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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

RESER'S FINE FOODS, INC., a domestic
business corporation,

Case No. 3:13-cv-00098

Plaintiff,

v.

BOB EVANS FARMS, INC., an Ohio-based
corporation; **BOB EVANS FARM FOODS,**
INC., an Ohio-based corporation,

Defendants.

COMPLAINT

(Preliminary Injunction, Breach of Non-Disclosure Agreement; Misappropriation of Trade Secrets pursuant to ORS 646.461, *et seq.* and Ohio Rev. Code 1333.61 *et seq.*; Conversion)

DEMAND FOR JURY TRIAL

Plaintiff Reser's Fine Foods, Inc., ("Reser's"), for its Complaint against Bob Evans Farms, Inc., and Bob Evans Farm Foods, Inc., (collectively, "BEF") alleges as follows:

JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because this is an action between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and cost.

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2. This Court has personal jurisdiction over Bob Evans in this action pursuant to 18 U.S.C. §§ 1965(a), (b) and (d), because the subject matter of this dispute involves a contractual agreement entered into by Bob Evans for local goods and services to be provided by Reser's.

3. BEF also contractually agreed to be bound by a confidentiality and non-disclosure agreement that it has breached. By breaching its contractual obligations owed to Reser's and causing tortious injury to Reser's in Oregon with knowledge that Reser's would be injured by its actions in Oregon, BEF is subject to Oregon's jurisdiction. BEF also regularly conducts business or solicits business nationally and markets its goods and services nationally.

VENUE

4. BEF transacted business in this judicial district, in which a substantial part of the transactions and events giving rise to these claims occurred. Venue in this judicial district is proper under 18 U.S.C. § 1965 and 28 U.S.C. § 1391.

PARTIES

5. Reser's is an Oregon corporation doing business in Oregon with its principal place of business located in Beaverton, Oregon.

6. BEF is an Ohio corporation with its principal place of business in Columbus, Ohio.

INTRODUCTION

7. Reser's is a family-owned and operated business. It is Oregon's sixth largest privately owned company, and has revenues exceeding \$1 billion a year. It employs more than 5,000 people in the US and Mexico.

8. Reser's began in the 1950s, when Mildred and Earl Reser decided to prepare and sell containers of homemade potato salad from their farmhouse kitchen in Cornelius, Oregon. The products they produced were so popular that only three generations later, Reser's is recognized as one of the nation's premier manufacturers of high quality refrigerated food and has

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earned a reputation as an innovator. Reser's products are sold locally and nationally to restaurants and supermarkets.

9. For more than 17 years, Reser's and BEF have had a business partnership in which Reser's has sold private label food products for BEF to re-sell. Through this partnership, Reser's provided BEF with access to Reser's confidential information and Reser's innovative product lines, processing of products, packaging techniques, market research and analysis.

10. Reser's has recently developed a very valuable, proprietary food processing innovation called the Baked process. Reser's spent at least 10 million dollars in capital costs over 3 years developing this revolutionary new process and suite of products. BEF, as a trusted business partner, was entrusted with information about the Baked process after the parties entered a nondisclosure agreement. BEF is now using that same information to make imitation products and is selling those products in the marketplace. By doing so, BEF is violating the Mutual Confidentiality and Non-Disclosure Agreement (the "Non-Disclosure Agreement") executed by BEF and Reser's on or about January 2008 (attached hereto as **Exhibit 1**). BEF also violated state and federal laws prohibiting the theft of trade secrets. Reser's brings this action to preliminarily and permanently enjoin the improper and unlawful conduct of BEF. BEF's actions are presently causing, and will continue to cause, significant irreparable harm to Reser's unless enjoined by this Court.

GENERAL ALLEGATIONS

11. BEF is a publicly-traded company headquartered in Ohio that owns and operates full service restaurants, and provides a line of retail food products under the BEF brand name. BEF describes itself as a "category leader in fresh sausage, refrigerated mashed potatoes and side dishes, and frozen breakfast," although it acknowledges that it relies on "third parties," to "co-pack" its mashed potatoes and macaroni and cheese product lines.

12. The business relationship between Reser's and BEF began in the mid-1990s, when Reser's convinced BEF that Reser's cut potato recipe would naturally partner with BEF's

sausage. Reser's then began manufacturing and packaging Bob Evans Farms Home Fries.

