

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CASE TYPE: OTHER CIVIL

Summit Brewing Company,
Plaintiff,

COURT FILE NO. _____

v.

COMPLAINT

Jeffrey W. Spaeth and Timothy P. Daly,
Defendants.

Plaintiff Summit Brewing Company, for its Complaint against Defendants Jeffrey W. Spaeth and Timothy P. Daly, states and alleges as follows:

THE PARTIES

1. Plaintiff Summit Brewing Company (“Summit”) is a privately-held Minnesota corporation with its business headquarters, taproom, and a production facility at 910 Montreal Circle in St. Paul, Ramsey County, Minnesota. Summit is engaged in the business of brewing craft beer for sale in Minnesota and surrounding states.

2. Defendant Jeffrey W. Spaeth (“Spaeth”) is an individual who currently resides at 2708 Ewing Avenue South, Minneapolis, Hennepin County, Minnesota, and is a former employee of Plaintiff Summit.

3. Defendant Timothy P. Daly (“Daly”) is an individual who currently resides at 1618 Ashland Avenue, St. Paul, MN 55104, and is a former employee of Plaintiff Summit.

JURISDICTION AND VENUE

4. Defendant Spaeth is subject to jurisdiction in Minnesota because he transacts business in Minnesota and resides in Minnesota.

5. Defendant Daly is subject to jurisdiction in Minnesota because he resides in Minnesota.

6. Venue is proper in this County pursuant to Minn. Stat. § 542.09 because Defendant Spaeth resides in this County and the causes of action alleged herein arose in part in this County.

FACTUAL BACKGROUND

7. Plaintiff Summit was founded in the mid-1980s by Chief Executive Officer (“CEO”), Mark Stutrud (“Stutrud”). At the time of its founding, Summit was one of fewer than twenty craft breweries across the country, and one of the only craft breweries in the Midwest.

8. Since that time, the craft brewing industry in Minnesota has experienced explosive growth and become increasingly competitive.

9. Summit has invested significant time, money, and resources developing: brand identity; sales and marketing plans, tools, strategies, and programs; pricing and distribution plans, tools, strategies, and programs; production goals; growth strategies; distributor relationship information; and management systems and techniques, all of which derive value from being not generally known to or readily ascertainable by Summit’s industry competitors.

10. Defendant Spaeth was one of Summit’s first employees, having been hired by Summit in 1986. Spaeth was employed by Summit through March 25, 2016.

11. Spaeth worked in sales and marketing throughout his employment with Summit. Most recently Spaeth served as Summit’s Vice President of Sales with responsibility for

defining and executing sales goals; developing strategic sales plans and marketing initiatives to increase sales growth, territory strength, customer satisfaction, brand loyalty and overall market share; and managing and developing wholesaler and distributor relationships.

12. Spaeth was eligible to participate in Summit's Employee Stock Purchase Plan and currently owns 79,688 shares, or approximately 2.5%, of Summit's Common Stock, which is closely held and not available for sale on the open market.

13. Both of Spaeth's positions with Summit, including his employment and shareholder status, provided him with access to considerable confidential information of Summit, including but not limited to sales and marketing plans, tools, strategies, and programs; pricing and distribution plans, tools, strategies, and programs; production goals; growth strategies; distributor relationship information; and management systems and techniques.

14. At all times during Spaeth's employment with Summit, Summit regarded the information noted above in Paragraph 13 as its trade secret or otherwise confidential information.

15. At all times during his employment with Summit, Spaeth was on clear notice of the information that Summit considered trade secret or otherwise confidential.

16. Summit maintains a confidentiality policy in its Employee Handbook, which is distributed to every employee from time to time throughout employment, putting employees on notice of their duty of confidentiality. The policy provides, in part, that Summit:

has developed certain unique information, products, processes, and procedures, which are important parts of our business. These trade secrets and confidential business and financial information are the property of Summit. You may develop, be provided with, or have access to such confidential or trade secret information during the course of your employment. You are expected to maintain the confidentiality of such information during your employment

and after your employment ends. In fact, you are specifically prohibited from disclosing such information to anyone. You are also prohibited from using it for your own purposes.

17. Defendants Daly and Spaeth each received the Employee Handbook containing the confidentiality policy during their respective periods of employment with Summit.

18. In addition, in connection with his separation from employment with Summit on March 25, 2016, Summit offered Spaeth a generous severance in exchange for specified terms set forth in a Confidential Separation Agreement and Release (the “Severance Agreement”).

19. In exchange for a substantial severance payment, in the Severance Agreement Spaeth agreed, among other things, not to divulge, furnish or make accessible to anyone or use in any way, any confidential or secret knowledge or information of Summit that he acquired or became acquainted with during his employment with the Company.

20. The Severance Agreement defines confidential information to include:

trade secrets; methods of research and testing, manufacturing processes, management systems and techniques, sales and marketing information, financial information, confidential or secret designs, recipes, formulae, processes, software, plans, devices or material, whether patented or patentable, directly or indirectly useful in any aspect of the business of the Company; any confidential or secret product development work of [Summit]; or any other confidential or secret aspects of the business of [Summit].

