

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ACTIVE MEDIA SERVICES, INC., d/b/a : CIVIL ACTION NO.:
**ACTIVE INTERNATIONAL :
Plaintiff, :
VS. :
ICON INTERNATIONAL, INC. :
Defendant. : FEBRUARY 3, 2006**

VERIFIED COMPLAINT

PARTIES

1. Plaintiff, **ACTIVE MEDIA SERVICES, INC., d/b/a Active International (Active)**, is a Delaware corporation with an office and principal place of business in Pearl River, New York,

2. The Defendant, Icon International, Inc. (“Icon”), is a Connecticut corporation with a principal place of business in Stamford, Connecticut.

JURISDICTION AND VENUE

3. Jurisdiction is founded on 28 U.S.C. 1332, as complete diversity of citizenship exists between the parties and the amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs.

4. Venue in this court is proper under 28 U.S.C. 1391(a), as a substantial part of the events giving rise to this claim occurred in the State of Connecticut.

FACTS

5. Both Active and Icon engage in the business of corporate barter, trade and cross

purchases and are competitors.

6. Active's purchase price for the media advertising is agreed upon by Active and the client and is based upon the client's established net benchmark price; being the net price the client would otherwise have paid to purchase such media (other than through Active) for 100% cash.

7. Active works closely with the client's advertising agencies. The agency provides to Active, on behalf of the client, among other things, the client's relevant net benchmark price and all other media planning specifications so that the advertising placed by Active, on behalf of the client, conforms to what the client would have otherwise purchased and placed (other than through Active) for 100% cash.

8. Concurrently upon Active's and the client's mutual agreement to the relevant purchase price for media advertising, Active advises the client of the applicable cash and trade credit blend – *i.e.*, the percentages of Active's invoices for such media advertising which will be payable by the client to Active in cash, and by reduction and application of the trade credit issued by Active to the client.

9. In order to permit Active's clients to pay a portion of their benchmark costs for media with trade credits, Active utilizes proprietary and confidential formulas and trading techniques and methods to negotiate and arrive at unique trading/barter arrangements, including, without limitation, trading terms, cash/trade blends, rates and ratios, trading discounts and cross purchase obligations, with media publishers to reduce the cash cost to Active. Active's trading/barter arrangements with the media vendors, including, without limitation Active's negotiated costs and rates are proprietary, confidential and not disclosed to the client or the client's advertising agency.

10. Between June 2000 to January 2006, Active employed Leslie Moses (“Moses”) in a number of senior executive positions.

11. As an employee of Active, Ms. Moses entered into an agreement to abide by Active’s Code of Conduct/Ethics Policy requiring her to keep all of Active’s trade secret and proprietary information strictly confidential, and to use such information only in the performance of her duties at Active. Ms. Moses was also required to annually confirm her compliance with the Code of Conduct. Specifically, the Code of Conduct states:

Confidentiality.

Information is key to our Company’s success. **Everyone must protect what is confidential while working at the Company and after leaving the Company.** The heading of confidential information includes but is not limited to financial documents, pricing or vendor information, client information, contracts, client lists or proposals, corporate development, the cost of goods, personnel files, manuals and procedures, computer software, design documents, videos and memos. (Information that has been made public by the Company, such as by press release, advertisement or filed documents, is not considered confidential).

It is the policy of the Company to ensure that the operations, activities, and business affairs of the Company and our clients are kept confidential to the greatest possible extent. If, during the course of your employment, you acquire confidential or proprietary information about the Company and its clients, suppliers, customers or even fellow employees, such information is to be handled in strict confidence and not to be discussed with outsiders. It is imperative that you in no way reveal or divulge any such information and that such information is used only in the performance of your duties at the Company. This means that you are also responsible for the internal security of such information. This means that you should not discuss confidential information with fellow employees unless they have a business need to know such information.

Employees found to be violating this policy are subject to disciplinary action up to and including discharge, and may also be subject to civil penalties for violations of this policy.

If you are unsure whether certain information is confidential, presume that it is. Therefore, it is important to be careful about what is said to friends, business associates and family members, even spouses. Finally, no one should attempt to

obtain confidential information that does not relate to his or her employment duties and responsibilities.

12. From June 2000 to about December 2004, Ms. Moses held the position of Vice President of Print Media, in which she served as a media buyer for several client accounts, including one of Active's most important and coveted accounts – the Quaker-Tropicana-Gatorade North America Division of PepsiCo ("QTG") account.

13. In this capacity, Ms. Moses had access to Active's confidential and proprietary information, including but not limited to the details of trade and cross purchase transactions, cash/trade negotiations, trade discounts, rates, blends and profits for each publication in QTG's print media plan.

14. In or about December 2004, as a result of a restructuring at Active, Ms. Moses was promoted to the position of Vice President of Print Trade Development. This reassignment entailed a change of duties and required Ms. Moses to relinquish to other Active employees her media-buying responsibilities, including those related to the QTG Account. Ms. Moses' new job function was to approach each and every magazine on her assigned list of titles and source or create trading business opportunities for Active.

15. Subsequent to this reassignment, Ms. Moses regularly placed telephone calls to various departments and individuals at Icon and discussed bringing the QTG account to Icon her desire to make the account as good for Icon as it was for Active. Ms. Moses also began making plans to use and disclose Active's confidential and proprietary information to Icon as an inducement to secure employment at Icon.

16. Based upon years of competition between Active and Icon, Icon knew or had reason

to know the information Ms. Moses possessed and intended to pass along was confidential and proprietary to Active. Icon also knew or had reason to know that Ms. Moses could not work on the QTG account without using or disclosing information that was confidential and proprietary to Active.

