

STATE OF MICHIGAN  
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

SCARLET HANSON-BIRK HOLD; and  
UNDERLUXE, LLC,

Plaintiffs,

Case No. 16-01547-CBB

vs.

HON. CHRISTOPHER P. YATES

GINA KUYERS; and LUXEIRE, LLC,

Defendants.

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OPINION AND ORDER DENYING PLAINTIFFS’  
MOTION FOR A PRELIMINARY INJUNCTION

When Plaintiff Scarlet Hanson-Birkhold and Defendant Gina Kuyers joined forces to create a clothing-design company, neither woman intended that effort to spawn two acrimonious lawsuits. Yet after the two women settled the initial action that resulted in their formal break-up, they became embroiled in this second lawsuit regarding their rights and responsibilities upon going their separate ways. Specifically, after Ms. Hanson-Birkhold paid Ms. Kuyers \$12,000 for “all tangible Company property” of the joint venture known as Kuyers and Hanson, LLC (“K&H”) in September 2015, Ms. Kuyers began producing and marketing undergarments known as innerwear through her company, Defendant Luxeire LLC (“Luxeire”). Although Ms. Hanson-Burkhold had not yet brought a product of that nature to market, Ms. Hanson-Birkhold filed the instant case and moved for an injunction to block Ms. Kuyers from selling any form of innerwear. On March 7, 2016, the Court conducted an evidentiary hearing at which both women testified. Now, based upon the record developed at that hearing, the Court concludes that Ms. Hanson-Birkhold has not established a right to any injunctive relief, so the Court must deny Ms. Hanson-Birkhold’s motion for a preliminary injunction.

## I. Factual Background

In June of 2014, Plaintiff Hanson-Birkhold and Defendant Kuyers formed K&H in order to “produce an innerwear garment that would be marketable and saleable.” See Hearing Tr at 23-24. Their joint project, however, did not get very far. By February 2015, the two were no longer working together. See id. at 49, 66, 117. In August 2015, Ms. Kuyers set up her own company, Defendant Luxeire. See id. at 76. In September 2015, Ms. Kuyers not only assigned her entire interest in K&H to Ms. Hanson-Birkhold, see id. at 68, but also turned over all of the K&H property that Ms. Kuyers had in her possession. See id. at 74, 119. Consequently, by the time Ms. Kuyers began operating her new business in earnest, she had entirely severed her ties with Ms. Hanson-Birkhold. See id. at 77.

Defendant Kuyers left her business relationship with Plaintiff Hanson-Birkhold planning to sell an innerwear line over the Internet. See Hearing Tr at 81. And, in fact, she went to market with innerwear garments in a matter of months after she formally ended her business relationship with Ms. Hanson-Birkhold. See Hearing Tr at 92, 151. But Ms. Kuyers testified that her Luxeire designs are her own work products, see id. at 102, 133, and she explained how her innerwear garments differ from items developed by K&H and Ms. Hanson-Birkhold’s new endeavor, Plaintiff Underluxe, LLC (“Underluxe”). See id. at 130-131.

Plaintiff Hanson-Birkhold filed her first lawsuit against Defendant Kuyers in March 2015, presenting claims arising from the operation of K&H. The two women ultimately resolved that suit in September 2015 by entering into a settlement agreement that gave Ms. Hanson-Birkhold control of K&H – including all of its assets – in exchange for the payment of \$12,000. Notably, however, that settlement agreement contained no noncompetition provision. Moreover, the non-solicitation restrictions in Exhibit 3 of the settlement agreement simply prohibited Ms. Kuyers from engaging

in activities “to induce or attempt to induce” customers and suppliers “to cease doing business with” Ms. Hanson-Birkhold’s company. Based upon the parties’ settlement agreement, the Court entered a stipulated order of dismissal on October 7, 2015, bringing the first case to a close.

Four months after the dismissal of the first case, Plaintiffs Hanson-Birkhold and Underluxe filed the instant case against Defendants Kuyers and her new company, Luxeire, asserting claims for breach of fiduciary duty, violation of the Michigan Uniform Trade Secrets Act (“MUTSA”), MCL 445.1901, *et seq*, breach of contract, and conversion. In a nutshell, the plaintiffs insist that the new company formed by Ms. Kuyers has improperly used designs and contacts of K&H to launch a new line of innerwear to the competitive detriment of the plaintiffs. Because the plaintiffs filed a motion for a preliminary injunction, the Court conducted an evidentiary hearing on March 7, 2016, to assess the propriety of injunctive relief. Now, the Court must resolve that motion.

## II. Injunctive Relief

An injunction “represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity.” Davis v Detroit Financial Review Team, 296 Mich App 568, 613 (2012). Our Court of Appeals has identified four factors to consider in determining whether to grant a preliminary injunction:

(1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued.

Id. The Court must also bear in mind that injunctive relief is warranted only if “there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury.” Id. at 614.