21. In mid-May, 2016, Stutrud, Summit’s CEO, became aware that Spaeth had entered into an independent consulting agreement with Summit’s direct competitor. The details of the arrangement were not made known to Stutrud.

22. Defendant Daly was hired by Summit in January, 2000, as a Sales Market Manager, and reported directly to Spaeth during most of his employment with Summit.

23. Until his employment with Summit ended in late August 2016, Daly was responsible for sales of Summit beer in a territory encompassing northern Minnesota, parts of northwestern Wisconsin, and parts of the Twin Cities metropolitan area.

24. Daly's position as a Sales Market Manager provided him with access to considerable confidential information of Summit, including but not limited to sales and marketing plans, tools, strategies, and programs; pricing and distribution plans, tools, strategies, and programs; distributor relationship information; and management systems and techniques.

25. At all times during Daly's employment with Summit, Summit regarded the information noted above in Paragraph 24 as its trade secret or otherwise confidential information.

26. At all times during his employment with Summit, Daly was on clear notice of the information that Summit considered trade secret or otherwise confidential.

27. In August 2016, Stutrud became aware that certain confidential and trade secret information of Summit had been disclosed to Summit's direct competitor without Summit's consent.

28. The direct competitor to whom Summit's confidential and trade secret information had been disclosed was the competitor that had retained Spaeth as a consultant.

29. During his employment with Summit, on or about August 17, 2016, Daly participated in providing Summit's confidential and trade secret information to Summit's direct competitor by, among other things, emailing such information to Defendant Spaeth. Upon information and belief, Daly participated in such disclosures by various means at other times during his employment with Summit. All such participation constitutes improper disclosure of various trade secret and confidential information belonging to Summit.

30. Upon information and belief, Daly, while he was still employed by Summit and Spaeth was engaged as a consultant to Summit's direct competitor, improperly disclosed to Spaeth certain confidential and trade secret information of Summit so that Spaeth could, in turn, pass such trade secret and confidential information to high-level executives within Summit's direct competitor.

31. Upon information and belief, Spaeth did provide the confidential and trade secret information of Summit he received from Daly to high-level executives within Summit's direct competitor. In so doing Spaeth intentionally and effectively provided Summit's direct competitor with an unfair competitive advantage.

32. Upon information and belief, Spaeth has, throughout his consulting engagement with Summit's direct competitor, improperly used and/or disclosed to or on behalf of that competitor various trade secret and confidential information belonging to Summit that Spaeth learned or became aware of during the term of his employment with Summit. In so doing Spaeth intentionally and effectively provided Summit's direct competitor with an unfair competitive advantage and realized personal benefit.

COUNT I
MISAPPROPRIATION OF TRADE SECRETS AND
CONFIDENTIAL INFORMATION (By Both Defendants)

33. Plaintiff hereby realleges and reasserts the allegations contained in the previous paragraphs 1 through 32 of the Complaint as if expressly restated herein.

34. As described in further detail above, Summit has invested significant time, money and other resources in developing its proprietary confidential information, including its sales and marketing plans, tools, strategies, and programs; pricing and distribution plans, tools,

strategies, and programs; production goals; growth strategies; distributor relationship information; and management systems and techniques.

35. The proprietary confidential information noted above in Paragraph 34 and Summit's other confidential business and trade secret information provides significant economic value to Summit from not being generally known to, or readily ascertainable by proper means, by Summit's competitors.

36. Summit has taken reasonable efforts to maintain the secrecy of its confidential, proprietary and trade secret information.

37. Upon information and belief, Defendants have used, taken, and/or disclosed confidential and trade secret business information of Summit for purposes other than Summit's sole benefit, including but not limited to the disclosure to and/or use for the benefit of Summit's direct competitor and for their own individual benefit.

38. The unlawful and improper actions of Defendants, as described above, including but not limited to Spaeth's use and disclosure of Summit's confidential business and trade secret information and Daly's August 17, 2016, disclosure of such information, constitute misappropriation of Summit's confidential business and trade secret information, in violation of Minnesota's Uniform Trade Secrets Act, Minn. Stat. § 325C.01, et seq.

39. As a result of the unlawful and improper actions of Defendants, as described above, Defendants have also been unjustly enriched.

40. Pursuant to Minnesota's Uniform Trade Secrets Act, Minn. Stat. § 325C.01, et seq., and Minnesota common law pertaining to protectable confidential information, Summit is entitled to recover damages in an amount to be determined at trial, including damages for both

business losses suffered by Summit and reflecting Defendants' unjust enrichment and improper gains.

41. Summit is also entitled to recover damages from Spaeth for his breach of contract, in an amount to be determined at trial, including damages for both business losses suffered by Summit and reflecting Spaeth's unjust enrichment and improper gains.

42. Summit is further entitled to injunctive relief against Defendants to prevent future misappropriation, and to an award against Defendants of Summit's reasonable attorneys' fees, and exemplary damages, all pursuant to Minn. Stat. §§ 325C.02 and 325C.04.