17. In the fourth quarter of 2005, Active and Icon both submitted proposals on the QTG account.

18. On or about January 23, 2006, Ms. Moses turned in her resignation to Active. Later that same day, Active received written notice from QTG that it had accepted a proposal from an alternative corporate barter entity and intended to use the trade credits generated from this entity to purchase its print media advertising. That entity, of course, is Icon.

19. Active has learned that Icon hired Ms. Moses as a media buyer. Active has also discovered that Icon has specifically assigned Defendant print buying responsibilities for QTG as the “expert” and is working on the same or similar QTG media plans for which she obtained confidential information while still an employee at Active.

20. Icon’s primary motive in hiring Defendant is to utilize, to its own advantage, Ms. Moses’ knowledge of Active’s confidential and proprietary information, including, but not limited to the economic terms and structure of Active’s transactions relating to the QTG Account because Icon knows or has reason to know that Ms. Moses cannot perform her essential job function at Icon without using or disclosing this information.

21. Icon has systematically raided Active’s employees for the apparent purpose of gaining access to Active’s confidential and proprietary information. Indeed, Ms. Moses is the ninth employee that Icon has hired away from Active. No less than three of these employees have worked on the QTG Account while at Active.

22. Ms. Moses, knowing that Icon sought to win the QTG Account away from Active, launched a plan with Icon to gather Active's confidential and proprietary information relating to the QTG account as an inducement for Icon to hire her into a senior media-buying position at Icon when Icon won the account.

23. After Ms. Moses departed from Active, Active discovered that Ms. Moses regularly and surreptitiously gathered confidential information about Active's QTG's media plans after her reassignment to the Print Trade Development group regularly in 2005. This gathering of information continued to the time of her departure to Icon in January 2006.

24. Specifically, Ms. Moses obtained confidential worksheets and summaries of Active's barter terms with each publication, including information relating to the blend of trade credits, cash and trade discounts provided by the publications. This information reflects Active's confidential purchase methodologies and formula, which is at the heart of its business. These documents also contained notes that indicate for approximately 180 or so different magazines how Active's buying team went about negotiating and making their buys (*i.e.*, how annual rate increases were handled; how the position of ads were handled; how certain negotiating impasses were resolved, etc.). Ms. Moses also obtained highly sensitive information on the identity of each publication in which Active was going to be placing QTG advertisement, a breakout of the page count by brand of the pages being purchased, and a grand page total counts by magazine.

25. Furthermore, a forensic search of Ms. Moses' computer hard drive resulted in a snapshot from an email dated October 3, 2005 from Ms. Moses to Icon's CEO, John Kramer. That email reveals that, *at Icon's request*, Ms. Moses willingly disclosed Active's proprietary information to Icon during the course of her interview process with Icon for the specific purpose of helping Icon misappropriate Active's confidential and proprietary information in order to steal

Active's QTG's business and obtaining a position at Icon. The e-mail, dated on or about October 3, 2005, is from Ms. Moses to Icon's president, John Kramer, and shows that starting in the Spring of 2005, Icon began interviewing Ms. Moses for a position as Icon's "Quaker Expert" and requested in the interview process that Ms. Moses disclose Active's admittedly proprietary information so that Icon could use that information in a business pitch to QTG and its media agent. Specifically, Ms. Moses states in the e-mail:

Midway during the interview process, the job description that [was] presented to me changed from "Trade Maven" to "Quaker Expert." . . . I was told to be patient, and assured that my employment was not a matter of "if" but "when." . . . I met with Ann Cole [an Icon employee], early Spring and spoke with her before her meeting with Quaker and OMD late in August. She asked me for some proprietary information which I gave her in good faith and said that she would have a better feel for the timing after that meeting.

Significantly, during the last quarter of 2005, Icon and Active were competing for the next QTG barter transaction.

26. Ms. Moses had no valid work-related reason to accumulate any of this confidential information, as she had been removed from her media buying function in December 2004 other than to use or disclose this information for Icon's benefit. Any need Ms. Moses had relating to her current position was satisfied by her superiors without a need for the documents she surreptitiously accumulated.

27. Ms. Moses obtained this information from a former subordinate on a pretext that she had a continued use for this information. Ms. Moses did so in anticipation of joining and sharing the information with Icon. Icon's primary purpose in pursuing and later hiring Ms. Moses as an executive at Icon was to obtain knowledge of the Active confidential and proprietary information Ms. Moses possessed and use it to win and maintain the QTG account.

28. Following loss of the QTG account, Active was instructed to cancel advertisements that it had arranged for QTG so that they could be repurchased by Icon. Because of Ms. Moses' position on the QTG account at Icon, Icon can match or beat Active's negotiations using Active's confidential and proprietary information.

29. There is no way that Icon can use Ms. Moses in her media-buying function at Icon without further misappropriating confidential information regarding the QTG account including but not limited to barter terms that Active has reached with media partners through negotiations and application of Active's proprietary purchase methodologies and formulae.

30. Furthermore, by knowing every last detail of Active's cash blend, profit, purchase methodology, and page distribution/allocation by title through Ms. Moses, Icon is now in a position to match or undercut Active's previous negotiations on the QTG and other accounts.

31. On or about January 26, 2006, Active sent a letter to Ms. Moses advising her of her obligations under Active's Code of Conduct and requested that she provide confirmation by January 27, 2006 that she has not disclosed Active's confidential information to Icon or any other parties. Ms. Moses failed to respond to this letter.

