

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

NEWS AMERICA MARKETING)	
IN-STORE, LLC,)	
)	
Plaintiff,)	CIVIL ACTION NO.
v.)	
)	1:07-CV-791-TCB
ROBERT T. EMMEL,)	
)	
Defendant.)	

**DEFENDANT ROBERT T. EMMEL'S APPENDIX IN
OPPOSITION TO DEFENDANT'S SUMMARY JUDGMENT MOTION**

Pursuant to N.D. Ga. LR 55.1.C, defendant Robert T. Emmel hereby files the attached materials in support of his contemporaneously-filed Brief in Opposition to Defendant's Motion for Summary Judgment.

Attachment

Contents

Def. Ex. L

Supplemental Declaration of Robert T. Emmel,
Dated 8/11/08

Respectfully submitted,

s/Marc N. Garber

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FONT CERTIFICATION

The undersigned certifies that this pleading complies with the font requirements of LR 5.1B because it has been prepared in Century Schoolbook, 13 point.

s/Marc N. Garber
MARC N. GARBER

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2008, I electronically filed the foregoing pleading with the Clerk using the Court's CM/ECF system, which will automatically send email notification of such filing to all attorneys of record.

s/Marc N. Garber
MARC N. GARBER

Defendant's

Ex. L

**(Supplemental Declaration of Defendant
Robert T. Emmel – Dated August 11, 2008)**

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**SUPPLEMENTAL DECLARATION
OF DEFENDANT ROBERT T. EMMEL**

Declarant Robert T. Emmel, pursuant to 28 U.S.C. § 1746, hereby declares and testifies as follows:

1. As of the date and time of this declaration, I am over 18 years of age and a United States citizen living in the state of Georgia.
2. All of the information contained within this declaration is true and correct and based on my personal knowledge, information, and belief.
3. During my employment, plaintiff News America Marketing In-Store Marketing, LLC ("NAMIS") did not provide me with the monetary values of a client-retailer's contract as related to NAMIS' profitability. NAMIS provided me only with the projected share of revenue for the client-retailer from its contract.

4. The information I received during NAMIS internal conference calls that was strategic and tactical information on how to sustain and grow the business that related to NAMIS retailers were “trade secrets”—not merely “confidential”—information because the information was financial data, financial plans, product plans, and lists of actual or potential customers or suppliers, all of which was not commonly known by or available to the public or NAMIS competitors.

5. The information I received from NAMIS concerning profit improvement initiatives that related to NAMIS retailers were “trade secrets”—not merely “confidential”—because the information was financial data, financial plans, product plans, and lists of actual or potential customers or suppliers, all of which was not commonly known by or available to the public or NAMIS competitors.

6. All the information stored on my NAMIS-issued laptop, other than personal information that may have been there, was strictly intangible information that were “trade secrets”—not merely “confidential”—because all that intangible information was either nontechnical company data,

compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors.

7. The intangible information stored on my NAMIS-issued laptop that were “selling strategies, pricing, and negotiating tactics” were “trade secrets”—not merely “confidential”—because all that intangible information constituted financial plans and product plans and related to actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors.

8. The intangible information stored on my NAMIS-issued laptop that were “customer invoices, customer contracts and addenda, internal customer assessments, proposed contract terms, customer contract demands, customer payment schedule details, and internal sales strategies” were “trade secrets”—not merely “confidential”—because all that intangible information involved financial plans and product plans and related to actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors.

9. All the so-called “confidential or proprietary” information I received from NAMIS during my employment was strictly intangible information in the form of documents and emails that were “trade secrets”—and not merely “confidential”—because all that intangible information was either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors.

10. NAMIS undertook steps to preserve the confidentiality of its trade-secret information, which NAMIS calls “sensitive business information” in its Statement of Undisputed Material Facts [Doc. 247-8]. At various times NAMIS issued different employee manuals and handbooks, including to me. I do recall reading those manuals and handbooks. **Most important, the NAMIS Employee Handbook—Emmel Dep. 1/11/08 – Pl. Ex. 1—stated that NAMIS wanted all employees to sign a written Non-Disclosure Agreement to ensure the confidentiality of NAMIS’s sensitive information and materials. But I never entered into any such agreement with NAMIS during my employment, and NAMIS never required one from me.**

11. My signature on any receipt for any NAMIS employee handbook or manual or policies statement was not, nor did I ever intend my signature to be, confirmation of any agreement or contract with NAMIS.

12. My signature on a receipt represented only an acknowledgment that I merely received the handbook itself—not that any term or provision (other than compensation-related provisions) of any NAMIS employee handbook, manual, or statement of policies constituted a contract or agreement, or my acceptance or understanding that I was legally bound.

