

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RETAIL SERVICE SYSTEMS, INC., )  
6059 Frantz Road, Suite 204 )  
Dublin, Ohio 43017, )

Plaintiff, )

v. )

MATTRESS BY APPOINTMENT, LLC, )  
(formerly known as Carolina )  
Bedding Direct, LLC) )  
c/o Registered Agent EraclidesGelman, )  
4811 Atlantic Boulevard )  
Jacksonville, Florida 32207, )

and )

MATTRESS BY APPOINTMENT, LLC, )  
c/o Registered Agent C. Edwin Shoffner, )  
10 Longview Terrace )  
Greenville, South Carolina 29605, )

and )

C. EDWIN SHOFFNER, )  
10 Longview Terrace )  
Greenville, South Carolina 29605, )

Defendants. )  
\_\_\_\_\_ )

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT**

NOW COMES plaintiff Retail Service Systems, Inc. (“Plaintiff” or “RSS”), and alleges as its complaint and demand for jury trial as follows:

## **I. INTRODUCTION**

1. RSS brings this action against Defendants Mattress By Appointment, LLC (hereinafter “MBA (FL) II”),<sup>1</sup> formerly known as Carolina Bedding Direct, LLC (“Carolina Bedding (FL)”);<sup>2</sup> Mattress By Appointment, LLC (hereinafter “MBA (SC)”); and C. Edwin Shoffner (“Shoffner”) (collectively, “Defendants”), for violations of Ohio’s Uniform Trade Secrets Act and for their liability as successors to several prior entities that are similarly liable for misappropriating RSS’s trade secrets. RSS owns a unique and proprietary system for establishing and operating retail mattress and furniture businesses. RSS’s system, which differs substantially from any methodologies used by traditional mattress and furniture retailers, yields higher *rates* of success at significantly lower operating costs than those found in the traditional mattress or mattress and furniture retail industry. RSS licenses and franchises the system through a network of dealers across the United States.

2. RSS’s system involves an intense training and management program through which dealers learn RSS’s proprietary methodologies for establishing and operating their businesses. The training program includes step-by-step instructions so that a dealer’s progress can be measured and improved through specific, duplicable actions. By investing significant resources,

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<sup>1</sup> The history of this action involves three entities named “Mattress By Appointment, LLC,” two existing under Florida law and one under South Carolina law. For clarity, this Complaint will refer to the Florida entity originally named “Mattress By Appointment, LLC” (which has since dissolved) as “MBA (FL) I,” will refer to the still-existing Florida entity that is party to this suit as “MBA (FL) II,” and will refer to the newly formed South Carolina entity, which is also a party to this lawsuit, as “MBA (SC).”

<sup>2</sup>Confusingly, the history of this suit also involves two entities named “Carolina Bedding Direct, LLC” that are predecessors to MBA. Because the first of these companies was formed in North Carolina and the second (the one that is a party to this suit as MBA (FL) II) was later formed in Florida, this Complaint will use “(NC)” and “(FL)” designations to distinguish the two entities.

RSS and its predecessor created and perfected its methodologies, and have tracked results under the system for more than a decade.

3. Through statistical tracking of its advertising, merchandising, and selling programs, RSS can quickly identify a dealer's areas for improvement. This management process enables RSS's dealers to achieve faster and more cost-effective results than those typically found in traditional retail start-ups.

4. RSS's trade secrets were misappropriated by Carolina Bedding (NC) and MBA (FL) I. RSS filed a lawsuit against those entities on October 4, 2013, and ultimately obtained a default judgment against those entities, as well as a permanent injunction prohibiting Carolina Bedding (NC) from using RSS's trade secrets. *Retail Service Systems, Inc. v. Carolina Bedding Direct, LLC, et al.*, Case No. 2:13-cv-00994, Doc. 117 (S.D. Ohio, Feb. 24, 2015) (Ex.1). A damages hearing against Carolina Bedding (NC) and MBA (FL) I (as well as a request for an injunction and damages against MBA (FL) I) is pending before Judge Smith.

