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Filing # 97626190 E-Filed 10/21/2019 05:09:45 PM

IN AND FOR DUVAL COUNTY FLORIDA

MATTRESS BY APPOINTMENT, LLC,  
a Florida limited liability company,

Plaintiff,

v.

CASE NO.: 16-2019-CA-005809

DANIEL ADAMS, an individual,  
RAPHAELA LUCARELLI, an individual,  
DISCOUNT DIRECT LLC  
(f/k/a Buy Appointment, LLC), a  
dissolved Florida limited liability company,  
DISCOUNT DIRECT, INC., a Florida corporation,  
and MATTRESS CLEARANCE WHOLESALE INC.,  
a dissolved Florida corporation.

Defendants.

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**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that DANIEL ADAMS, Appellant, appeals to the First District Court of Appeal the Order of this Court rendered October 3, 2019. The nature of the order is an Order Granting Plaintiffs Emergency Motion for Preliminary Injunction and Entering Preliminary Injunction.

Respectfully submitted,



Whitney Coyne,  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided via E-Service to Counsel for the Plaintiff, Kevin Cook, [kcook@orrcook.com](mailto:kcook@orrcook.com), 818 A1A North, Suite 302, Ponte Vedra, Florida 32082 on this 21st day of October, 2019.

COYNE LAW, P.A.  
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[wcoyne@lawyersrq.com](mailto:wcoyne@lawyersrq.com)

/s/ Whitney C. Coyne

Whitney C. Coyne, Esq.

Attorney for Appellant,  
Fla. Bar No.:603147

Filing # 96678135 E-Filed 10/03/2019 10:51:59 AM

IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR DUVAL  
COUNTY, FLORIDA

CASE NO.: 16-2019-CA-005809-XXXX-MA  
DIVISION: CV-C

MATTRESS BY APPOINTMENT LLC, a  
Florida limited liability company,

Plaintiff,

vs.

DANIEL ADAMS, an individual,  
RAPHAELA LUCARELLI, an individual,  
DISCOUNT DIRECT LLC (f/k/a Buy  
Appointment, LLC), a dissolved Florida  
limited liability company, DISCOUNT  
DIRECT INC. a Florida corporation, and  
MATTRESS CLEARANCE WHOLESALE,  
INC., a dissolved Florida corporation.

Defendants.

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**ORDER GRANTING PLAINTIFF'S EMERGENCY MOTION FOR  
PRELIMINARY INJUNCTION AND ENTERING PRELIMINARY INJUNCTION**

THIS MATTER came on to be heard on Plaintiff's Emergency Motion for Preliminary Injunction (the "Motion"), pursuant to Rule 1.610, Florida Rules of Civil Procedure, and sections 542.335 and 688.003, Florida Statutes, and the Court having considered the Motion, the evidence presented, and argument of counsel, hereby makes the following findings and conclusions of law:

1. MBA will suffer irreparable harm if an injunction is not entered. Specifically, Defendants may use or continue to use MBA's confidential and trade secret materials in direct competition with MBA.

2. There is no adequate remedy at law that would compensate MBA for the continued use, misappropriation, and disclosure of MBA's confidential information and trade secret information. Under section 542.335, Florida Statutes, "the violation of an enforceable restrictive covenant creates a presumption of irreparable injury to the person seeking enforcement of a restrictive covenant." § 542.335(1)(j), Fla. Stat. Under section 688.003, Florida Statutes, "Actual or threatened misappropriation may be enjoined." § 688.003(1), Fla. Stat.

3. Adams expressly agreed that a breach of the Confidentiality Agreements or the Territory Agreements With Protective Covenants could be remedied by entry of an injunction.

4. In the Confidentiality Agreements, Adams agreed: "(a) to hold the Confidential Information in strict confidence; (b) not to disclose such Confidential Information to any third party except as specifically authorized in writing; (c) not to use any Confidential Information for any other purpose than the business purposes of Carolina; and (d) to promptly notify [MBA] in writing of a breach of this Agreement, whether deliberate or inadvertent, is discovered."

5. In the Territory Agreements With Protective Covenants, Adams agreed that the "Territory" was a "straight-line radius of fifteen miles around the physical location of any showroom maintained by Dealer and authorized by MBA, during the two-year period preceding the termination of this Agreement."

6. Adams operated two locations within the two-year period preceding the termination of the Territory Agreement, one at 7684 15<sup>th</sup> Street East, Sarasota, Florida ("Sarasota Store") and the other at 3425 Heid Road, Sebring, Florida ("Sebring Store").

7. Adams has admitted to operating competing locations for Discount Direct, a direct competitor of MBA, from the exact location as his MBA location at the Sarasota Store and

in Bradenton Florida (for Discount Direct West Florida), which is located approximately twelve (12) miles from the Sarasota Store.