32. Icon has systematically raided Active's employees for the apparent purpose of gaining access to Active's confidential and proprietary information and Ms. Moses is the ninth employee that Icon has hired away from Active in the past sixteen months. No less than three of these employees had worked on the QTG Account.

33. As evidenced by the e-mail snapshots exposing the disclosure of Active's confidential and proprietary information to by Ms. Moses to Icon (while an employee of Active), Icon induced Ms. Moses to obtain Active Confidential Information to Icon to obtain an executive position with senior level responsibility for handling the QTG account at Icon.

34. After accepting employment with Icon, Ms. Moses continued to use and/or disclose Confidential Information about QTG to Icon as there is no way for her to perform her essential job function without Icon's information.

35. Icon has knowingly and intentionally solicited and received and will continue to receive Active Confidential Information and Icon knows or should know this information is proprietary and confidential to Active. Indeed, Icon requested Ms. Moses to provide it with Active's proprietary information for use by it on the QTG account and Ms. Moses complied as evidenced by a snapshot of e mail on Ms. Moses computer at active.

36. Icon has used and will continue to use Active's confidential and proprietary information for its own benefit.

37. Active has put Icon on written notice that Ms. Moses obtained Active's proprietary and confidential information by surreptitious means and that Ms. Moses cannot perform her job at Icon without using or disclosing this information. Icon, however, has failed to take action to maintain the status quo and stop to and/or prevent its use or disclosure.

FIRST CLAIM FOR RELIEF
(Under the Connecticut Uniform Trade Secrets Act)

38. Active repeats and realleges the allegations contained in paragraphs 1 through 37 hereof, as if fully set forth herein.

39. The Active's confidential and proprietary information constitutes a "trade secret" within the meaning of 35-51(d) ("CUTSA") of the Connecticut General Statutes.

40. Icon's conduct, as set forth above, constitutes an actual or threatened misappropriation of Active's trade secrets within the meaning of G.G.S. Sections 35-51(b) and 35-52 and a violation of CUTSA.

41. Icon's conduct, as set forth above, poses a real and immediate threat of harm to Active, which constitutes an irreparable injury and damage for which there is no adequate remedy at law.

42. Icon has misappropriated, and unless enjoined, will continue to misappropriate Active's trade secrets.

43. By reason of the foregoing, Active is entitled to a temporary restraining order, a preliminary injunction and a permanent injunction: 1) enjoining Icon from obtaining, using or disclosing any portion of Active's trade secrets; 2) enjoining Icon from employing Ms. Moses in any capacity; and 3) enjoining Icon from performing on the QTG account.

44. As a result of Icon's misappropriation of Active's trade secrets, Active has suffered and will continue to suffer substantial damages and is entitled to an award of compensatory damages in an amount to be determined at trial for the loss of trade secrets and the QTG account. Accordingly, Active is entitled to an award of punitive damages, under Conn. Gen. Stat. Sec. 35-53, in an amount to be determined at trial, together with its reasonable attorney's fees.

SECOND CLAIM FOR RELIEF
(Under the Connecticut Unfair Trade Practices Act)

45. Active repeats and realleges the allegations contained in paragraphs 1 through 44 hereof, as if fully set forth herein.

46. Icon's intentional use and disclosure of Active's trade secrets and other confidential and proprietary information of Active, in the trade and commerce of the state of Connecticut, for Icon's benefit to steal the QTG and other accounts of Active is unethical, unscrupulous, immoral, unfair and deceptive and constitutes an unfair method of competition or trade practice in violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Sec. 42-110, et seq.

(“CUTPA”). Such acts are continuing as of the date hereof.

47. As a result of Icon’s violation of CUTPA, Active has suffered and will continue to suffer economic loss and damage, as well as immediate and irreparable harm.

48. A copy of this Complaint has been forwarded to the Attorney General of the state of Connecticut pursuant to Conn. Gen. Stat. Sec. 42-110g(c).

49. By reason of the foregoing, Active is entitled to a temporary restraining order, a preliminary injunction and a permanent injunction: 1) enjoining Icon from using or disclosing any portion of Active’s trade secrets; 2) enjoining Icon from employing Ms. Moses in any capacity; and 3) enjoining Icon from performing on the QTG account.

50. Active has no adequate remedy at law.

51. As a result of Icon’s violation of CUTPA, Active has suffered and will continue to suffer economic loss and damages.

52. By reason of the foregoing, Icon is liable to Active for compensatory damages in an amount to be determined at trial and punitive damages, together with its reasonable attorney’s fees under Conn. Gen. Stat. Sec. 42-110g.

PRAYER FOR RELIEF

WHEREFORE, Active respectfully requests judgment against Icon as follows:

- A. A temporary restraining order, and preliminary and permanent injunctions enjoining Icon from: 1) obtaining, using or disclosing any portion of Active’s trade secrets; 2) from employing Ms. Moses in any capacity; 3) from performing on the QTG account; and 4) from using or disclosing information obtained directly or indirectly from Active’s trade secrets;

- B. Compensatory damages in an amount to be determined at trial; punitive damages as provided by Conn. Gen. Stat. Sec. 35-53 and 42-110g; and attorney's fees as provided by Conn. Gen. Stat. Sec. 35-54 and 42-110g
- C. Awarding Active its costs and disbursements, including in-house and forensic costs and reasonable attorney's fees;
- D. That Icon be ordered to turn over to Active any and all documentation or information in any tangible form in its possession, custody or control which contains Active trade secrets and confidential information;
- E. That Icon be enjoined from destroying or otherwise rendering unavailable any information relevant to this lawsuit, including any evidence of any communications between Icon and any current or former Active employees, including Ms. Moses;
- F. Expedited discovery; and
- G. Such further relief as the court may deem proper.