5. MBA (FL) II and MBA (SC) are continuations of, and successors to, Carolina Bedding (NC) and MBA I, and have continued improperly using RSS's trade secrets. Upon information and belief, MBA (FL) II and MBA (SC) are wholly owned and operated by C. Edwin Shoffner ("Shoffner"). Upon information and belief, Shoffner has improperly disseminated RSS's trade secrets and management methodologies. Accordingly, RSS seeks to enjoin Defendants' ongoing violations and recover damages caused by Defendants' improper use of RSS's trade secrets and management methodologies.

## **II. PARTIES**

6. Plaintiff RSS is an Ohio Corporation with its principal place of business at 6059 Frantz Road, Suite 204, Dublin, Ohio 43017, Franklin County, Ohio.

7. Defendant Mattress By Appointment, LLC (MBA (FL) II) is a Florida limited liability company with its principal place of business at 2817 Alaskan Way, Jacksonville, Florida 32226. Upon information and belief, Defendant MBA (FL) II continues to conduct business in the State of Ohio in this district and throughout certain portions of the United States.

8. Defendant Mattress By Appointment, LLC (MBA (SC)) is a South Carolina limited liability company. Upon information and belief, Defendant MBA (SC) continues to conduct business in the State of Ohio in this district and throughout certain portions of the United States.

9. Upon information and belief, Defendant C. Edwin Shoffner is a citizen of South Carolina residing at 10 Longview Terrace, Greenville, South Carolina, 29605, and is the sole owner/member and operator of MBA (FL) II and MBA (SC).

### **III. JURISDICTION AND VENUE**

10. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. §1332(a)(1) as the amount in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between citizens of different States.

11. Venue in this judicial district is proper under 28 U.S.C. §1391(b) and (c) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

### **IV. FACTUAL ALLEGATIONS**

#### **PMD is Formed**

12. In 1997, Jeffrey S. Hosking (“Hosking”) founded a business that was subsequently incorporated as Power Marketing Direct, Inc. (“PMD”) in 2001. In 2008, Hosking formed a related company called PMD Furniture Direct, Inc. (“PMDF”); collectively, the “PMD Entities”). Over the course of several years, the PMD Entities developed a unique and comprehensive

marketing program that they applied to the mattress and furniture industry. PMD licensed and/or franchised “dealers” to purchase mattresses and furniture exclusively through PMD, where over 55% of PMD’s sales were in mattresses. Further, PMD trained these dealers to market and sell those products through unique, non-traditional, retail-type stores using the PMD proprietary marketing, merchandising, and selling program that had been developed by PMD over time, utilizing PMD’s extensive marketing and sales experience.

13. Pursuant to an Asset Purchase Agreement between RSS, PMD, PMDF and Jeffrey S. Hosking dated June 12, 2013 (hereinafter the “Asset Purchase Agreement”), Plaintiff RSS now owns the majority of the assets of the PMD Entities, including the intellectual-property rights to this marketing, selling, and management system for establishing and operating these specialized retail businesses—which includes all trademarks, trade names, patents, trade dress, copyrights, methodologies, and trade secrets.

14. RSS’s proprietary program involves a unique by-appointment-only business with a much higher success rate than a typical retail start-up business. It combines scripted, low-cost advertising techniques; scripted and planned telephone conversations; and in-person merchandising and selling methodologies for selling mattresses and furniture by appointment. RSS’s program also includes a step-by-step trackable management process for measuring and developing licensed and/or franchised dealers.

15. Because PMD’s marketing approach was unique and highly successful (and continues to be under RSS’s ownership), but capable of duplication, PMD took great steps to protect its secrets. All PMD dealers were required to sign non-disclosure agreements in the interview process and license or franchise agreements before receiving PMD’s initial training, receiving training manuals, opening a location, and attending PMD’s extensive two-day basic training

seminar where the proprietary methodologies were further expounded. The PMD entities and RSS have invested tremendous capital into the enforcement and protection of the trade secrets via numerous successful state and federal actions dating back to the early 2000's.