8. Adams agreed that during the term of the agreement and for one (1) year following termination, he would not in any way or in any capacity, either directly or indirectly:

Engage in the Business in the Territory or in any area within a forty-five (45) mile radius of the Territory.

Own any interest in any business that is engaged in the Business in the Territory or within a forty-five mile radius of the Territory.

Provide services within the Territory or within a forty-five mile radius of the Territory that are competitive with MBA. For purposes of this subparagraph only, "provide services" means that Dealer shall not: (a) be engaged or employed on Dealer's own account or on behalf of any other person or entity in the same capacity as Dealer was engaged in by MBA; or (b) provide services on Dealer's own account or on behalf of any other person or entity that are the same as the services Dealer provided to MBA at the time of the termination of this Agreement for any reason. For purposes of this subparagraph only, "competitive with" means engaged in the Business.

Solicit, induce, influence or attempt to solicit, induce or influence any Customer (a) to cease doing business in whole or in part with MBA, or any other Dealer for MBA; or (b) to do business with any other person or entity engaged in the Business. For purposes of this subparagraph, "Customer" means a person or entity to whom or to which Dealer sold any Products with the one-year period preceding the termination of this Agreement for any reason.

Solicit, attempt to solicit, induce, attempt to induce, encourage or endeavor to cause any dealer for MBA for any reason to (a) cease being a dealer for MBA, (b) reduce the amount of Products sold through MBA, (c) sell or market Products through any other person or entity engaged in the Business, (d) or in any manner interfere with the business relationship between MBA and any of its dealers. "Dealer" for purposes of this paragraph means any dealer as of the date of termination; any dealers added thereafter; and any within 18 months prior to termination.

9. Adams has agreed and argued to this Court that the information MBA seeks to protect is confidential and trade secret information. See Motion for Protective Order, ¶ 15.

10. Based on the foregoing (including its claim for breach of contract against Adams) MBA is likely to succeed on the merits of its claims against Defendants because Adams has breached the Confidentiality Agreements and Territory Agreement by, *inter alia*, engaging in the Business within a sixty (60) mile radius from the Sarasota Store, and by using and disclosing MBA's confidential information and trade secret materials.

11. Based upon the specific facts shown, MBA will suffer immediate and irreparable injury, loss, or damage if an injunction is not granted.

12. A preliminary injunction will serve the public interest because Florida's public policy favors enforcement of contracts.

13. With respect to a bond required under Rule 1.610(b), the Court sets the bond at a \$50,000.

THEREFORE, Plaintiff's Emergency Motion for Preliminary Injunction is hereby GRANTED, and the Court enters this Preliminary Injunction against Defendants to remain in effect for one (1) year following full compliance herewith pursuant to the following:

(a) Adams, and all those in active concert with him (including Defendants), are enjoined from violating the Confidentiality Agreement and Territory Agreements With Protective Covenants;

(b) Defendants are enjoined from using or disclosing any confidential information of MBA or any of MBA's trade secrets to any person or entity outside of MBA, which includes but is not limited to the use or disclosure of any version of the following MBA materials:

- i. the "Playbook" the "Business Manual" or any "Business Training Manual,"
- ii. the "Blue Print for Success,"
- iii. the "New Dealer Checklist,"

- iv. the "Mattress by Appointment Invoice,"
- v. the "Sample Business Card Template,"
- vi. any sample Facebook banners,
- vii. any MBA logos,
- viii. the "20/20 Daily Action Plan,"
- ix. "How to Use Craigslist,"
- x. "Craigslist Relevance"
- xi. "How to Use Facebook,"
- xii. "Sample Q150 Flyer,"
- xiii. "Sample Clearance Flyer,"
- xiv. "Phone Approach,"
- xv. "Activity Report,"
- xvi. "Profit Tracking Sheet,"
- xvii. any phone scripts,
- xviii. any training videos or scripts for the same,
- xix. any "video testimonial" scripts,
- xx. any information located under the "Business Manual" tab of the password protected dealer website, including information related to the showroom, advertising, phone/scheduling, selling, tracking, earning, delivery, financing, vendor delivery, and/or training videos,
- xxi. any documents or information included on the MBA password protected dealer website.

