IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FINANCIALAPPS, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 19-1337-CFC-CJB
	)	
ENVESTNET, INC. and YODLEE, INC.,	)	
	)	
Defendants.	)	

REPORT AND RECOMMENDATION

Plaintiff FinancialApps, LLC ("Plaintiff" or "FinApps") filed this action against Defendants Envestnet, Inc. ("Envestnet") and Yodlee, Inc. ("Yodlee" and collectively with Envestnet, "Defendants") asserting 14 counts, including claims for misappropriation of trade secrets, fraud, tortious interference with prospective business opportunities, unfair competition, copyright infringement, violation of state deceptive trade practices statutes, breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. (D.I. 2) Presently pending before the Court is Defendants' partial motion to dismiss Counts II-X and Count XIV of Plaintiff's Complaint, filed pursuant to Federal Rule of Civil Procedure 12(b)(6) (the "Motion"). (D.I. 15) For the reasons set forth below, the Court recommends that the District Court GRANT-IN-PART and DENY-IN-PART the Motion.

I. BACKGROUND

A. Factual Background

Plaintiff is a Florida limited liability company with its principal place of business in Fort Lauderdale, Florida. (D.I. 2 at ¶ 22) Founded in 2014, Plaintiff is a software development company in the financial technology ("FinTech") space—a technological area in which consumers can access financial services digitally. (*Id.* at ¶¶ 1-2, 31) Defendant Envestnet is a

Delaware corporation with its principal place of business in Chicago, Illinois. (*Id.* at ¶ 23) Envestnet provides wealth management software solutions to financial advisors and financial institutions. (*Id.* at ¶¶ 1, 69) Defendant Yodlee is a Delaware corporation with its principal place of business in Redwood City, California. (*Id.* at ¶ 24) Yodlee provides consumer financial data aggregation services. (*Id.* at ¶¶ 1, 70) Yodlee has been a wholly-owned subsidiary of Envestnet since 2015. (*Id.*)

By early 2016, Plaintiff had created a software platform (referred to in the Complaint as the "Platform") that was capable of analyzing vast amounts of consumer financial data in real time; the Platform was also able to generate credit risk reports for underwriters to use in making decisions on loan issuances and extensions of credit. (*Id.* at ¶¶ 4, 35) Beginning in 2015, Defendants sought to create similar consumer credit risk software that would use Yodlee's large repository of aggregated data. (*Id.* at ¶¶ 5, 71) The parties began discussions in 2016 regarding the formation of a long-term strategic partnership, which would include Yodlee licensing Plaintiff's software and technology for use in a new application called "Risk Insight." (*Id.* at ¶¶ 6, 75-76) In exchange for Plaintiff's supplying its software, technology and technical knowledge, Yodlee would: (1) supply its raw aggregated financial data and (2) provide a team of experienced, trained employees to market and sell Risk Insight. (*Id.* at ¶ 75)

On January 31, 2017, Plaintiff and Yodlee executed a Software License and Master Services Agreement ("MSA") and other related agreements. (*Id.* at ¶¶ 7, 83 & exs. 1-3) Plaintiff had put into place several specific measures to protect the secrecy of its proprietary technology and trade secrets, and therefore insisted that the MSA include confidentiality provisions, exclusivity obligations and other restrictive covenants related to the use of thereof. (*Id.* at ¶¶ 8-9, 90)

Plaintiff alleges, however, that Yodlee never had any intention of working with Plaintiff to grow Risk Insight. (*Id*. at ¶ 7) Instead, it alleges that Yodlee was solely interested in entering into a licensing agreement in order to gain access to, and misappropriate, Plaintiff's technology—all so that Defendants could develop their own competing application. (*Id.* at ¶¶ 7, 77, 82) In this way, Yodlee is alleged to have intentionally misled Plaintiff to convince it to enter the MSA. (*Id.*) According to Plaintiff, Yodlee's misrepresentations caused Plaintiff to lose out on other lucrative business and licensing opportunities available to it at the time. (*Id.* at ¶¶ 83-84) Plaintiff further alleges that Yodlee: (1) misused access to critical components of the Risk Insight Platform, so that those components could be incorporated into a competing platform that Yodlee was secretly developing; and (2) sought to obscure Plaintiff's involvement with Risk Insight from clients, in order to be able to later transition those clients to its new secret platform. (*Id.* at ¶¶ 10-13, 98-99, 120)

As for Envestnet, Plaintiff alleges that it too is using Yodlee's competing platform (including the proprietary information and trade secrets stolen from Plaintiff, i.e., the Platform) to develop credit risk software applications for its clients. (*Id.* at ¶ 156) Plaintiff alleges that Envestnet made multiple offers to purchase FinApps' proprietary technology because it wanted to eliminate the possibility of future liability for Defendants' misappropriation of that technology. (*Id.* at ¶¶ 18-19, 160-61) After Yodlee's competing platform was nearly complete, Envestnet no longer attempted to purchase FinApps' intellectual property; instead, it began to incorporate software from Yodlee's platform into Envestnet's Credit Exchange product. (*Id.* at ¶¶ 19, 163)

In early 2019, with over two years remaining in the term of the parties' agreement, Plaintiff alleges that Defendants withdrew resources and employees from the Risk Insight

product. (*Id.* at ¶¶ 20, 164-65) According to Plaintiff, by this point Defendants had successfully misappropriated Plaintiff's proprietary information and trade secrets. (*Id.* at ¶¶ 20, 173) In addition to Yodlee's misappropriation, Plaintiff alleges that Yodlee has also refused to pay Plaintiff millions of dollars owed to it pursuant to the parties' contracts. (*Id.* at ¶ 174)

Further relevant facts related to resolution of the Motion will be set out as needed in Section III.

B. Procedural Background

Plaintiff filed the Complaint on July 17, 2019. (D.I. 2) On September 17, 2019, Defendants filed the instant Motion, seeking dismissal of 10 of Plaintiff's 14 claims. (D.I. 15) On October 7, 2019, United States District Judge Colm F. Connolly referred this case to the Court to conduct all proceedings and to hear and determine all motions, pursuant to 28 U.S.C. § 636(b). (D.I. 18) Briefing on the Motion was completed thereafter on November 13, 2019. (D.I. 27)

II. STANDARD OF REVIEW

When presented with a Rule 12(b)(6) motion to dismiss for failure to state a claim, a court conducts a two-part analysis. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). First, the court separates the factual and legal elements of a claim, accepting all of the complaint's well-pleaded facts as true, but disregarding any legal conclusions. *Id.* at 210-11. Second, the court determines whether the facts alleged in the complaint are sufficient to show that the plaintiff has a "'plausible claim for relief.'" *Id.* at 211 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. In assessing the plausibility of a claim, the court

must "'accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.'" *Fowler*, 578 F.3d at 210 (quoting *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008)).

III. DISCUSSION

Defendants make two primary arguments for dismissal of certain of Plaintiff's claims.[1] First, Defendants assert that Plaintiff's Delaware statutory claims for misappropriation of trade secrets against both Defendants (Count II) and for deceptive trade practices against Yodlee (Count VII) must be dismissed, because Plaintiff does not allege a sufficient nexus between the parties' dispute and Delaware. (D.I. 16 at 2, 5-7) Second, Defendants argue that Plaintiff's claims in Counts III-V, VII-X and XIV are preempted under the Federal Copyright Act, 17 U.S.C. § 301 (the "Copyright Act") and/or the Uniform Trade Secrets Act ("UTSA"). (*Id.* at 2, 8-17)[2] The Court will take up these arguments in turn.

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[1] In addition to these two arguments, in their opening brief Defendants further sought dismissal of Plaintiff's claim for copyright infringement against both Defendants (Count VI of the Complaint) on the grounds that Plaintiff failed to allege that it had successfully registered its purported copyrights. (D.I. 16 at 2, 4-5) Plaintiff did not expressly respond to this argument, (*see* D.I. 22 at 3 n.2; D.I. 27 at 1), but did request that dismissal be without prejudice to Plaintiff's right to amend and re-plead this count, (D.I. 22 at 3 n.2). Therefore, the Court recommends that Defendants' Motion be GRANTED without prejudice with respect to Count VI.

[2] Thus, certain of Defendants' points regarding this second argument (i.e., the preemption argument) necessarily contemplate that there is a claim for copyright infringement in the case. As noted above, *see supra* n.1, the Court is recommending the dismissal of the copyright infringement claim in Count VI without prejudice. Despite this, the Court will below address Defendants' arguments regarding copyright-related preemption issues. It does so partly for sake of completeness, as it is possible that there will be an objection to the Court's recommendation of dismissal of Count VI. It also does so because, as a practical matter, it appears likely that Plaintiff will later amend its pleading to re-add a copyright claim in a similar form to the claim in Count VI, (D.I. 22 at 3 n.2); in that event, the Court's decision would also provide helpful guidance for the parties in the future.

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