**Darren Conrad Becomes a PMD Dealer**

16. From early 2000 to April 2003, Darren Conrad ("Conrad") was affiliated with PMD in a variety of ways. Conrad began by assisting PMD's founder and President, Hosking, and eventually became a PMD dealer, manager, and trainer of other PMD dealers.

17. At the end of March, 2003, Conrad left PMD. Contemporaneous with his departure from PMD, Conrad executed a Separation Agreement, which included a provision that stated:

[Conrad] agrees that he will not for a period of three (3) years following the execution of this Agreement engage in any of the following activities:

(a) Undertake planning for or organization of any business activity competitive with [PMD's] business or combine or conspire with others for the purposes of organizing any such competitive business activity;

(b) Directly or indirectly or by any action in concert with others, induce or influence any person or entity who is engaged as an employee, agent, independent contractor of [PMD] to terminate or in any way compromise his or her business relationship with [PMD];

(c) Call upon any business contacts of [PMD] for the purposes of soliciting or selling competitive products or services;

(d) Divert to, solicit, or in any other way attempt to take away business contacts, clientele or customers of [PMD] and place said business with any other business that may compete with the business of [PMD];

(e) Directly or indirectly compete with the business of [PMD].

(Ex. 2 at 19).

18. Unknown to PMD, in early 2003 Conrad secretly began planning to start a separate business, extremely similar to PMD, in South Carolina. After he left PMD, Conrad in fact started that business, then named Carolina Bedding and Furniture, Inc.

19. Carolina Bedding and Furniture, Inc. operated using the exact same methodologies as PMD. The company recruited dealers who purchased mattresses and furniture exclusively through the company, and it trained those dealers to market and sell their product using PMD's marketing and sales system. Specifically, Carolina Bedding and Furniture, Inc. trained dealers using a "Guide to Success" manual also referred to as the "playbook" describing its marketing and sales system, which Conrad had largely copied from PMD's own "Basics Training Manual."

**PMD Wins a Lawsuit Against Darren Conrad for Misappropriation of Its Trade Secrets**

20. In early February 2004, PMD learned of Conrad's competing business. By that time, Conrad had built Carolina Bedding and Furniture, Inc. into an imitation company with approximately 17 dealers located in several southeastern states.

21. On February 9, 2004, PMD sued Conrad in the Franklin County Court of Common Pleas for breach of the PMD License Agreement and Separation Agreement and misappropriation of PMD's trade secrets, among other things, and sought both damages and an injunction against Conrad. *See Power Marketing Direct, Inc. v. Darren Conrad*, Case No. 04-CV-1519 (Franklin C.P.).

22. After a five-day preliminary injunction hearing, during which approximately two dozen witnesses testified, the Magistrate granted PMD's motion for preliminary injunction, finding (among other things) that "PMD has demonstrated by clear and convincing evidence a substantial likelihood that it will prevail on its cause of action against [Conrad] for violation of the Uniform Trade Secret Act." (*See Ex. 2, Magistrate's Decision Sustaining Plaintiff's Motion for a Preliminary Injunction, Filed February 9, 2004* ("Magistrate's October 4, 2004 Decision") at 47). The Magistrate further found that "the systematic approach and business philosophy

engineered by Jeffrey Hosking and PMD is truly unique and proprietary in the industry” and that Conrad’s attempt to argue otherwise was unpersuasive. *Id.*

23. The trial court sustained the Magistrate’s decision and preliminary injunction, and then awarded damages and a permanent injunction following trial. (*See* Ex. 3, Decision and Entry Granting Plaintiff’s Request for Permanent Injunction and Damages Against Defendant Darren Conrad dated January 26, 2009 (the “2009 Injunction Entry”) at 9). The trial court agreed that “PMD’s business materials and methodologies are trade secrets” and that Conrad wrongfully used those trade secrets, “therefore violat[ing] the Uniform Trade Secrets Act.” (*Id.* at 11). Accordingly, the trial court permanently enjoined Conrad and found him liable for \$140,000 in compensatory damages, \$40,000 in punitive damages, and PMD’s attorneys’ fees. (*Id.* at 18-19).

