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Attorneys for plaintiff Univera, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNIVERA, INC., a Delaware corporation,

Plaintiff,

v.

QIVANA, LLC, a Utah limited liability
company; DEREK HALL, an individual; and
MARCUS LAUX, an individual,

Defendants.

COMPLAINT

Case: 2:09cv00202
Assigned To : Alba, Samuel
Assign. Date : 3/5/2009
Description: Univera v Qivana, et al

Plaintiff Univera, Inc., complains of defendants Qivana, LLC, Derek Hall, and Marcus Laux as follows:

PARTIES

1. Univera, Inc. ("Univera"), is a Delaware corporation with its principal place of business at 2660 Willamette Dr. NE, Lacey, Washington 98516.
2. On information and belief, Qivana, LLC, ("Qivana"), is a Delaware limited liability company with its principal place of business at 5255 West 11000 North, Suite 100, Highland, Utah 84003.

3. On information and belief, Derek Hall is a resident of both Highland, Utah, and St. George, Utah, and is the Chief Executive Officer of Qivana. Hall is also the former Chief Executive Officer of ECONET, Inc. (“ECONET”), and former Chief Executive Officer of plaintiff Univera. Until July 31, 2008, Hall was a member of the board of directors of ECONET.

4. On information and belief, Marcus Laux is a resident of California. Laux is the former chair of ECONET’s Scientific and Strategic Advisory Board.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because there is complete diversity of citizenship between plaintiff Univera and defendants Qivana, Hall, and Laux, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. This Court has personal jurisdiction over Qivana, Hall, and Laux because they have transacted business in the State of Utah in connection with the subject matter of this Complaint and because they have caused harm to Univera in the State of Utah.

7. Venue is proper in this Court under 28 U.S.C. §1391(a) and (c).

GENERAL ALLEGATIONS

8. Univera provides natural health products and dietary supplements through a network of independent distributors.

9. Each independent distributor is party to an “Associate Agreement/Convenience Plan Agreement” with Univera. A copy of this Agreement is attached as **Exhibit A**.

10. Under the “Associate Agreement/Convenience Plan Agreement,” Univera grants to its distributors, or “Associates,” the “non-exclusive right upon the terms and conditions contained herein and in the Company’s Policies and Procedures, to purchase Univera products,

to promote and sell Univera products, and to sponsor new Associates in the United States and its territories and in countries where Univera is established.” (Ex. A at 2 ¶ A.) A copy of Univera’s Policies and Procedures is attached as **Exhibit B**.

11. Univera’s Policies and Procedures provide, in part, as follows:

3.3 Constructive Criticism; Ethics

....

B. Negative and disparaging comments about Univera, its products or Compensation Plan, by Associates made to Univera, in the Field or at Univera meetings or events, or disruptive behavior at Univera meetings or events, serve no purpose other than to dampen the enthusiasm of other Associates. Associates must not belittle Univera, other Univera Associates, Univera products, the Compensation Plan, or Univera directors, officers, or employees. Such conduct represents a material breach of these Policies and Procedures and may be subject to sanctions as deemed appropriate by Univera.

....

3.10 Solicitation for Other Companies or Products

....

C. An Associate must not sell, or entice others to sell, any competing products or services, including training materials, to Univera Customers or Associates. Any product or service in the same category as a Univera product or service is deemed to be competing (i.e., any dietary supplement is a competing product, regardless of differences in cost, quality, ingredients or nutrient content). This provision does not apply where professional services are the primary source of revenue and the product sales are secondary (e.g., doctor’s offices, clinics, health clubs, spas and beauty salons).

....

F. An Associate may not offer any non-Univera opportunity, products or services at any Univera related meeting, seminar or convention, or immediately following a Univera event.

G. As a condition of participating in the Univera opportunity and in consideration of receipt of commissions and other bonuses from Univera, a former Associate at the Platinum level or below may not recruit any Univera Associate or Customer for another direct selling, multi-level, network marketing, or relationship marketing company for a period of six months following the termination, expiration, or cancellation of the Associate Agreement.

H. As a condition of participating in the Univera opportunity and in consideration of receipt of commissions and other bonuses from Univera, a former Associate at the Diamond level or above may not recruit any Univera Associate or Customer for another direct selling, multi-level, network marketing, or relationship marketing company for a period of one year following the termination, expiration, or cancellation of the Associate Agreement.

I. A violation of any of the provisions in this Section 3.10 shall constitute unreasonable and unwarranted contractual interference between Univera and its Associates and would inflict irreparable harm on Univera. In such event, Univera may, at its sole discretion, impose any sanction it deems necessary and appropriate against such Associate or such Associate's distributorships, or seek immediate injunctive relief without the necessity of posting a bond.

(Ex. B ¶¶ 3.3 & 3.10.)

12. As the former CEO of Univera, defendant Hall was aware of the terms of the "Associate Agreement/Convenience Plan Agreement" and Univera's Policies and Procedures.

13. Hall's knowledge and awareness of Univera's contractual relationships, and the terms and conditions associated with those relationships, is imputed to Qivana and its principals.

14. On information and belief, Qivana was legally formed in November 2008.

15. Qivana's products and services are positioned and publicized as being directly competitive to Univera's products and services.

16. Beginning in late 2008, Qivana and, on information and belief, Hall began organizing meetings and conference calls to recruit Univera distributors.

17. On information and belief, Qivana has engaged Univera distributors as agents to recruit other Univera distributors away from Univera to Qivana in violation of Univera's Policies and Procedures.

