Proctor stole and/or destroyed his most recent non-compete agreements.

79. Upon information and belief, Proctor, while still employed by ALI, breached his non-compete agreement by, for example:

(a) Intentionally stealing ALI's confidential and proprietary

- information to use for the benefit of Label Edge;
- (b) Sharing ALI's confidential and proprietary information with clients, customers, vendors, or contacts in the labeling business;
- (c) Secretly developing a scheme with Parr and GP Labels to start Label Edge and take business from ALI;
- (d) Contacting ALI customers and soliciting them as customers of a labeling business Proctor planned or someone else planned to start;
- (e) Directly competing against ALI within one year of leaving ALI by operating Label Edge.

80. As a result of Proctor's breach of his non-compete agreement, ALI is entitled to damages, attorneys' fees, and statutory attorneys' fees in an amount to be proved at trial.

CLAIM VIII - UNJUST ENRICHMENT

81. Paragraphs 1-80 are incorporated herein by reference as if set forth word for word.

82. ALI invested time, energy, and resources in Proctor in order to further the business of ALI, which is evident through ALI's training, support, payment of salary, and permitting the use of ALI's state-of-the-art equipment, for Proctor to grow as an employee and Operations Manager of ALI.

83. Defendants, including and through Proctor, have used ALI's confidential and proprietary information to further their own personal interests, which is improperly competing with ALI.

84. Defendants have stolen the weaponized ALI's trade secrets and goodwill to the detriment of ALI.

85. Therefore, Defendants have been unjustly enriched to ALI's detriment.

86. Defendants should be required to disgorge any and all profits and benefits reaped from using ALI's assets, property, support, technology, equipment, goodwill, and confidential and proprietary information.

87. Based on Defendants' conduct, judgment should be entered against Defendants in an amount to be proven at trial.

CLAIM IX – PUNITIVE DAMAGES

88. Paragraphs 1-87 are incorporated herein by reference as if set forth word for word.

89. Defendants have acted maliciously with the intent to harm ALI, or with conscious indifference to the consequences of their actions. Consequently, ALI is entitled to recover punitive damages from Defendants in an amount to be determined at trial to deter such conduct by Defendants in the future.

WHEREFORE, Plaintiff, Arkansas Labeling, Inc., prays that the Court enter a judgment in its favor against Defendants, Tim Proctor and Label Edge, LLC, as set forth herein, grant all relief sought in this Amended Complaint, for compensatory and punitive damages, for its costs, attorneys' fees, and for any and all other proper relief to which it may be entitled.

Respectfully submitted,

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