COUNT II
BREACH OF CONTRACT (By Defendant Spaeth)

43. Plaintiff hereby realleges and reasserts the allegations contained in the previous paragraphs 1 through 42 of the Complaint as if expressly restated herein.

44. Defendant Spaeth, as described above, entered into a consulting arrangement with Summit's direct competitor.

45. Upon information and belief, Spaeth has used, taken, and/or disclosed confidential, sensitive, and proprietary business information that he learned or became aware of during his employment with Summit for purposes other than Summit's sole benefit, including for Spaeth's own personal gain and for the benefit of Summit's direct competitor.

46. Defendant Spaeth has, accordingly, breached his Severance Agreement with Summit.

47. Plaintiff is, therefore, entitled to injunctive relief against Spaeth prohibiting him, either directly or indirectly, from using, taking, and/or disclosing any confidential, sensitive, and proprietary business information of Summit for any purpose other than Summit's sole benefit.

48. Plaintiff is also, therefore, entitled to recover the gross amount of its severance payment to Spaeth under the Severance Agreement, which was paid to Spaeth, in part, as consideration for securing Spaeth's cooperation and compliance with the terms of the Severance Agreement.

49. Plaintiff has also been damaged, and will be further damaged, by the breach of contract by Defendant Spaeth; Spaeth is thus also liable to Plaintiff for the damages caused by those breaches, in an amount in excess of \$50,000 to be proven at trial, including consequential damages.

COUNT III
BREACH OF DUTY OF LOYALTY (By Defendant Daly)

50. Plaintiff hereby realleges and reasserts the allegations contained in the previous paragraphs 1 through 49 of the Complaint as if expressly restated herein.

51. Defendant Daly, during the period when he was employed with Summit, owed a duty of loyalty to Summit, requiring him to act in the best interests of Summit.

52. Defendant Daly, by and through the actions described above, including but not limited to his contact and communications with Defendant Spaeth occurring prior to the end of Daly's employment with Plaintiff, breached his duty of loyalty owed to Summit.

53. Plaintiff has been damaged, and will be further damaged, by the breach of duty of loyalty by Defendant Daly and said Defendant is thus liable to Plaintiff for the damages caused by his breach, in an amount in excess of \$50,000 to be proven at trial, including consequential damages.

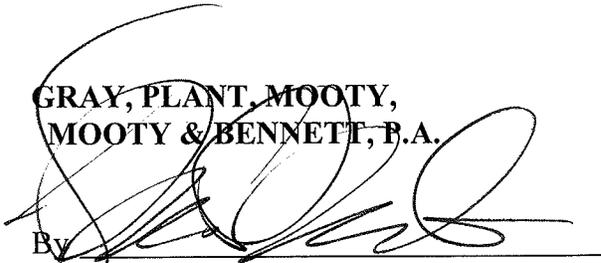
REQUEST FOR RELIEF

WHEREFORE, Plaintiff Summit requests that the Court grant the following relief:

1. Granting judgment to Summit and against Defendants based upon the claims set forth above.
2. Granting Summit temporary and permanent injunctive relief against Defendants.
3. Awarding Summit compensatory damages against Defendants based upon the claims set forth above, in amounts in excess of \$50,000 per Defendant, including damage to Plaintiff's business, and disgorgement by Defendants of all amounts unjustly received by them, all in amounts to be proven at trial.
4. Awarding Summit exemplary damages, pursuant to Minn. Stat. §§ 325C.03, against Defendants.
5. Awarding Summit additional damages against Defendants in the form of forfeiture of compensation and revenues previously paid to them by Summit in periods during which they breached their respective duties to Summit, including forfeiture of the severance payment to Spaeth made under the Severance Agreement and specifically including damages against Daly in the form of forfeiture of compensation paid by Summit to Daly while an employee.
6. Granting Summit an award of its attorneys' fees incurred in this action as to and against Defendants, pursuant to Minn. Stat. §§ 325C.04.
7. Granting Summit an award of its costs and disbursements incurred in this matter.
8. Granting Summit such other and further relief as the Court deems just and equitable.

Dated: September 15, 2016

**GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.**

By 

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**ATTORNEYS FOR PLAINTIFF
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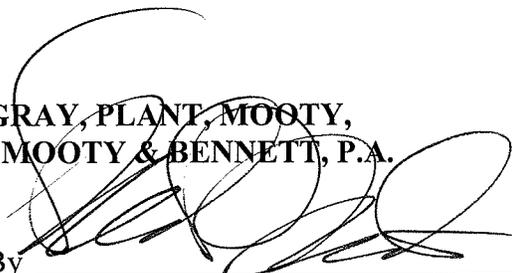
ACKNOWLEDGMENT

Pursuant to Minn. Stat. § 549.21, the parties represented by the undersigned attorneys, acknowledge that costs, disbursements, and reasonable attorney's and witness' fees may be awarded to the opposing party or parties for actions in bad faith; the assertion of a claim or a defense that is frivolous and that is costly to the other party; the assertion of an unfounded position solely to delay the ordinary course of the proceedings or to harass; or the commission of a fraud upon the court.

Dated: September 15, 2016

**GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.**

By


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