(c) Adams, directly or indirectly, is enjoined from engaging in the Business within a sixty (60) mile radius from the Sarasota Store and the Sebring Store;

(d) Adams is enjoined from owning any interest in any business that is engaged in the Business within a sixty (60) mile radius of the Sarasota Store and the Sebring Store except Adams may own up to five percent of such competing business if the shares are listed on a commonly recognized securities exchange or if such shares are quoted in the over-the-counter market at least once per week in the Wall Street Journal;

(e) Adams is enjoined, directly or indirectly, from providing services within a sixty (60) mile radius of the Sarasota Store and the Sebring Store that are competitive with MBA;

(f) Adams is enjoined, directly or indirectly, from soliciting, attempting to solicit, inducing, attempting to induce, encouraging or endeavoring to cause any dealer for MBA for any reason to (a) cease being a dealer for MBA, (b) reduce the amount of Products sold through MBA, (c) sell or market Products through any other person or entity engaged in the Business, (d) or in any manner interfere with the business relationship between MBA and any of its dealers.

(g) Adams is ordered to give up possession of and return any and all of MBA's property remaining in Defendants' possession, including, but not limited to all drafts and versions of:

- i. the "Playbook" the "Business Manual" or any "Business Training Manual,"
- ii. the "Blue Print for Success,"
- iii. the "New Dealer Checklist,"
- iv. the "Mattress by Appointment Invoice,"
- v. the "Sample Business Card Template,"
- vi. any sample Facebook banners,
- vii. any MBA logos,

- viii. the "20/20 Daily Action Plan,"
- ix. "How to Use Craigslist,"
- x. "Craigslist Relevance"
- xi. "How to Use Facebook,"
- xii. "Sample Q150 Flyer,"
- xiii. "Sample Clearance Flyer,"
- xiv. "Phone Approach,"
- xv. "Activity Report,"
- xvi. "Profit Tracking Sheet,"
- xvii. any phone scripts,
- xviii. any training videos or scripts for the same,
- xix. any "video testimonial" scripts,
- xx. any information located under the "Business Manual" tab of the password protected dealer website, including information related to the showroom, advertising, phone/scheduling, selling, tracking, earning, delivery, financing, vendor delivery, and/or training videos,
- xxi. any documents or information included on the MBA password protected dealer website.

(h) Defendants are ordered to produce to an independent computer forensic expert all electronic storage devices Adams or any other Defendant has used in or for the by-appointment sales industry, including but not limited to all personal computers, smart phones, or tablets (for the purpose of making a control copy or mirror image to protect against destruction of evidence);

(i) Defendants are ordered that after the independent computer forensic expert copies

their storage devices, they must permanently delete and destroy every electronic version of the documents or information listed above or other documents or materials which otherwise contain MBA's Confidential Information.

(j) Lucarelli, Discount Direct LLC, Discount Direct Inc., and Mattress Clearance Wholesale, Inc. are enjoined from interfering with the agreements between MBA and Adams.

This preliminary injunction shall take effect upon the posting of the bond set forth above.

Done and ordered in chambers this 30<sup>th</sup> day of October, 2019.



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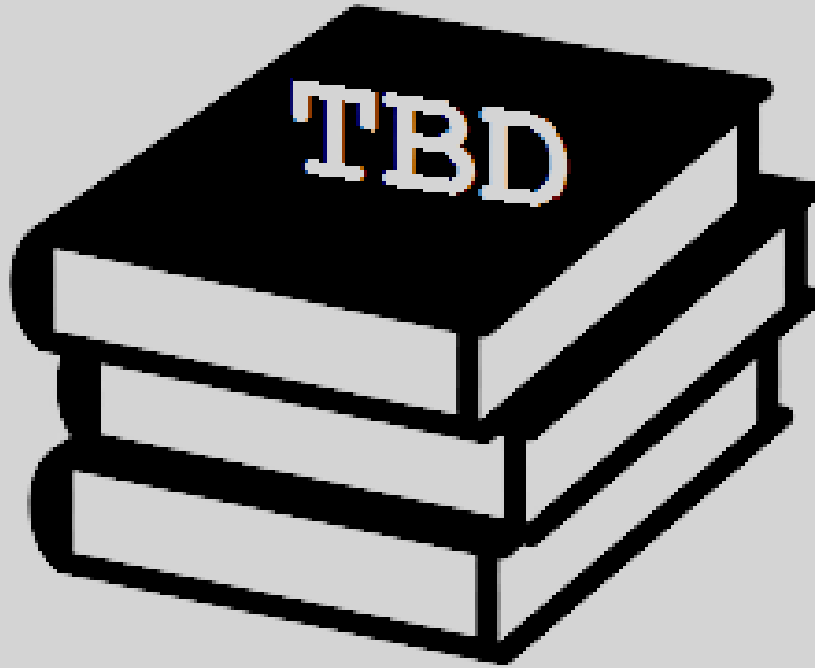
THE HONORABLE ROBERT M. DEES  
Circuit Court Judge

cc: Kevin Cook ([kcook@orrcook.com](mailto:kcook@orrcook.com))  
Whitney Coyne ([wcoyne@lawyersrq.com](mailto:wcoyne@lawyersrq.com))

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