**PLAINTIFF,
ACTIVE MEDIA SERVICES, INC.**

By: _____
Eliot B. Gersten (ct05213)
John J. Robacynski (ct15636)
GERSTEN, CLIFFORD & ROME, LLP
214 Main Street
Hartford, CT 06106
Tel: 860-527-7044
Its Attorneys

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ACTIVE MEDIA SERVICES, INC., d/b/a : CIVIL ACTION NO.:
**ACTIVE INTERNATIONAL :
Plaintiff, :
: :
VS. :
: :
ICON INTERNATIONAL, INC. :
Defendant. : FEBRUARY 3, 2006**

VERIFICATION

GEORGE OTRAS, Senior Vice President of **ACTIVE MEDIA SERVICES, INC.** has verified that the information and allegations contained in the foregoing Verified Complaint are true and correct to the best of his knowledge, information and belief.

Dated: February ____, 2006

Eliot B. Gersten

**UNITED STATES DISTRICT COURT
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ACTIVE MEDIA SERVICES, INC., d/b/a : CIVIL ACTION NO.:
**ACTIVE INTERNATIONAL :
Plaintiff, :
VS. :
ICON INTERNATIONAL, INC. :
Defendant. : FEBRUARY 3, 2006**

APPLICATION FOR EX-PARTE TEMPORARY RESTRAINING ORDER

Pursuant to Fed. R. Civ. P. 65(b), the Plaintiff, Active Media Services, Inc., hereby moves the Court to issue a Temporary Restraining Order enjoining the Defendant, Icon International, Inc., as follows:

1. An ex-parte temporary restraining order enjoining Icon: 1) obtaining, using or disclosing any portion of Active's trade secrets; 2) from employing Ms. Moses in any capacity; and 3) from performing on the QTG account; and 4) from using or disclosing information obtained directly or indirectly from Active's trade secrets; and

2. The Defendant is further ordered to immediately turn over to the Plaintiff any and all documents or information in any tangible form in the Defendant's possession, custody, or control, which contain trade secrets or confidential information.

3. That Defendant be enjoined from destroying or otherwise rendering unavailable any information relevant to this lawsuit, including any evidence of any communications between Icon and any current or former Active employees, including Ms. Moses.

In support of this Application, the Plaintiff represents as follows:

1. Contemporaneously with the filing of this Application, the Plaintiff has filed a Verified Complaint and Affidavit alleging and establishing that the Defendant has or will receive Active Confidential Information and that Defendant has used this information to obtain Plaintiff's accounts. The Plaintiff has set forth claims for violation of the Connecticut Uniform Trade Secrets Act, Conn. Gen. Sta. Sec. 35-50, et seq. and the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Sec. 42-110, et seq.

2. There is a substantial likelihood that the Plaintiff will succeed on the merits on its claim. The Defendant's conduct poses a real and immediate threat of harm to the Plaintiff, which constitutes an irreparable injury for which there is not adequate remedy at law.

WHEREFORE, the Plaintiff hereby applies for an Ex-Parte Temporary Restraining Order in accordance with its request for relief, and respectfully requests that the Defendant be ordered to appear at an early date to show cause why the Plaintiff's prayer for an injunction should not be granted.

**PLAINTIFF,
ACTIVE MEDIA SERVICES, INC.**

By: _____
Eliot B. Gersten (ct05213)
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Defendant.	:	FEBRUARY 3, 2006

APPLICATION FOR PRELIMINARY INJUNCTION

Pursuant to Fed. R. Civ. P. 65(a), the Plaintiff, Active Media Services, Inc., hereby moves the Court to issue an Order preliminarily enjoining the Defendant, Icon International, Inc., as follows:

1. A preliminary injunction enjoining Icon: 1) obtaining, using or disclosing any portion of Active's trade secrets; 2) from employing Ms. Moses in any capacity; and 3) from performing on the QTG account; and 4) from using or disclosing information obtained directly or indirectly from Active's trade secrets; and

2. The Defendant is further ordered to immediately turn over to the Plaintiff any and all documents or information in any tangible form in the Defendant's possession, custody, or control, which contain trade secrets or confidential information.

3. That Defendant be enjoined from destroying or otherwise rendering unavailable any information relevant to this lawsuit, including any evidence of any communications between Icon and any current or former Active employees, including Ms. Moses;

In support of this Application, the Plaintiff represents as follows:

1. Contemporaneously with the filing of this Application, the Plaintiff has filed a Verified Complaint and Affidavit alleging and establishing that the Defendant has or will receive Active Confidential Information and that Defendant has used this information to obtain Plaintiff's accounts. The Plaintiff has set forth claims for violation of the Connecticut Uniform Trade Secrets Act, Conn. Gen. Sta. Sec. 35-50, et seq. and the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Sec. 42-110, et seq.

2. There is a substantial likelihood that the Plaintiff will succeed on the merits on its claim. The Defendant's conduct poses a real and immediate threat of harm to the Plaintiff, which constitutes an irreparable injury for which there is not adequate remedy at law.

WHEREFORE, the Plaintiff hereby applies for a Preliminary Injunction Order in accordance with its request for relief, and respectfully requests that the Defendant be ordered to appear at an early date to show cause why the Plaintiff's prayer for an injunction should not be granted.