24. Sometime between March and June of 2004, after the state court’s preliminary injunction entry but before trial, Conrad moved to Florida, where he ignored the state court rulings and continued to sell mattresses and recruit and train dealers.

25. According to the Ohio state court, these actions violated its preliminary injunction: “[I]t is clear to the Court that [Conrad] did not abide by the restrictions imposed by the preliminary injunction. Instead, [Conrad’s] own testimony establishes that he continues to operate dealerships and/or indirectly compete with PMD by servicing dealerships in territories such as Charlotte, North Carolina.” (Ex. 3 at 15-16). “Because [Conrad] has continued to violate the restrictions imposed by the covenant and the preliminary injunction,” the court extended the injunction (based on the terms of Conrad’s contracts with PMD) for an additional 15 months. (*Id.* at 16).

26. The state court’s permanent injunction issued on January 26, 2009. On April 1 of that year, Conrad received a copy of that order. (Ex. 4, letter to Conrad from Cooper & Elliott).



27. Soon thereafter, Conrad conspired with defendant Shoffner to subvert the Ohio state court's order and injunction by creating a payment scheme in which Shoffner insured that Conrad would be paid on all mattresses sold to dealers trained in PMD's methodologies during the injunction period. In this scheme, Conrad "gave away" his Carolina Bedding and Furniture, Inc. dealers, splitting them among three different dealers, who received 20-30 dealers each. In return, Shoffner ensured that Conrad received a monetary portion of all mattress sales by those dealers.

28. Conrad and Shoffner jointly and knowingly continued using PMD's trade secrets to develop dealers in secret from PMD. On the surface, Conrad gave away his dealers to other individuals for no consideration, but in fact, Conrad continued to be paid a percentage of mattress sales by those dealers. Using this scheme, Conrad received payments—based on mattresses sold by these dealers—separately and directly by companies for whom Shoffner worked as a sales executive. As soon as the injunction period lapsed in April 2010, Conrad more aggressively engaged in using PMD's methodologies with his former dealers, as well as new ones, first in Greenville, South Carolina, and later in Charlotte, North Carolina. In both locations, Conrad continued his business relationships with Shoffner and the dealers, until a falling out with one of the dealers in October 2011.

**Darren Conrad Forms Carolina Bedding (NC) and Carolina Bedding (FL)**

29. On October 18, 2011, Conrad formed Carolina Bedding Direct, LLC ("Carolina Bedding (NC)") in North Carolina. Conrad was the sole owner of Carolina Bedding (NC), and he operated the company in the same manner he operated Carolina Bedding and Furniture, Inc. Specifically, Conrad continued selling to, recruiting, and training dealers using versions of the "playbook" he obtained during his time at PMD and created while operating Carolina Bedding

and Furniture, Inc. Using PMD's marketing, merchandising, sales, and management systems in this way, as well as continuing his supply relationship with defendant Shoffner, Conrad quickly grew his network to over 100 dealers.

30. In 2012, Conrad moved to Florida. At first he continued to operate Carolina Bedding (NC) from Florida, but on April 11, 2012, Conrad registered Carolina Bedding Direct, LLC, under Florida law ("Carolina Bedding (FL)"), intending for that company to take over the business of Carolina Bedding (NC).

31. As the sole owner of both entities, Conrad simply transferred to Carolina Bedding (FL) full and exclusive use of Carolina Bedding (NC)'s dealers, employees, playbook, and online ordering system. Carolina Bedding (FL) also used the same merchant account, bank accounts, federal Employer Identification Number, mattress vendor relationship through defendant Shoffner, which included the same "private" trade name labels for mattresses that were used by its North Carolina predecessor. This transfer was "informal"—Carolina Bedding (FL) did not enter into a contract for these assets or give any consideration for them.