18. Qivana's agents have announced and advertised recruiting meetings not as Qivana recruiting meetings, but as Univera team meetings. Qivana and its agents deliberately targeted high-level Univera distributors as invitees to these meetings.

19. During the course of these recruiting meetings, Qivana and its agents have attempted to target Univera distributors to join Qivana, and have also attempted to induce Univera distributors to violate their agreements with Univera by pursuing and recruiting other distributors in violation of Univera's Policies and Procedures.

20. Qivana and its agents have made disparaging comments regarding Univera to Univera distributors in their efforts to recruit them away from Univera and to Qivana.

21. During the course of its ongoing campaign to induce Univera distributors to breach their agreements with Univera, Qivana and its agents have instructed distributors to maintain silence regarding Qivana's efforts and communications among Univera distributors.

22. At several of these meetings, a Univera distributor who had previously been recruited by Qivana, asserted that Hall had rights to patents related to Univera product ingredients, that Univera management was inept, and that the distributors would be better off working with Qivana. The distributor then suggested that the group discontinue meeting as Univera distributors but continue meeting as Qivana distributors.

23. On information and belief, during the course of Qivana and Hall's efforts to recruit away Univera distributors, Hall asserted to at least one Univera distributor that Univera was failing and that its senior management would be leaving the company in the very near future.

24. In addition, on information and belief, Qivana and its agents, all of whom have been active Univera distributors, have utilized one or more websites affiliated with significant Univera distributors as a means to recruit away Univera distributors.

25. Laux is a former consultant of Unigen Pharmaceuticals, Inc., and former chair of the ECONET Scientific and Strategic Advisory Board.

26. At the time Laux served in these capacities, Univera and Unigen Pharmaceuticals, Inc., were both part of the ECONET family of companies.

27. As part of his work with Unigen Pharmaceuticals, Inc., and the ECONET Scientific and Strategic Advisory Board, Laux became aware of the ingredients of Univera products with the understanding that this was highly confidential, proprietary information. *See* Consulting Agreement ¶ 6, attached as Exhibit C.

28. Nevertheless, on information and belief, Laux has disclosed proprietary information regarding the ingredients of Univera products to individuals associated with Qivana and/or individuals being recruited by Qivana.

FIRST CAUSE OF ACTION

(Intentional Interference with Economic Relations – Qivana and Hall)

29. Univera incorporates the foregoing paragraphs as if fully stated herein.

30. Defendants Hall and Qivana have intentionally interfered with Univera's existing and potential economic relations, including with its distributors.

31. Defendants Hall and Qivana had knowledge of the provisions of the “Associate Agreement/Convenience Plan Agreement” and Univera’s Policies and Procedures that prohibited distributors from disparaging Univera, competing directly against Univera, and soliciting and/or recruiting away Univera distributors to competing network marketing businesses.

32. Nevertheless, defendants Hall and Qivana interfered with Univera’s business by an improper means, including by encouraging Univera’s distributors to violate their “Associate Agreement/Convenience Plan Agreement” and Univera’s Policies and Procedures.

33. Defendants Hall and Qivana’s actions have caused injury to Univera in an amount to be proven at trial.

34. The acts of each of the defendants Hall and Qivana manifest a knowing and reckless indifference toward and disregard of the rights of Univera. Accordingly, Univera is entitled to an award of punitive damages against each of the defendants Hall and Qivana in an amount to be proven at trial.

SECOND CAUSE OF ACTION
(Unfair Competition – Qivana and Hall)

35. Univera incorporates the foregoing paragraphs as if fully stated herein.

36. Defendants Hall and Qivana organized meetings to recruit Univera distributors.

37. Many of these meetings were presented, positioned, and advertised as Univera team meetings, creating a probability of confusion and deception.

38. Only after the meetings began did it become apparent that the meetings were actually designed to persuade Univera distributors to abandon Univera in favor of Qivana.

39. Defendants Hall and Qivana’s actions have caused injury to Univera in an amount to be proven at trial.

THIRD CAUSE OF ACTION

(Misappropriation of Trade Secrets in Violation of Utah Code Ann. § 13-24-1 *et seq.* – Laux)

40. Univera incorporates the foregoing paragraphs as if fully stated herein.

41. The ingredients to Univera's products are proprietary information and constitute a trade secret under Utah law.

42. Univera communicated information regarding its product ingredients to Laux as part of his work with Unigen Pharmaceuticals, Inc., and the ECONET Scientific and Strategic Advisory Board with the understanding that this information could not be disclosed to third parties.

43. Despite this understanding, Laux has disclosed this confidential Univera information to others.

44. As a result of that disclosure, Univera has been damaged in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, UNIVERA prays for relief as follows:

- (a) for compensatory, consequential, and punitive damages caused by defendants;
- (b) for attorneys' fees and costs as allowed by law;
- (c) preliminary and permanent injunctive relief prohibiting defendants' unlawful conduct; and
- (d) for such further relief as this Court may deem fit to award.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Univera demands a jury trial of all issues so triable.

RESPECTFULLY SUBMITTED this 5th day of March, 2009.

HOLME ROBERTS & OWEN LLP

A handwritten signature in black ink, appearing to read "E. G. Maxfield", written over a horizontal line.

Eric G. Maxfield

Cory A. Talbot

Attorneys for plaintiff Univera, Inc.

Plaintiff's Address:

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Lacey, WA 98516