13. The hand-written date of “July 30, 2004” on the receipt that purports to be for the 2004 NAMIS’s Standards of Business Conduct is not in my handwriting. That date was inserted by someone without my knowledge or consent. And I do not recognize the handwriting.

14. I sent via UPS a duplicate of my NAMIS laptop on a portable hard-drive to Lee Abrams of Mayer Brown on or about October 4, 2006.

15. I never provided any NAMIS documents or information to any non-governmental third parties (other than my own attorneys)—such as any NAMIS competitor—in any instance that required the advance authorization of NAMIS, either directly or indirectly or through any employee, agent, or attorney.

16. I provided NAMIS documents and information only to: (i) two United States Senators, Paul Sarbanes and Charles Grassley; (ii) two United States Senate Committees, Senate Banking Committee and the Senate Finance Committee through their investigative counsel; (iii) the Securities and Exchange Commission (“S.E.C.”); and (iv) to the New York State Attorney General, on referral from the Senate Banking Committee—***but never to any NAMIS competitors or other non-governmental persons.***

17. My purpose in providing NAMIS documents and information to the two Committees and the two members of the U.S. Senate, the S.E.C., and to the N.Y. State Attorney General was to document for federal and state authorities what I believed in good faith was NAMIS’s illegal anti-competitive conduct against NAMIS competitors and NAMIS’s fraudulent conduct against its own retailer-customers.

18. All the NAMIS information and documents, as well as the memorandum containing NAMIS business information, that I sent to the offices of Senator Sarbanes and Senator Grassley, and to Nicholas Podsiadly, solely in his capacities as the U.S. Senate Finance Committee Investigative Counsel and, later, the U.S. Senate Judiciary Committee Investigative Counsel, were “trade secrets”—not merely “confidential”—because all the

information and documents contained either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors.

19. I have never at any time assumed or used a “false identify” that would have involved the use of any false government-issued forms of identification or a false social security number or any other false documentation needed to create an “identity.”

20. The memorandum and 16 documents containing NAMIS information that I provided to the S.E.C. in early February 2006 contained intangible NAMIS trade-secret information—not mere “confidential” information—because all the NAMIS intangible information reflected in that memorandum was either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors.

21. I had no substantive discussions with Mr. Mashburn of the S.E.C. about NAMIS's illegal activities during my meetings at the S.E.C. on or about February 6 and 7, 2006. I met with other S.E.C. investigators those days to discuss the substance of NAMIS's illegal activities.

22. I had no substantive discussions with Mr. Mashburn of the S.E.C. about my January 23, 2006 memorandum with exhibits to Senator Sarbanes regarding NAMIS's illegal activities, which I had provided to the S.E.C. I met with other S.E.C. investigators to discuss the substance of those materials.

23. On or about February 7, 2006, I gave investigators at the S.E.C. a NAMIS rate card available to the general public on NAMIS's own website (www.newsamerica.com). I provided that rate card to the S.E.C. in response to its investigators' request during our meeting on February 6, 2006.

24. I obtained this rate-card from News America's publicly accessible and available website (www.newsamerica.com). No password was needed. The News America website let me—and any other member of the public who so chose—to open the rate card document in PDF format and print it.

25. The same type of NAMIS rate card—updated with 2008 rates and program changes and additions—is still publicly available and accessible to anyone with internet access by doing the following:

- (i) going to www.newsamerica.com; then
- (ii) selecting “In-store Media”; then
- (iii) clicking on “Rates”; and then
- (iv) clicking on the “2008 Rate Card”—after which a PDF version of the current rate card will open to be viewed, printed, or saved in an electronic media format.

26. A comparison between its 2006 rate card that NAMIS filed under seal with the NAMIS 2008 rate card on its publicly-accessible website confirms they are the same document, except for the 2008 rate card being updated to reflect current rates and any new NAMIS advertising programs offered since then.

27. On or about October 20, 2006, I met with the New York Attorney General’s office on my ***personal time*** and only ***after*** concluding all NAMIS business required for that day. My meeting with the New York Attorney General’s office occurred just before I left for the airport for a return flight home.

28. The January 23, 2006 letter and attachments that I provided to the New York Attorney General's Office were NAMIS intangible trade-secret information—not mere “confidential information”—because all the NAMIS intangible information reflected in those materials were either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors.

29. The exhibits to the “Chronology of a Lockout” that I provided to Nicholas Podsiadly in his capacity as the U.S. Senate Finance Committee Investigative Counsel were NAMIS intangible trade-secret information—not mere “confidential information”—because all the NAMIS intangible information reflected in those materials were either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors.