32. Void of assets, Carolina Bedding (NC) was dissolved on April 26, 2012.

33. As Conrad and Shoffner had intended, Carolina Bedding (FL) continued the business of Carolina Bedding (NC), recruiting, training, and advising dealers across the country, including in Ohio, using RSS's proprietary marketing, merchandising, sales, and management systems. These dealers continued to use this system to market and sell mattresses, which they would purchase from mattress manufacturers, and Carolina Bedding (FL) continued to receive a percentage of its dealers' purchases, just as Carolina Bedding (NC) had.

**Conrad Forms MBA (FL) I and Shoffner Becomes a 45% Owner**

34. On November 19, 2012, Conrad started yet another company, Mattress By Appointment, LLC (“MBA (FL) I”), in Florida. This company was originally intended to continue the operations of Carolina Bedding (FL), but in fact it never did so.

35. In March 2013, Shoffner purchased a 45% ownership interest in Carolina Bedding (FL). Shoffner knew about Carolina Bedding (FL)’s business model and PMD’s lawsuit against Conrad prior to becoming a part-owner of Carolina Bedding (FL).

**RSS Sues Carolina Bedding (NC) and MBA I**

36. On October 4, 2013, RSS (which by this time owned PMD’s intellectual property and trade secrets) filed suit against Carolina Bedding (NC) and MBA (FL) I in the Southern District of Ohio, claiming misappropriation of trade secrets and civil conspiracy. *See Retail Service Systems, Inc. v. Carolina Bedding Direct, LLC*, Case No. 2:13-cv-994 (S.D. Ohio).

37. On February 4, 2014, in response to this lawsuit, Conrad and Shoffner renamed Carolina Bedding (FL) to “Mattress By Appointment, LLC” (“MBA (FL) II”), despite the fact that a company with that name already existed—and was already being sued by RSS.

38. Two days later, Conrad and Shoffner dissolved MBA (FL) I on February 6, 2014.

39. MBA (FL) II continued the business that Carolina Bedding (FL) had been operating. Like Carolina Bedding (FL), Carolina Bedding (NC), and Conrad’s prior companies, MBA (FL) II recruited, trained, and advised dealers using the same marketing, merchandising, sales, and management system it had originally taken from PMD. In fact, MBA (FL) II, under the exclusive control and ownership of Conrad and Shoffner, continued to use the same dealers, employees, playbook, online ordering system, EIN number, vendors, merchants, and bank accounts as Carolina Bedding (NC) and Carolina Bedding (FL).

40. Moreover, MBA (FL) II's own website—[www.mattressbyappointment.com](http://www.mattressbyappointment.com)—explains precisely why it is a successor entity to Carolina Bedding (NC), Carolina Bedding (FL), and MBA I. Under the “Our History” section of its website, MBA (FL) II describes its origin in 2003 as Carolina Bedding and Furniture, Inc., which then developed into Carolina Bedding Direct, which became Carolina Bedding (NC), which became Carolina Bedding (FL), which became MBA (FL) I and MBA (FL) II. (*See* Ex. 5). Some of these are the very entities that the Franklin County Common Pleas Court found to violate that court's injunction. (*See* Ex. 3, 2009 Injunction Entry at 7-8).

41. Like with the business's shift from Carolina Bedding (NC) to Carolina Bedding (FL), MBA (FL) II did not give any consideration for the assets that it used to operate; rather, it just assumed Carolina Bedding (FL)'s assets under its new name and continued recruiting, training, and advising new dealers with the methodologies acquired by Conrad while at PMD.

#### **Shoffner is Fired and Conrad Files for Bankruptcy**

42. In March 2014, MBA (FL) II's Board of Trustees fired Shoffner as President. In May 2014, Shoffner instituted a provision in his contract that required either Shoffner or Conrad to buy out the other partner's interest in MBA (FL) II. Due in part to this provision, as well as RSS's continued efforts to collect on PMD's prior judgment against him, Conrad filed for personal bankruptcy on July 3, 2014.