**PLAINTIFF,
ACTIVE MEDIA SERVICES, INC.**

By: _____
Eliot B. Gersten (ct05213)
John J. Robacynski (ct15636)
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**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ACTIVE MEDIA SERVICES, INC., d/b/a : CIVIL ACTION NO.:
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**AFFIDAVIT OF GEORGE OTRAS IN SUPPORT OF
APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

GEORGE OTRAS, having been duly sworn, hereby deposes and says:

1. I am the Senior Vice President of the Print Trade Services Group of Active Media Services, Inc. d/b/a Active International (“Active”), and have been employed by Active for over 20 years.

2. As Senior Vice President of the Print Trade Services Group, I am responsible for, among other things, overseeing Active’s Print Media and Print Trade Development groups, both of which Leslie Moses (“Moses”), was a member. Ms. Moses is a former employee of Active and is presently an employee of defendant Icon International, Inc. (“Icon”), a direct competitor of Active.

3. I submit this Affidavit in support of Active’s application for a Temporary Restraining Order and Preliminary Injunction enjoining Icon from misappropriating Active’s proprietary and confidential information in connection with Moses’ duties as a new employee of Icon.

4. The statements in this Affidavit are based upon my personal knowledge and investigation of the facts relating to this matter.

Active's Business

5. Active is engaged in the business of, among other things, issuing trade credit to clients in exchange for goods and/or assets sold by such clients to Active. The trade credit is useable by Active's clients in connection with the purchase from Active of, among other things, media advertising. The trade credit is useable by the client to pay a negotiated portion of Active's invoices for such media.

6. Active's purchase price for the media advertising is agreed upon by Active and the client and is based upon the client's established net benchmark price; being the net price the client would otherwise have paid to purchase such media (other than through Active) for 100% cash.

7. Active works closely with the client's advertising agencies. The agency provides to Active, on behalf of the client, among other things, the client's relevant net benchmark price and all other media planning specifications so that the advertising placed by Active, on behalf of the client, conforms to what the client would have otherwise purchased and placed (other than through Active) for 100% cash.

8. Concurrently upon Active's and the client's mutual agreement to the relevant purchase price for media advertising, Active advises the client of the applicable cash and trade credit blend – i.e, the percentages of Active's invoices for such media advertising which will be payable by the client to Active in cash and by reduction and application of the trade credit issued by Active to the client.

9. Active's actual costs in the media purchased by Active from the media vendors are non-disclosed. In order to permit Active's clients to pay a portion of their benchmark costs for media with trade credits, Active utilizes proprietary and confidential formulas and trading techniques and methods to negotiate and arrive at unique trading/barter arrangements, including, without limitation, trading terms, cash/trade blends, rates and ratios, trading discounts and cross purchase obligations, with media publishers to reduce the cash cost to Active.

10. Active's trading/barter arrangements, including, without limitation Active's negotiated costs and rates are proprietary, confidential and not disclosed to the client or the client's advertising agency.

11. Accordingly, Active takes specific steps to safeguard the confidentiality of this type of business information relating to Active's media buys. Active employees are required to enter into an agreement to abide by Active's Code of Conduct/Ethics Policy ("Code of Conduct") which requires that all business information be maintained strictly confidential during and after employment. An annual certification of compliance with the Code of Conduct is required to be executed by employees.

12. Additionally, employees receive instructions on the highly confidential nature of Active's information as part of their orientation in the print department. Particular attention is placed upon the highly confidential nature of Active's trading arrangements and rates with media publishers, and confidentiality reminders are made periodically by management. As part of these orientations and periodic reminders, employees are instructed not to disclose Active's confidential information. Further, confidential information that is stored electronically is password protected.

Ms. Moses' Employment and Agreement to Maintain Confidentiality

13. Between June 2000 and January 2006, Active employed Ms. Moses in a number of senior executive positions.

14. On or about July 13, 2000 Ms. Moses received and signed an acknowledgement of receipt of an employee handbook that contained confidentiality provisions.

15. As an employee of Active, in 2004 Ms. Moses entered into an agreement (the "Agreement") to abide by Active's Code of Conduct requiring her to keep all business information strictly confidential during and after her employment at Active, and to use such information only in the performance of her duties at Active. She was also required to annually confirm her compliance with the Code of Conduct.

16. Specifically, the Code of Conduct, which Ms. Moses agreed to abide by, states:

Confidentiality.

Information is key to our Company's success. **Everyone must protect what is confidential while working at the Company and after leaving the Company.** The heading of confidential information includes but is not limited to financial documents, pricing or vendor information, client information, contracts, client lists or proposals, corporate development, the cost of goods, personnel files, manuals and procedures, computer software, design documents, videos and memos. (Information that has been made public by the Company, such as by press release, advertisement or filed documents, is not considered confidential).

It is the policy of the Company to ensure that the operations, activities, and business affairs of the Company and our clients are kept confidential to the greatest possible extent. If, during the course of your employment, you acquire confidential or proprietary information about the Company and its clients, suppliers, customers or even fellow employees, such information is to be handled in strict confidence and not to be discussed with outsiders. It is imperative that you in no way reveal or divulge any such information and that such information is used only in the performance of your duties at the Company. This means that you are also responsible for the internal security of such information. This means that you should not discuss confidential information with fellow employees unless they have a business need to know such information.

Employees found to be violating this policy are subject to disciplinary action up to and including discharge, and may also be subject to civil penalties for violations of this policy.

If you are unsure whether certain information is confidential, presume that it is. Therefore, it is important to be careful about what is said to friends, business associates and family members, even spouses. Finally, no one should attempt to obtain confidential information that does not relate to his or her employment duties and responsibilities.

