

DOCKET NO. UWY-CV-14-6026552-S	:	SUPERIOR COURT
	:	
NUCAP INDUSTRIES INC., ET AL., Plaintiffs	:	J.D. WATERBURY
	:	
VS.	:	AT WATERBURY
	:	
PREFERRED TOOL AND DIE, INC., ET AL., Defendants.	:	JUNE 11, 2015

**PLAINTIFFS’ MOTION FOR ORDER OF COMPLIANCE TO
DEFENDANTS PREFERRED TOOL AND DIE, INC. AND PREFERRED
AUTOMOTIVE COMPONENTS’ TO RESPOND TO PLAINTIFFS’
INTERROGATORIES AND REQUESTS FOR PRODUCTION**

Plaintiffs, Nucap Industries Inc. (“Nucap Industries”) and Nucap US Inc., as the successor to Anstro Manufacturing (“Nucap US”) (collectively “Plaintiffs” or “NUCAP”), respectfully file this Motion for Order of Compliance to compel Defendants Preferred Tool and Die, Inc. (“Preferred Tool”), and Preferred Automotive Components, a division of Preferred Tool and Die (“Preferred Automotive”) (collectively, “Preferred”) to respond to Plaintiffs’ First Set of Interrogatories (“Interrogatories”) and First Set of Requests for Production (“Requests for Production”) and produce documents responsive to the Requests for Production.

1. This is an action for misappropriation of trade secrets arising out of Preferred’s use of Plaintiffs’ trade secret information in the course of establishing a competing business for the sale of brake component parts.

2. Plaintiffs initiated this action on July 21, 2014 in New Haven and filed their Complaint on August 13, 2014. On March 4, 2015, the Superior Court, New Haven J.D., transferred the matter to Waterbury J.D.

3. On December 23, 2014, Plaintiffs served Preferred with twenty five (25) distinct requests for production and seventeen (17) interrogatories in December 2014. *See* First Requests

for Production directed to Preferred, attached as Exhibit 1; First Interrogatories directed to Preferred, attached as Exhibit 2 (collectively, “Discovery Requests”).

4. After seeking two separate extensions of time to respond, Preferred submitted its written responses and objections to the Discovery Requests on March 25, 2015—three months after they were originally served.

5. For the overwhelming majority of its responses to the Requests for Production, Preferred refused to produce responsive documents and, instead, stated that it would provide documents only once a “suitable protective order is entered.” *See* Exhibit 3, Preferred Responses and Objections to Plaintiff’s First Requests for Production at ¶¶ 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 21, 22, 23, 24, and 25.

6. While Preferred has acknowledged that responsive documents exist and stated in its written responses that it would produce the documents, it still has not done so to date.

7. Rather, Preferred refused to produce those additional documents by insisting on a protective order that is overly restrictive and lacks any support in relevant Connecticut law.

8. While Plaintiffs have agreed to Preferred’s request for a “Confidentiality” designation for discovery materials produced by the parties in this litigation, Preferred continues to insist on a “Highly Confidential” or “Attorneys’ Eyes Only” level of protection that would preclude the parties themselves (or their representatives) from viewing, accessing, or inspecting certain discovery materials.

9. Preferred has produced only fifteen (15) documents in total, consisting of nothing more than product brochures, product listings, documents relating to the Friction Materials Standards Institute, and letters exchanged by legal counsel. Preferred has not produced a single email.

10. Preferred will not even produce documents it considers “Confidential,” despite the fact that both parties agree on the protections that would be afforded to “Confidential” documents and no real dispute exists over how those documents would be handled in discovery.

11. With respect to the remaining portion of Preferred’s production, it is admittedly holding back a set of documents that are responsive for at least twenty (20) of Plaintiffs’ Requests for Production.

12. The scope of discovery in Connecticut is broad and favors the liberal disclosure of information in discovery. Under Practice Book §13-2, “a party . . . may obtain . . . discovery of information or disclosure, production and inspection of papers, books or documents material to the subject matter involved in the pending action, which are not privileged.” Practice Book §13-2.

13. Further, “[d]iscovery shall be permitted if the disclosure sought would be of assistance in the prosecution or defense of the action and if it can be provided by the disclosing party or person with substantially greater facility than it could otherwise be obtained by the party seeking disclosure.” *Id.*

14. Our Supreme Court has held, when considering the scope of discovery, that information is discoverable where the information requested is “reasonably calculated to lead to the discovery of admissible evidence.” *Sanderson v. Steve Snyder Enterprises, Inc.*, 196 Conn. 134, 139, 491 A.2d 289 (1985).

15. In Connecticut, trade secrets are considered discoverable information and do not qualify as “privileged information” that falls outside the scope of Practice Book §13-2.

16. Indeed, especially in actions where the plaintiff is alleging a misappropriation of its trade secrets, the plaintiff is fully entitled to obtain discovery on otherwise confidential

information like a defendant's customers, products, pricing, and sales. *Microtech Int'l, Inc. v. Fair*, 1992 Conn. Super. LEXIS 2754, at *7 (Conn. Super. Ct. Sept. 18, 1992).

17. *Microtech* is a misappropriation of trade secrets case with a remarkably similar procedural posture and is instructive here. There, the Superior Court granted the plaintiff's motion to compel the production of product, sales, and other arguably "trade secret" information. *Microtech Int'l, Inc. v. Fair*, 1992 Conn. Super. LEXIS 2754, at *7 (Conn. Super. Ct. Sept. 18, 1992). Like here, the defendant refused to produce any "trade secret" materials in discovery and argued that the confidential nature of the withheld information precluded the plaintiff's ability from obtain discovery of those materials. *Id.* at *4.

18. The *Microtech* court rejected the defendant's request for an overly broad protective order. Instead, the only limitation the court placed on discovery was that confidential discovery materials would be shielded from the *general public*. The court expressly held that discovery, while it would be conducted in private, would involve "only persons involved in the litigation being present." *Id.* at *9. To ensure that the litigants did not disclose any confidential information to the public at large, the court fashioned the sensible remedy of sealing the court file and ordering the parties not to disclose any alleged trade secret without court approval. *Id.* ("[A]ny person involved in this litigation is not to disclose any alleged trade secret without prior court approval.").

19. Here, despite meet and confer efforts and attempts by the parties to resolve the dispute without Court intervention, Preferred has failed to provide the requested discovery and is insisting on a protective order that would prevent any persons employed by Plaintiffs from viewing or accessing discovery materials designated by Preferred as "Highly Confidential" or "Attorneys' Eyes Only."

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Defendants.	:	JUNE __, 2015

[PROPOSED] ORDER

On this _____ day of _____, 2015, upon consideration of the Plaintiffs’ Motion to for Order of Compliance, any Opposition by Defendants, and any argument of counsel, it is hereby ORDERED that the Motion is GRANTED.

Defendants Preferred Tool and Die, Inc. and Preferred Automotive Components, a division of Preferred Tool and Die are hereby ORDERED produce all documents, without regard to “Attorneys’ Eyes Only” or “Confidential” designations, responsive to Plaintiffs’ Requests for Production Nos. 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 21, 22, 23, 24, and 25. Preferred is may mark such documents as “Confidential.”

Preferred is further ordered to produce all responsive and “Confidential” documents that it has failed to produce and that are in its possession.

BY THE COURT:
