

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

OCEAN TOMO, LLC,

Plaintiff-Counter Defendant,

v.

JONATHAN BARNEY and
PATENTRATINGS, LLC,

Defendant-Counter Plaintiffs.

No. 12 C 8450

Judge: Joan B. Gottschall
Magistrate: Judge Mary M. Rowland

**SECOND AMENDED AND SUPPLEMENTAL COMPLAINT FOR INJUNCTIVE
RELIEF, DECLARATORY JUDGMENT AND DAMAGES**

As and for its Second Amended and Supplemental Complaint for Injunctive Relief, Declaratory Judgment and Damages against Defendants Jonathan Barney (“Barney”) and PatentRatings, LLC (“PR”) (collectively, “Defendants”), Plaintiff Ocean Tomo, LLC (“OT”), by and through its attorneys, Vedder Price P.C., states and alleges as follows:

NATURE OF ACTION

1. This action arises out of a soured business relationship between OT, on the one hand, and PR and Barney, on the other hand. Barney created PR, a company that owns and develops proprietary objective computer-generated metrics for determining the quality and relevance of issued United States patents. Barney is the Chief Executive Officer and the majority owner of PR.

2. In approximately 2004, OT and PR entered into a License Agreement pursuant to which, among other things, PR provided to OT certain proprietary computer-generated metrics for determining the quality and relevance of patents. As part of the business relationship, Barney became a Member of OT, and OT became a Member of PR, assuring that each company would

have a vested interest in the future performance of the other. Over the years, OT has made substantial capital investments and loans for the development of this technology, secured by PR's assets.

3. In 2007, a dispute arose between the parties regarding amounts loaned by OT to PR. In settlement of that dispute and other issues, on July 19, 2007 the parties entered into an amendment to the License Agreement, a security agreement and promissory note pursuant to which, *inter alia*, the amount of the disputed loan was set at \$1,500,000 and the revenue share payable by OT to PR was altered.

4. Nonetheless, disputes between the parties continued to arise, and in early 2012 PR purported to wrongfully terminate the agreements between the parties based upon nonmaterial breaches which, if they are even breaches in the first place, have been cured by OT in accordance with the License Agreement. In addition, PR has attempted to rescind the 2007 amendment, security agreement and promissory note based on unsupported allegations of fraudulent misrepresentations and concealments.

5. By this action, OT seeks a declaration from this Court that: 1) OT is not, and never was, in breach of its contracts with PR; 2) in the alternative to the foregoing, to the extent any breach of the License Agreement occurred, any and all such breaches are nonmaterial or have been subsequently cured by OT; 3) to the extent PR contends that there are other uncured breaches, PR has not provided adequate notice thereof and therefore has not met the contractual precondition to termination of the License Agreement; 4) to the extent PR seeks to rescind any of the parties' agreements for fraud and/or failure of consideration, PR's asserted grounds for rescission are without merit and are barred; and 5) the parties' agreements remain in full force and effect, and OT retains its rights thereunder.

6. In addition, OT brings a number of claims arising out of Barney's improper behavior while the parties' relationship was deteriorating. Barney was a Member and Managing Director of OT, and as such, he was intimately involved in the development and marketing of OT's services and was given access to detailed knowledge of OT's confidential information relating to financial data, business plans, business methods and practices, and client identities, needs and preferences. Additionally, Barney was provided access to sensitive and confidential information about OT's financial and client data related to OT's clients (including historical and realized revenues, and profit margins), strategic plans, business development efforts, proprietary products and valuation methods, and client requirements.

7. Because he was provided access to OT's confidential information and client relationships and as a condition of his employment, Barney executed an employment agreement (the "Employment Agreement") that prohibited him from using or disclosing OT's confidential information for his own benefit or the benefit of anyone other than OT.

8. During the course of his employment with OT, Barney was provided with a laptop for business use (the "Laptop"). The Laptop contained OT's confidential information relating to financial data, business plans, business methods and practices, and client identities, needs and preferences. Further, Barney executed a Computer Asset Policy Agreement (the "CAP Agreement") during his employment with OT that prohibited him from modifying, altering or upgrading any hardware or software provided to him by OT.

9. Barney resigned from OT on or about February 14, 2011. At that time, he did not return the Laptop to OT. Despite multiple demands by OT for the return of the Laptop, Barney refused to turn over the Laptop until on or about June 14, 2011. Upon receiving the Laptop from Barney, OT hired a forensic expert, who analyzed the Laptop and determined that the hard drive

on the Laptop had been intentionally overwritten or wiped, which permanently deleted and destroyed all of OT's confidential and proprietary information from the Laptop.

10. In addition to completely wiping the hard drive of the Laptop, Barney, upon information and belief, made a copy of the Laptop's hard drive before erasing it. This copy has not been provided to OT. Upon information and belief, Barney continues to access and use data from the copied hard drive, including OT's confidential business and financial information.

11. Further, starting at least as early as in approximately February 2012, Barney and PR began contacting, and continue to contact, NTT Data, a potential customer and business partner of OT, in order to divert NTT Data's business away from OT and to PR. Barney and PR have attempted to solicit business from NTT Data despite knowing that OT has a valid business expectancy in its relationship with NTT Data.

12. As such, OT asserts claims for breach of contract, breach of fiduciary duty, violation of the Illinois Trade Secrets Act, 765 ILCS 1065/1 *et seq.* ("ITSA"), violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 ("CFAA"), conversion, and tortious interference with prospective economic advantage, arising out of Barney's destruction, copying and use of OT's confidential information and trade secrets, along with his and PR's attempt to divert a business opportunity away from OT. OT likewise seeks a declaratory judgment establishing that it is not tortiously interfering with Defendants' business expectancies or relationships.

13. OT seeks preliminary and permanent injunctive relief to restrain and enjoin Barney's continued breaches of the Employment Agreement, which have caused and continue to cause irreparable injury to OT, including injunctive relief enjoining Barney from (i) using or disclosing OT's confidential information for his own benefit or the benefit of anyone other than

OT and (ii) tortiously interfering with OT's business expectancies and relationships. OT further seeks an order compelling Barney to return all OT trade secrets, confidential information, and all other proprietary information and property belonging to OT, including without limitation, the copy of the Laptop hard drive believed to be in Barney's possession.

14. In addition to injunctive and declaratory relief, OT has incurred damages from Barney's ongoing misconduct and seeks compensatory damages, punitive and exemplary damages, and such other relief as the Court deems just and proper.

PARTIES

15. OT is an Illinois limited liability company with its principal place of business in Chicago, Illinois. OT, the leading Intellectual Capital Merchant Banc firm, provides, among other things, financial products and services related to expert testimony, valuation, investments, risk management and transactions throughout the United States and overseas. Most of OT's high-level executives are located in the Chicago, Illinois area. OT's corporate activities and critical decision-making take place at the corporate headquarters located in Chicago, Illinois.

16. Barney is an individual who, upon information and belief, resides at 312 Signal Road, Newport Beach, California 92663. Barney was a Managing Director at OT and was the head of OT's PatentRatings® ("OTPR") group at the time of his resignation on or about February 14, 2011. Barney was and currently is one of only three equity owners of OT. Barney is currently the Chief Executive Officer and majority owner of PR.

17. PR is a California limited liability company, with its principal place of business in Irvine, California, that owns and develops proprietary objective computer-generated metrics for determining the quality and relevance of issued United States patents.

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