13. By approximately 1998, Reser's and BEF's partnership was further solidified when Reser's began producing and packaging a variety of Reser's hot fill products to BEF. "Hot fill" products are products that are cooked up in kettles, deposited into microwavable containers, and then sealed while still hot. Hot fill products included mashed potatoes, pastas, and other side dishes.

14. Each of these products was manufactured by Reser's using Reser's recipes and processing techniques, and the Reser's products were then packaged for BEF and sold by BEF under Bob Evans' brand name.

15. BEF has had very minimal involvement in the development of recipes or product development. Reser's developed all recipes, processing techniques and other intellectual property involved in the products Reser's prepared and packaged for BEF. BEF merely resold the finished products under Bob Evans' brand name.

A. The Mutual Confidentiality and Non-Disclosure Agreement.

16. On January 22, 2008, BEF sent Reser's the Non-Disclosure Agreement and asked Reser's to sign it.

17. According to the Non-Disclosure Agreement, BEF and Reser's desired to "engage in discussions and information sharing to benefit their mutual business interest * * *." The Non-Disclosure Agreement further acknowledged that Reser's and BEF "are willing to disclose such proprietary, confidential and trade secret information, and technology solely for the purpose of enabling each other to freely engage in such discussions and information sharing to benefit their mutual business interests and relationship (collectively the "Work"), on the condition that such information and technology be kept confidential and not be used except as provided hereby."

18. The Non-Disclosure Agreement expressly acknowledged that confidential information obtained from the other, "is and shall remain the sole and exclusive property of the

other, that it is valuable, special and unique to the other, and is the subject of and subject to measures designed to prevent it, in the ordinary course of business, from being available to persons other than those selection by the other party to have access thereto.”

19. The Non-Disclosure Agreement defines protected information as “all or any portion of any confidential or proprietary product or ingredient information (including recipes and formulas), product samples, product prototypes, manufacturing technology or processes, trade secret, business, financial, marketing, computer, pricing, operations, technical, vendor or customer (current and prospective) information, or other information, data and materials, disclosed verbally or in writing by [Reser’s] or Bob Evans to the other, or to which [Reser’s] or Bob Evans obtains access from the other, or which is therefrom developed by [Reser’s] or Bob Evans.” In addition, the parties contractually agreed that “the disclosure of confidential information in violation of the terms of this Agreement shall cause immediate and irreparable injury, loss and damage, and that an adequate remedy at law for such injury loss and damage may not exist.”

20. Both parties signed the Non-Disclosure Agreement (*see Exhibit 1*).

B. Reser’s Baked Process Research and Development.

21. In and around 2006, Reser’s began to internally research and develop a baking-type food product. Over the course of the next three years, Reser’s innovations led to the development of a revolutionary new baked process. (Reser’s “Baked Process”).

22. Reser’s Baked Line is innovative because it is a refrigerated product that, when prepared, has a crunchy, caramelized, browned top layer over a creamy bottom layer. Reser’s Baked line is refrigerated, not frozen and has a refrigerator shelf life of four to six weeks. It is a ready-baked product that is designed to be ready to eat in minutes after it is reheated in a microwave or consumer’s oven.

23. Many aspects of the processing, packaging, and products are trade secrets developed and owned by Reser's. Additionally, the selection and development of products and recipes utilize confidential, proprietary market and business research and insights and innovative techniques developed by and owned by Reser's. It took Reser's three years and many millions of dollars in capital to develop the Baked Process, and the market insight Reser's relied on in the development of products is the result of Reser's decades of experience in the ready-made food market and Reser's focused new product development, research and testing.

24. In April, 2010, Reser's presented the Baked Process to BEF. The products were enthusiastically received, and BEF bought three Baked side dishes offered by Reser's in October 2010: scalloped potatoes, macaroni and cheese, and hash brown casserole (the "Baked Products").

25. Reser's considers its innovative Baked Process to be an extremely valuable trade secret. It limits access to information about the Baked Process to those who have a need to know. It closely controls access to the plants where the Baked Process is produced, putting the oven production lines in different buildings, so that third parties who view the hot fill lines will not see the Baked Line.

26. Reser's also takes steps to control disclosures by its own employees. The Reser's employee manual expressly prohibits Reser's employees from divulging company trade secrets and makes clear that an employee who does will be subject to discipline for doing so.

27. Reser's relied on the protections provided by the Non-Disclosure Agreement when it disclosed confidential, trade secret information about its Baked Process to BEF.

28. In April 2010, Reser's explained the Baked Process to BEF. Shortly thereafter, BEF employee, Dee Hadley, was allowed to visit the oven facility located in Pasco, Washington and used by Reser's for the Baked Process. She toured the line while it was in production, and watched one of the initial production runs. She spent quite a lot of time on the floor observing while desired browning levels were being developed. BEF employees also visited Baked

Process lines in 2011 and 2012. On at least some of these occasions, BEF employees acquired proprietary and trade secret information belonging to Reser's.

29. On several occasions, Reser's has informed BEF in writing that its Baked Process is proprietary and the information shared with BEF is confidential.

30. In August 2012, BEF announced that it had purchased Kettle Creations, a company that makes hot fill side dishes. For the first time, BEF acquired the capacity to manufacture ready to eat side dishes.

31. Reser's believed that BEF was going to use the trade secrets and other confidential information it had obtained over the years from Reser's to start making products based on the Baked Process. Reser's feared that continuing to sell the Baked Products to BEF while BEF secretly used Reser's proprietary information to develop a competing product would enable the theft of Reser's trade secrets. On August 23, 2012, Mark Reser, the President and Chief Executive Officer of Reser's, sent a letter to BEF stating that, in order to "protect Reser's business interests for the long term, including our cutting edge Oven Baked Technology," effective October 19, 2012, Reser's would no longer accept orders for "Bob Evans Oven Baked Sides". Mr. Reser gave BEF enough prior warning to permit BEF to fill its existing orders, and to stop its sales of the Baked Line to BEF without breaching any existing contracts.

32. As of October 19, 2012, Reser's stopped selling the Baked Products to BEF.

33. At some point, either shortly before October 19, 2012 or shortly thereafter, BEF started selling its own baked macaroni and cheese, hash brown casserole, and scalloped potatoes, under the same UPC codes that were used for Reser's Baked Products. It took BEF a matter of weeks to use Reser's proprietary information to copy the products and the process. The website for Kettle Creations confirms that it is producing an innovative baked line of products.

34. BEF has sold these knockoff products under the same UPC codes that BEF used for the products supplied by Reser's. This is significant because major retailers, such as Walmart, have tight regulations that prohibit nearly all modifications to products that have been

accepted under a given UPC code without notice to the retailer. In order to provide these products to retailers, such as Walmart, using the same UPC codes, the products must be indistinguishable from the Baked Line. This means that BEF did not simply duplicate Reser's proprietary process; it used proprietary information to reverse engineer these three products.

FIRST CLAIM FOR RELIEF

(Misappropriation of Trade Secrets)

35. Reser's realleges each of the allegations set forth in paragraphs 1 through 31, above.

36. Reser's disclosed information regarding the Baked Process and Baked Products, including market analysis, ingredients, recipes, packaging, and the technology used by Reser's to develop Reser's Baked process and Baked Products to BEF pursuant to the Non-Disclosure Agreement.

37. This proprietary, confidential information includes trade secrets within the meaning of ORS 646.461 and Ohio Rev. Code 1333.61. Reser's derives independent economic value, actual or potential, because the trade secrets were: (a) not generally known to third parties who could obtain economic value from their use, and (b) the trade secrets were not readily ascertainable by proper means by third parties or available to third parties to create economic value from their use. The trade secrets were also the subject of reasonable efforts to protect their secrecy, including controlling access to the information and requiring key employees to sign nondisclosure agreements.

38. BEF knew, or should have known, that BEF's disclosure of and use of Reser's trade secrets for the purpose of making and selling competing products violated the Non-Disclosure Agreement.

39. BEF willfully and maliciously misappropriated Reser's trade secrets by using them to produce competing products in violation of the Non-Disclosure Agreement.

40. BEF continues to use Reser's misappropriated trade secrets in an attempt to divert market share and customers from Reser's to BEF, and to provide BEF with competitive advantage in the nationwide marketplace.

41. Reser's is suffering irreparable harm, and has no adequate remedy at law for its injuries caused by BEF's misappropriation of Reser's trade secrets.

42. Pursuant to ORS 646.463 and Ohio Rev. Code 1333.62, BEF should be preliminarily and permanently enjoined from the misappropriation of Reser's trade secrets, and from utilizing confidential information and/or benefitting from confidential information taken from Reser's.