17. From June 2000 to about December 2004, Ms. Moses held the position of Vice President of Print Media, in which she served as a media buyer for several client accounts, including one of Active's most important accounts – the Quaker-Tropicana-Gatorade North America Division of PepsiCo ("QTG") account (the "QTG Account").

18. In this capacity, Ms. Moses had access to Active's highly confidential information, including but not limited to the details of trade and cross purchase transactions, cash/trade negotiations, trade discounts, rates, blends and profits for each publication in QTG's print media plan and other confidential information contained in Active's buyer work sheets and summary charts. This confidential information was developed by Active over twenty plus years and is based on Active's insights into the print media business and countless negotiations at the cost of millions of dollars. It is impossible for a competitor to develop this information unless they devote comparable time and expense to the necessary research effort and to the negotiations with print publications. Even if a competitor was to make the required effort, there is no guarantee that they would ever achieve the insights and negotiations necessary to make the effort a success as Active has done in the print and trade media business. Year after year, Active's use of its confidential and proprietary information in negotiations has resulted in rates of return that exceed those of the industry and have allowed it substantial growth and high customer rankings.

19. In or about December 2004, as a result of a restructuring at Active, Ms. Moses was promoted to the position of Vice President of Print Trade Development. This reassignment entailed a change of duties and required Ms. Moses to relinquish to other Active employees her media-buying responsibilities, including those related to the QTG Account. Ms. Moses, however, secretly kept current on the QTG Account in her new position on Active's trade and cross purchase transactions, cash/trade negotiations, trade discounts, rates, blends and profits for each publication in QTG's print media plan by obtaining copies of Active's buyer work sheets and summary charts.

20. Ms. Moses' new job function was to approach each and every magazine on her assigned list of titles and source or create trading business opportunities for Active.

**Icon Recruits Ms. Moses and Assumes
Media Buying Responsibilities for QTG**

21. On or about January 23, 2006, Ms. Moses resigned her position at Active and joined Icon, a direct competitor of Active. Active was also formally advised on this date that Icon had been selected over Active to handle the QTG account over which Ms. Moses assumed responsibility as set forth below.

22. Like Active, Icon offers clients trade credits in exchange for excess or underperforming assets. Icon's trade credits can be used to buy media time, advertising services, corporate travel, merchandise or other products and services through Icon.

23. Active has learned that Icon has assigned Ms. Moses print buying responsibilities for QTG and is working on the same or similar QTG media plans for which she obtained confidential information while still an employee at Active. Based upon Icon's history of vigorously competing with Active and Icon's recruitment of eight other Active employees, I

believe that Icon's primary motive in hiring Ms. Moses is to utilize, to its own advantage, her knowledge of Active's confidential and proprietary information, including, but not limited to the economic terms and structure of Active's transactions relating to the QTG Account. I also believe that Ms. Moses cannot perform her job on the QTG Account with Icon without compromising Active's confidential and proprietary cost structure and rates.

24. Indeed, Icon has systematically raided Active's employees for the apparent purpose of gaining access to Active's confidential and proprietary information and is actively pursuing Active's accounts. In fact, Ms. Moses is the ninth employee that Icon has hired away from Active. No less than three of these employees had responsibilities with respect to the QTG Account.

25. Moreover, during the last two to three months of 2005, Active was competing with Icon for the next QTG barter transaction for 2006. The ability to lure an Active employee with intimate knowledge of Active's negotiations and arrangements with media publishers would prove to be invaluable to Icon, which, I believe, had little or no experience servicing QTG's media needs.

Icon Has and/or Will Obtain Active's Proprietary and Confidential Information with Icon

26. Upon learning about Ms. Moses' sudden resignation from Active and contemporaneous acceptance of a compromising position at Icon that would require her to negotiate terms for the purchase of print media for QTG, I undertook a thorough investigation of Ms. Moses' activities prior to her departure from Active.

27. That investigation involved a physical inspection of the files in Ms. Moses' former office, interviews of her colleagues and supervisors, and a review of her emails then

saved on Active's network. In addition, Active has been conducting a forensic search of Ms. Moses' computer hard drive. The search, which is still ongoing, captures a snapshot of Ms. Moses' email activities, including emails that appeared on her computer monitor.

28. Based upon my investigation, it appears that Ms. Moses, knowing that Icon sought to win the QTG Account away from Active, launched a plan to gather Active's information relating to the QTG Account and use the information to obtain a media-buying position at Icon.

29. Specifically, I believe that, both during and after her employment with Active, Ms. Moses disclosed Active's proprietary and confidential information to Icon, including information relating to the QTG Account. Several recent events and discoveries corroborate this conclusion.

30. First, I have discovered that after Ms. Moses was reassigned to the Print Trade Development group and she relinquished the QTG Account, Ms. Moses continued to regularly and surreptitiously gather confidential information about QTG's media plans.

31. Specifically, I have learned that, starting mid-year of 2005, Ms. Moses began obtaining from a former subordinate on the QTG Account hardcopies of data based documents containing confidential data with regard to the QTG Account – specifically work sheets and summaries of Active's barter terms with each publication, including information relating to the blend of trade credits, cash and trade discounts provided by the publications. This information reflects Active's proprietary purchase methodologies and formulas and has no benefit outside Active than to be used by a competitor such as Icon.

32. These documents also contain notes that indicate for 180 or so different magazines how Active's buying team went about negotiating and making their buys (*i.e.*, how

annual rate increases were handled, how the position of the ads were handled; how certain negotiating impasse points were resolved, etc.). This confidential information is invaluable in the hands of a competitor such as Icon.

33. Second, I also learned that Ms. Moses obtained from the same employee the following information:

- The identity of each publication in which Active was going to be placing QTG advertisement.
- A breakout of the page count by brand of the pages being purchased.
- Grand page total counts by magazine.

34. This confidential information combined with the confidential barter terms and formulas provided Ms. Moses and now Icon with a step by step “playbook” to replicate Active’s media buying strategy and also undercut Active’s previous arrangements with media houses for QTG advertisements.

35. As the head of the Print Services Department, I can unequivocally state that Ms. Moses had no valid work-related reason to obtain the information described above, as she had been removed from her media buying function in December 2004. I can also unequivocally state that this information is invaluable to Icon and has been or inevitably will be disclosed by Ms. Moses to Icon.

36. Ms. Moses’ supervisors were not aware that she was obtaining these documents. To my knowledge, the only employee who was aware that Ms. Moses was engaged in gathering information relating to the QTG Account was a former subordinate and associate of Ms. Moses from whom Ms. Moses requested the information.

37. Ms. Moses disclosed the confidential information she obtained to Icon for the purpose of obtaining a position at Icon. A forensic search of Ms. Moses' computer hard drive resulted in a snapshot of an email which appears to be dated October 3, 2005 (the "Email Snapshot"), from Ms. Moses to Icon's President, John Kramer. That email reveals that, *at Icon's request*, Ms. Moses disclosed Active's proprietary information to Icon during the course of her interview process with Icon for the specific purpose of helping Icon misappropriate Active's confidential and proprietary information in order to steal Active's QTG's business and in obtaining a position for Ms. Moses at Icon. Specifically, that snapshot reads as follows:

"Midway during the interview process, the job description that [was] presented to me changed from "Trade Maven" to "Quaker Expert." . . . I was told to be patient, and assured that my employment was not a matter of "if" but "when." . . . I met with Ann Cole [Icon] early Spring and spoke with her before her meeting with Quaker and OMD late in August. She asked me for some proprietary information which I gave her in good faith and said that she would have a better feel for the timing after that meeting."

The Email Snapshot also shows that Icon had made Ms. Moses' employment as a "Quaker Expert" conditional on Icon's winning the QTG business. Indeed, Ms. Moses noted in the Email Snapshot that Icon was not willing to commit to her employment "without an outright guarantee of the Quaker business." *See id.* Significantly, during the last two to three months of 2005, Icon and Active were competing for the next QTG barter transaction. (Exhibit A).

38. Telephone records establish that throughout 2005, after she was removed from her media buying function, Ms. Moses maintained dialogue with QTG and its media agency, OMD. Telephone records also reveal that, during this same time period, Ms. Moses placed numerous

phone calls to Icon until Active discovered these calls in November 2005 and instructed her to cease contacting Icon.

39. A review of Ms. Moses' emails shows that on or about January 10, 2006, Ms. Moses learned that QTG had selected Icon to replace Active as media-purchasing vendor.

40. Shortly thereafter and before any official announcement was made by QTG, OMD, without authority from QTG, sent a notice to various publishing companies indicating that QTG had replaced Active with Icon.

41. On January 23, 2006 – the same day that Ms. Moses resigned from Active – Active received written notice from QTG that it had accepted a proposal from an alternative corporate barter entity and intended to use the trade credits generated from this entity to purchase its print media advertising. That entity, of course, is Icon.

42. On the same day, an OMD employee sent Ms. Moses an e-mail, stating “Call Me!”

43. Shortly thereafter, OMD began instructing Active to cancel its media buys for QTG so that Icon could repurchase them, on the ground that QTG had transferred its print buying responsibilities to Icon.

44. At about the same time, I learned that Ms. Moses joined Icon and began working as a media buyer for QTG – the function that she served when she was employed at Active as the VP of Print Media.

45. There is no possible way that Ms. Moses can carry out her current media-buying function at Icon without Icon misappropriating the confidential information regarding the QTG Account that Ms. Moses obtained as an Active employee. Ms. Moses has knowledge of the confidential information on barter terms that Active has reached with media partners through

negotiations and application of Active's proprietary purchase methodologies and formulas. Ms. Moses cannot part the Red Sea and artificially ignore this information in her head when negotiating with these same media publishers on behalf of Icon thereby allowing Icon to misappropriate Active's confidential information.

46. By knowing every last detail of Active's cash blend, profit, purchase methodology, and page distribution/allocation by title, Ms. Moses, and therefore Icon, is now in a position to structure a proposal that would match or undercut Active's previous arrangement with QTG.

47. On or about January 26, 2006, Active, through its counsel, sent a letter to Ms. Moses advising her of her obligations under the Code of Conduct and requesting that she provide confirmation by 3:00 p.m. on January 27, 2006 that she has not disclosed Active's confidential information to Icon or any other parties. To my knowledge, Ms. Moses has not sent the requested confirmation.

48. On January 26, 2006, Active put Icon on written notice that Ms. Moses obtained Active's proprietary and confidential information by surreptitious means and that Ms. Moses cannot perform her job at Icon without using or disclosing this information. Icon, however, has failed to take action to maintain the status quo and stop to and/or prevent its use of disclosure.

49. On January 27, 2006, Icon responded by stating they directed Ms. Moses not to use or disclose Active's confidential or proprietary information, an impossibility based on her knowledge of this information, the position she holds at Icon and the QTG account she works on.

50. Unless Icon is enjoined from improperly obtaining, using and disclosing such confidential information and allowing Ms. Moses to work as a media buyer on the QTG account at Icon, Active will face irreparable harm because its business foundation (pricing, transaction

structure, discounts, buys, negotiations, swaps and related confidential and proprietary bases) on this major account will be undercut allowing major inroads by Icon into all of Active's accounts.