43. As part of Conrad's bankruptcy proceedings, Shoffner purchased Conrad's remaining 55% interest in MBA (FL) II.

44. Upon information and belief, defendant MBA (FL) II, formerly known as Carolina Bedding (FL), transferred some or all of its assets to MBA (SC). Upon further information and

belief, both companies continue to operate to this day as successors-in-interest to Carolina Bedding and Furniture, Inc. and Carolina Bedding (NC).

45. Upon information and belief, through the actions of defendant C. Edwin Shoffner, Defendants MBA (FL) II and MBA (SC) have obtained and continue to use RSS's trade secrets in violation of the Ohio Uniform Trade Secrets Act, Ohio Rev. Code §§1333.61, *et seq.*

46. Upon information and belief, through the actions of defendant C. Edwin Shoffner, Defendant MBA (FL) II and MBA (SC) have disseminated to MBA (FL) II and MBA (SC) dealers or licensees the trade secrets and methodologies of RSS, causing harm that will be difficult to quantify but runs into the millions of dollars.

## **V. CAUSES OF ACTION**

### **COUNT I** **Successor Liability**

47. Plaintiff hereby adopts and incorporates by reference paragraphs 1 through 46.

48. As described above, Defendants MBA (FL) II and MBA (SC), by and through C. Edwin Shoffner and Darren Conrad, have undergone a succession of identity changes since the formation of their initial predecessor-in-interest, Carolina Bedding and Furniture, Inc. in 2003.

49. Conrad never fully complied with the Ohio court's injunction, instead knowingly and intentionally resuming business practices substantially similar to those which the Franklin County Court of Common Pleas found to be a misappropriation of RSS's trade secrets when he acted as the sole owner and operator of Carolina Bedding (NC) from October 18, 2011, to April 11, 2012.

50. Conrad knowingly and intentionally continued business practices substantially similar to those which the Franklin County Court of Common Pleas found to be a misappropriation of

RSS's trade secrets, and those utilized by Carolina Bedding (NC), when he acted as the sole owner and operator of Carolina Bedding (FL) from April 11, 2012, to March 2013.

51. Conrad and Shoffner knowingly and intentionally continued business practices substantially similar to those which the Franklin County Court of Common Pleas found to be a misappropriation of RSS's trade secrets, and those utilized by Carolina Bedding (NC), when they acted as co-owners and operators of Carolina Bedding (FL) from March 2013 to February 4, 2014.

52. Conrad and Shoffner knowingly and intentionally continued business practices substantially similar to those which this Court found to be a misappropriation of RSS's trade secrets, and those utilized by Carolina Bedding (NC) and Carolina Bedding (FL), when they acted as co-owners and operators of MBA (FL) II from February 4, 2014 until September 4, 2014—when Shoffner purchased all remaining shares of MBA (FL) II in Conrad's personal bankruptcy.

53. On August 29, 2014, just days before Shoffner finalized the purchase of Conrad's shares in MBA (FL) II, Shoffner formed MBA (SC).

54. Shoffner knowingly and intentionally continues to misappropriate RSS's trade secrets—including those utilized by Carolina Bedding (NC) and Carolina Bedding (FL)—through his sole ownership and operation of MBA (SC) and MBA (FL) II from September 4, 2014 to the present.

55. Each successive iteration of Carolina Bedding and Furniture, Inc.—first Carolina Bedding (NC), MBA (FL) I, and then Carolina Bedding (FL) (now MBA (FL) II)—is a successor-in-interest to the prior entities. Among other things, as described above: (1) each business merely continued the prior business activities of its predecessor and personnel remained consistent throughout each successive name change; (2) ownership interests did not change as a

result of each successive name change; (3) each predecessor transferred all of its assets in the absence of consideration and immediately ceased operations at the time of each name change; and (4) each iteration assumed the ongoing obligations of its predecessor.

56. MBA (FL) II and MBA (SC), by and through Shoffner, continue to use RSS's trade secrets. These companies are the present successors-in-interest, and are liable to Plaintiff RSS for damages caused by their predecessors' misappropriation of RSS's trade secrets.