43. BEF should be ordered to immediately return to Reser's all confidential information belonging to Reser's, and Reser's is entitled to receive an order requiring BEF to honor the terms of the Non-Disclosure Agreement

44. In addition to the irreparable harm suffered by Reser's as a result of BEF's misappropriation of Reser's trade secrets, Reser's has been damaged in an amount of at least \$100,000, the exact amount to be proven at trial.

45. Reser's is entitled to punitive damages in an amount of twice the sum awarded under paragraph 48 above, pursuant to ORS 646.465(3), or in an amount of three times the sum awarded under paragraph 48 above pursuant to Ohio Rev. Code 1333.63(b).

46. Reser's also is entitled to its reasonable attorney's fees under ORS 646.467 and Ohio Rev. Code 1333.63(c).

SECOND CLAIM FOR RELIEF

(Breach of Mutual Confidentiality and Non-Disclosure Agreement)

47. Reser's realleges each of the allegations set forth in paragraphs 1 through 43, above.

48. Reser's and BEF are parties to the Non-Disclosure Agreement, which is a valid contract under Ohio and Oregon law.

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49. The Non-Disclosure Agreement contains covenants of confidentiality and non-disclosure, whereby BEF expressly agreed that it would not disclose or use proprietary, confidential, or trade secret information disclosed to it by Reser's.

50. BEF has breached the Non-Disclosure Agreement by disclosing and using Reser's proprietary, confidential, and trade secret information to develop competing products including the Baked Products.

51. Enforcement of the Non-Disclosure Agreement is necessary to protect Reser's legitimate business interests, including, but not limited to, proprietary, confidential, and trade secret information about Reser's Baked Process.

52. Based on BEF's admission in the Non-Disclosure Agreement, Reser's has no adequate remedy at law for its injuries caused by BEF's breach of the Non-Disclosure Agreement. Unless BEF is preliminarily and permanently enjoined from breaching the Non-Disclosure Agreement, Reser's will continue to suffer irreparable harm.

53. In addition to the irreparable harm suffered by Reser's as a result of BEF's breach of the Non-Disclosure Agreement, Reser's has suffered monetary damages in an amount of at least \$100,000, the exact amount to be proven at trial.

THIRD CLAIM FOR RELIEF

(Conversion)

54. Reser's realleges each of the allegations set forth in paragraphs 1 through 50. above.

55. To the extent that BEF cannot return to Reser's any of Reser's tangible property that it has misappropriated, Reser's seeks damages against BEF for conversion in an amount to be proven at trial.

WHEREFORE, Reser's prays for judgment against BEF as follows:

(a) That the Court enjoin BEF from utilizing, directly or indirectly, any proprietary, confidential information or trade secrets that BEF obtained from Reser's, by selling

the Baked Products: baked macaroni and cheese, baked hashbrown casserole, or baked scalloped potatoes;

(b) That the Court enjoin BEF, whether alone or in concert with or through others, including, but not limited to, any officer, agent, representative, and/or employee of Kettle Creations, from using Reser's proprietary, confidential information and/or trade secrets by selling any product produced using Reser's proprietary, confidential information or trade secrets or soliciting or initiating contact with, directly or indirectly, any customer based on products produced using Reser's proprietary, confidential information and/or trade secrets;

(c) That the Court Require BEF, within three (3) days of the date the preliminary injunction order is issued, to produce to counsel for Reser's all originals and copies of any proprietary, confidential information and/or trade secrets belonging to Reser's; and

(d) In light of the fact that BEF will still be able to compete fairly with Reser's in the marketplace for new clients, Reser's believes that a bond of \$1,000 should be sufficient.

(e) That the Court award Reser's monetary damages for misappropriation including both the actual loss caused by the misappropriation and the unjust enrichment caused by the misappropriation, in an amount to be proved at trial presumed to be not less than \$100,000;

(d) That the Court award Reser's exemplary damages for BEF's willful and malicious misappropriation of Reser's trade secrets in an amount equal to two times the monetary damages awarded;

(e) That the Court award Reser's its costs, expenses, and reasonable attorneys' fees;

(f) That the Court grant such other and further relief in law or in equity as is deemed just and equitable under the circumstances.

DATED: January 17, 2013

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