A. Likelihood of Success on the Merits.

Although the plaintiffs' complaint includes four counts, the plaintiffs have elected to focus upon their trade-secrets claim in arguing for injunctive relief. Thus, the Court shall similarly devote its efforts to addressing the plaintiffs' likelihood of success on that claim. In paragraph 94 of their complaint, the plaintiffs present a laundry list of alleged trade secrets, including designs, suppliers, manufacturing processes and schedules, pattern development, material development, fabric selection, and strategies for soliciting prospective customers. See Complaint, ¶ 94. The plaintiffs can show a likelihood of success on the merits of their trade-secrets claim under the MUTSA by establishing three elements: "(1) the existence of a trade secret, (2) acquisition of the trade secret in confidence, and (3) unauthorized use or disclosure." See Henkel Corp v Cox, 386 F Supp 2d 898, 902 (ED Mich 2005). According to the MUTSA, a trade secret "means information, including a formula, pattern, compilation, program, device, method, technique, or process" that "[d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use" and "[i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy." See MCL 445.1902(d). Therefore, a clothing pattern can qualify as a trade secret, see id., but a broad concept such as "innerwear" cannot constitute a trade secret because that concept is not "a formula, pattern, compilation, program, device, method, technique, or process[.]" See id.

The evidence adduced at the hearing demonstrates that Plaintiff Hanson-Birkhold worked in conjunction with Defendant Kuyers on broad concepts for innerwear, but the two women did not develop unique patterns that they could sell as innerwear garments. See Hearing Tr at 101. Indeed, Ms. Kuyers presented patterns she developed on her own, see Hearing Exhibit B, and she explained

that the garments she brought to market months after she left K&H flowed from the designs of that nature. Moreover, Ms. Kuyers identified significant differences between the garments she now sells through Defendant Luxeire and the innerwear items that Ms. Hanson-Birkhold plans to sell through Plaintiff Underluxe. See Hearing Tr at 130-131. Moreover, Ms. Kuyers has chosen to rely upon a new set of suppliers with which K&H had little or no contact. See id. at 128, 134. Accordingly, the Court concludes that, at least at this early stage of the case, the record is bereft of evidence that Ms. Kuyers has impermissibly used or disclosed any trade secrets of K&H, Ms. Hanson-Birkhold, or her new company, Underluxe.

B. Irreparable Harm.

The plaintiffs have to “make a particularized showing of concrete irreparable harm or injury in order to obtain a preliminary injunction.” Michigan Coalition of State Employee Unions v Civil Service Commission, 465 Mich 212, 225 (2001). Beyond that, the Court can only issue injunctive relief if “there is no adequate remedy at law[.]” See Davis, 296 Mich App at 614. Thus, if an award of monetary damages can make the plaintiffs whole, the Court cannot issue an injunction. Although the plaintiffs’ attorney stressed the importance of being the first to market with innerwear garments, counsel’s questions to Plaintiff Hanson-Birkhold about monetary damages resulted in the following exchange:

Q: Do you believe that you can calculate the extent of that damage in dollars?

A: Roughly. Sure. I could.

Q: How would you do that?

A: Well, my – I would have to calculate the time that has been spent, what I’ve had to push back, the actual going to market. I’ve had to do a few more revisions that were unexpected.

See Hearing Tr at 36. That testimony dooms the plaintiffs’ request for injunctive relief.

C. Balance of Harms.

Analysis of the balance of harms requires the Court to decide whether “the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief.” See Davis, 296 Mich App at 613. The injunctive relief requested by the plaintiffs would put Defendant Kuyers and her company completely out of business. In contrast, the denial of injunctive relief would still allow the plaintiffs to bring innerwear garments to market, albeit with competition from Ms. Kuyers and her new company. That outcome, however, seems unlikely to cause any impermissible harm to the plaintiffs because Ms. Kuyers and her new company are using different suppliers, design consultants, and channels of distribution, leaving the plaintiffs free to use their own resources to enter the marketplace for innerwear.

D. Harm to the Public Interest.

The harm to the public interest resulting from injunctive relief appears manifest. That is, an injunctive order would deprive buyers of innerwear of the garments designed by Defendant Kuyers and her new company, whereas the denial of injunctive relief would provide the innerwear market with garments from two separate sources – the plaintiffs and Ms. Kuyers’s new company. Thus, the Court finds that the public interest will benefit from the denial of an injunction.

III. Conclusion

The Court’s analysis of all four factors that bear upon the propriety of injunctive relief leads ineluctably to the conclusion that the plaintiffs have no basis for demanding an injunction that would suspend the business operations of Defendant Kuyers and her new company. To be sure, the Court recognizes that Plaintiff Hanson-Birkhold bought the assets of K&H from Ms. Kuyers, but the Court

finds nothing in the language of the parties' settlement agreement or in Michigan law that permits the issuance of a stringent injunctive order that would keep Ms. Kuyers out of the innerwear market. Instead, the Court concludes that Ms. Hanson-Birkhold and Ms. Kuyers settled their prior lawsuit on terms that contemplate entry of both women into the innerwear market, albeit with restrictions on Ms. Kuyers that she seemingly has honored thus far. Thus, the Court shall deny the plaintiffs' motion for a preliminary injunction.

IT IS SO ORDERED.

Dated: March 22, 2016



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HON. CHRISTOPHER P. YATES (P41017)  
Kent County Circuit Court Judge