51. To the best of my knowledge, the foregoing is true and correct.

GEORGE OTRAS

Sworn to this ___ day of February, 2006.

Notary Public

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ACTIVE MEDIA SERVICES, INC., d/b/a : CIVIL ACTION NO.:
**ACTIVE INTERNATIONAL :
Plaintiff, :
VS. :
ICON INTERNATIONAL, INC. :
Defendant : FEBRUARY 3, 2006**

ORDER TO SHOW CAUSE

Upon the application of a plaintiff, attached hereto, it is Ordered that the Defendant, Icon International, Inc., show cause before this Court at a hearing to be held in courtroom ____ on the ____ day of _____, 2006 at ___ a.m. or p.m. or as soon thereafter as counsel can be heard, why a Preliminary Injunction should not be issued herein as set forth in the attached Application for Preliminary Injunction;

It is also hereby Ordered, that service of this Order to Show Cause together with a copy of the Verified Complaint and Application for Preliminary Injunction be served upon the Defendant on or before the ____ day of _____, 2006.

Clerk / U.S. District Court Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ACTIVE MEDIA SERVICES, INC., d/b/a : CIVIL ACTION NO.:
**ACTIVE INTERNATIONAL :
Plaintiff, :
VS. :
ICON INTERNATIONAL, INC. :
Defendant : FEBRUARY 3, 2006**

EX-PARTE TEMPORARY RESTRAINING ORDER

The foregoing Application having come before this Court and the issues having been duly

considered and the decision having been duly rendered, it is hereby ORDERED:

1. The Defendant is hereby temporarily restrained and enjoined from: 1) obtaining, using or disclosing any portion of Active's trade secrets; 2) from employing Ms. Moses in any capacity; and 3) from performing on the QTG account; and 4) from using or disclosing information obtained directly or indirectly from Active's trade secrets; and

2. The Defendant is further ordered to immediately turn over to the Plaintiff any and all documents or information in any tangible form in the Defendant's possession, custody, or control, which contain trade secrets or confidential information.

Plaintiff having been and continuing to be irreparably injured by Defendant's misappropriation of Plaintiff's trade secrets and account in violation of CUTSA and CUTPA, notices having been provided by Plaintiff to Defendant and disregarded by Defendant. This Order shall last until February , 2006 at which time the parties are to appear before this court .

Dated at _____ Connecticut, this ____ day of _____, 2006 at __: __ M

United States District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ACTIVE MEDIA SERVICES, INC., d/b/a : **CIVIL ACTION NO.:**
ACTIVE INTERNATIONAL :
Plaintiff, :
: :
VS. : :
: :
ICON INTERNATIONAL, INC. : :
Defendant : **FEBRUARY 3, 2006**
: :
:

PRELIMINARY INJUNCTION ORDER

The foregoing Application having come before this Court and the issues having been duly considered and the decision having been duly rendered, it is hereby ORDERED:

1. The Defendant is hereby preliminarily enjoined from: 1) obtaining, using or disclosing any portion of Active's trade secrets; 2) from employing Ms. Moses in any capacity; and 3) from performing on the QTG account; and 4) from using or disclosing information obtained directly or indirectly from Active's trade secrets; and

2. The Defendant is further ordered to immediately turn over to the Plaintiff any and all documents or information in any tangible form in the Defendant's possession, custody, or control, which contain trade secrets or confidential information.

Dated at _____ Connecticut, this
____ day of _____, 2006.

United States District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ACTIVE MEDIA SERVICES, INC., d/b/a : CIVIL ACTION NO.:
**ACTIVE INTERNATIONAL :
Plaintiff, :
 :
 :
VS. :
 :
 :
ICON INTERNATIONAL, INC. :
Defendant : FEBRUARY 3, 2006**

PLAINTIFF'S CORPORATE DISCLOSURE STATEMENT

The Plaintiff, Active Media Services, Inc., d/b/a Active International, is a privately owned corporation with an address of 1 Blue Hill Plaza, Pearl River, NY 10965. Plaintiff represents that the defendant is a wholly owned subsidiary of Omnicon.

**PLAINTIFF,
ACTIVE MEDIA SERVICES, INC.**

By: _____
Eliot B. Gersten (ct05213)
John J. Robacynski (ct15636)
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214 Main Street
Hartford, CT 06106
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Its Attorneys

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ACTIVE MEDIA SERVICES, INC., d/b/a : CIVIL ACTION NO.:
ACTIVE INTERNATIONAL :
Plaintiff, :
VS. :
ICON INTERNATIONAL, INC. :
Defendant : FEBRUARY 3, 2006

CERTIFICATION FOR EX-PARTE TEMPORARY RESTRAINING ORDER

The undersigned attorney for the plaintiff in the above-referenced matter hereby certifies that the Plaintiff provided notice to Defendant (attached hereto) of plaintiff's intentions to seek relief arising – *inter alia* – under the Connecticut Uniform Trade Secret Act but defendant has refused to respond.

PLAINTIFFS,

By: _____
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**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ACTIVE MEDIA SERVICES, INC., d/b/a	:	CIVIL ACTION NO.:
ACTIVE INTERNATIONAL	:	
Plaintiff,	:	
	:	
VS.	:	
	:	
ICON INTERNATIONAL, INC.	:	
Defendant	:	FEBRUARY 3, 2006

APPEARANCE

Please enter the appearance of the undersigned for the plaintiff in the above-referenced matter.

PLAINTIFFS,

By:

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