57. MBA (FL) II and MBA (SC), as successors-in-interest to Carolina Bedding (NC), are also subject to the permanent injunction entered against Carolina Bedding (NC) by the Federal District Court of the Southern District of Ohio.

## **COUNT II**

### **Violation of Ohio's Uniform Trade Secrets Act; Ohio Rev. Code §§ 1333.61, et seq.**

58. Plaintiff hereby adopts and incorporates by reference paragraphs 1 through 57.

59. Plaintiff brings this claim pursuant to Ohio's Uniform Trade Secrets Act, Ohio Rev. Code §§ 1333.61, *et seq.*

60. As described above, Defendants MBA (FL) II and MBA (SC), by and through Defendant Shoffner, have willfully and maliciously misappropriated the trade secrets of RSS in violation of Ohio's Uniform Trade Secrets Act, Ohio Rev. Code §§ 1333.61, *et seq.*

61. Defendants MBA (FL) II and MBA (SC), by and through Defendant Shoffner, did willfully and maliciously acquire RSS's trade secrets, knowingly, or with reason to know, that the trade secrets were acquired by improper means.

62. Defendants MBA (FL) II and MBA (SC), by and through Defendant Shoffner, did willfully and maliciously use RSS's trade secrets without the express or implied consent of RSS.

63. At the time Defendants MBA (FL) II and MBA (SC) used RSS's trade secrets, Defendants knew or had reason to know that they had acquired knowledge of those trade secrets

through Darren Conrad, who had utilized improper means to acquire the trade secrets, as held by the Franklin County Common Pleas Court.

64. Plaintiff has been damaged by Defendants MBA (FL) II, MBA (SC), and Shoffner's willful and malicious conduct in an amount to be determined at trial that exceeds \$75,000.00 exclusive of interest and costs.

65. Pursuant to Ohio Rev. Code §§ 1333.62 through 1333.64, Plaintiff is entitled to (1) permanent injunctive relief precluding Defendants from using Plaintiff's trade secrets; or in the alternative, (2) exceptional injunctive relief that conditions future use of the trade secrets by Defendants, or any subsequent related entities, upon payment of a reasonable royalty; (3) actual damages caused by the misappropriation; (4) unjust enrichment damages caused by the misappropriation that is not taken into account in computing actual loss; or in the alternative (5) past and future reasonable royalty payments; (6) punitive damages of up to three times the amount awarded in actual and unjust enrichment damages (or past royalties); and (7) attorneys' fees.

**WHEREFORE**, Plaintiff Retail Service Systems, Inc. respectfully demands a trial by jury and prays for judgment as follows:

- A. Injunctive Relief: a permanent injunction enjoining Defendants from using RSS's trade secrets and proprietary materials;
- B. Damages: Actual damages and unjust enrichment damages;
- C. Royalties: Past and future royalties;
- D. Punitive Damages: Punitive or exemplary damages in an amount to be determined by the Court under statute or a jury;
- E. Interest: Pre-judgment and post-judgment interest to Plaintiff, as allowed by law;



- F. Attorneys' Fees, Costs and Expenses: Attorneys' fees, costs and expenses to Plaintiff; and
- G. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

*/s/ James E. Arnold*

James E. Arnold (OH 0037712)

*Trial Attorney*

JAMES E. ARNOLD & ASSOCIATES, LPA

115 W. Main St., Fourth Floor

Columbus, Ohio 43215

Telephone: (614) 460-1600

Email: [jarnold@arnlaw.com](mailto:jarnold@arnlaw.com)

OF COUNSEL:

Gerrod L. Bede (OH 0088075)

JAMES E. ARNOLD & ASSOCIATES, LPA

115 W. Main St., Fourth Floor

Columbus, Ohio 43215

Telephone: (614) 460-1600

Email: [gbede@arnlaw.com](mailto:gbede@arnlaw.com)

*Counsel for Plaintiff Retail Service Systems, Inc.*

**JURY TRIAL DEMAND**

Plaintiff RSS hereby demands a trial by jury as to all issues so triable.

*/s/ James E. Arnold*

James E. Arnold