30. On or about December 6, 2006, I spoke briefly to—but had no substantive discussion with—Jennifer DeKarske of the Minnesota Attorney General’s Office. We did not discuss any of NAMIS’s illegal activities or evidence that I had previously discussed and provided to Senators Sarbanes and Grassley and to Nicholas Podsiadly in his capacity as the U.S. Senate Finance Committee Investigative Counsel.

31. The NAMIS documents and other information I provided on December 20, 2006, to an agency of the United States—*i.e.*, the Senate Finance Committee and its investigative counsel acting on the Committee’s behalf—were provided at the specific request of the Senate Finance Committee.

32. Those 58 pages of NAMIS documents that I provided on December 20, 2006, to Senate Finance Committee’s investigative counsel, at his request acting on the committee’s behalf, were NAMIS intangible trade-secret information—not mere “confidential” information—because all the NAMIS intangible information reflected in those materials were either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential

customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors.

33. The reason I asked in my 11/17/06 letter to Patrick Kroc “if any” non-compete agreements existed between myself and NAMIS and was in NAMIS’s files is because, as it turns out, I correctly believed I had never signed any non-compete agreement with NAMIS, nor had I ever received any such agreement back from NAMIS. My 11/17/06 letter to Mr. Kroc is Emmel Dep. 1/11/08 – Pl. Ex. 19.

34. After my termination, I did **not** keep any NAMIS intangible trade-secret information, whether stored in documents or on the 3 DVDs that duplicated my laptop’s hard-drive, for the purpose of giving them to any NAMIS competitors.

35. After my termination, my purpose in keeping NAMIS intangible trade-secret information, in documentary form and on the 3 DVDs, was to support my earlier disclosures of NAMIS’s illegal activities to two United States Senate Committees (Finance and Banking), two United States Senators (Sarbanes and Grassley), and for the potential use of the U.S. Department of Justice and Federal Trade Commission, as well as to support my earlier disclosures to the Securities and Exchange Commission—

because in mid-December 2006, I was notified by Nicolas Podsiadly acting on behalf of the U.S. Senate Judiciary Committee that the Committee was weighing a referral of my information about NAMIS's illegal activities to the U.S. Department of Justice and Federal Trade Commission.

36. All the documents and 3 DVDs that I chose to keep in mid-December 2006 after my termination was intangible trade-secret information—not mere “confidential” information—because all the NAMIS intangible information reflected in those documents and on the 3 DVDs was either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors.

37. After my termination, I never shared any NAMIS documents or information with any NAMIS competitor except when compelled to do so by legal process in the form of federal-court subpoenas served on me in two federal lawsuits filed against NAMIS by FLOORgraphics, Inc. in the District of New Jersey and Insignia Systems, Inc. in the District of Minnesota.

38. I acted in good faith, and on the advice of my counsel, to comply with my legal obligations after being served with the subpoenas issued by both NAMIS and FLOORgraphics in the New Jersey federal lawsuit.

39. NAMIS blocked employees with non-compete agreements from working for competitors only if those employees *voluntarily* left, but not if they were *involuntarily* terminated. Regardless, I had no non-compete agreement with NAMIS at the time of my termination.

40. I in no way “deliberately delayed execution the December 2006 Agreement.” NAMIS never even set a deadline for me to sign our 12/21/06 Agreement—which is the date I signed it.

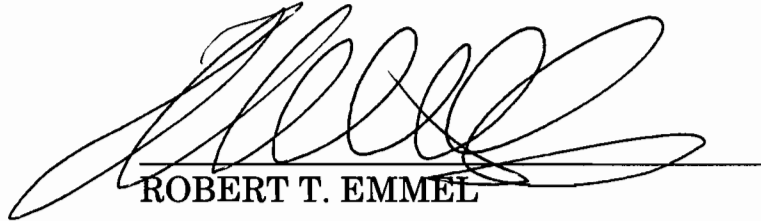
41. I never had any discussions with or made any statements about or demands for money from NAMIS to Jordan Lippner in December 2006 or January 2007 or any time thereafter, and I never made any threats if I did not receive a severance payment.

42. I never even met Lippner or heard his voice prior to attending his deposition in late-February 2008 in New York City.

43. Lippner, who is an attorney and high-level NAMIS in-house lawyer, never memorialized my supposedly extortionate threats—as confirmed by my review of all the materials produced by NAMIS in this case, none of which include any document authored by Lippner that corroborates his claim.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

SIGNED this 11th day of August, 2008.



ROBERT T. EMMEL