

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CONSOLIDATED FOR TRIAL**

COMPULIFE SOFTWARE, INC.

Plaintiff,

v.

BINYOMIN RUTSTEIN
and DAVID RUTSTEIN,

Defendants.

CASE NO.: 16-CV-80808-BER

COMPULIFE SOFTWARE INC.,

Plaintiff,

v.

MOSES NEWMAN, DAVID
RUTSTEIN, BINYOMIN RUTSTEIN
and AARON LEVY,

Defendants.

CASE NO.: 16-CV-81942-BER

**ORDER DENYING PLAINTIFF'S MOTION TO HOLD DEFENDANTS IN
CONTEMPT (ECF NOS. 349, 380)**

On February 9, 2022, I held an evidentiary hearing on Plaintiff's motion to hold Defendants in contempt for purported violations of the permanent injunction I entered on October 20, 2021. ECF Nos. 349, 380. At the hearing, Plaintiff proffered the testimony of three witnesses: Tyler Unfer, Nancy Miracle, and Robert Barney. For the reasons stated below, I find that Plaintiff did not meet its burden of proof and therefore Plaintiff's motion is **DENIED**.

BACKGROUND

Following a November 2020 bench trial, and in accordance with my Findings of Fact and Conclusions of Law (ECF Nos. 314, 310), final judgment was entered and damages awarded on October 20, 2021 in favor of Plaintiff on its claims for misappropriation of trade secrets (Counts IV and V in the '08 case and Counts I and V in the '42 case), and final judgment was entered in favor of Defendants on the copyright infringement claims alleged in the Complaint (Counts I and II in the '08 case and Counts II and III in the '42 case). ECF Nos. 317, 313.¹ At Plaintiff's request, the final judgment also included a permanent injunction. The injunction, as drafted by Plaintiff's counsel and uncontested by Defendants, stated as follows:

4. **A permanent injunction** against defendants Binyomin Rutstein a/k/a Ben Rutstein, David Rutstein a/k/a David Gordon, Moses Newman, and Aaron Levy, their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more of them, including but not limited to American Web Designers, Ltd. ("AWD") and the National Association of Accredited Insurance Professionals ("NAAIP"), who receive notice by any means reasonably calculated to give actual notice **ARE HEREBY PERMANENTLY RESTRAINED AND ENJOINED** from:

- a. copying, duplicating, acquiring, appropriating, misappropriating, scraping, obtaining, using, displaying, or otherwise engaging in any activity directed to obtaining or using, in whole or in part, Compulife's trade secret compilation of information concerning the term life insurance market, term life products, and term life rates; or
- b. conspiring with, receiving revenue from, or profiting from, assisting, aiding or abetting another person or business entity, including but not limited to American Web Designers, Ltd., the National Association of Accredited Insurance Professionals, or any members thereof, or any other person or business entity, in engaging or performing any of the activities enumerated above.

¹ The final judgment was later corrected at docket entries 363, 404.

5. THE COURT ALSO ORDERS THAT inasmuch as the proof at trial demonstrated that the defendants are in possession of the plaintiff's trade secrets, that defendants have repeatedly misappropriated the plaintiff's trade secrets, and that the misappropriation has continued to date, pursuant to 18 U.S.C. § 1836(b)(3)(A)(ii) and Fla. Stat. § 688.003(3), the Court hereby determines that requiring the defendants to take affirmative actions to protect the plaintiff's trade secrets is appropriate, and therefore **HEREBY ORDERS THE DEFENDANTS** Binyomin Rutstein a/k/a Ben Rutstein, David Rutstein a/k/a David Gordon, Moses Newman, and Aaron Levy to immediately discontinue the provision of life insurance quoting and quotation services and the use of life insurance quoters on the websites at the domain names www.naaip.org and www.beyondquotes.com, and file a certification with the Court confirming that the provision of life insurance quoting and quotation services and the use of life insurance quoters has ceased at the websites at www.naaip.org and www.beyondquotes.com within five (5) business days of the date of this Final Judgment and Permanent Injunction.

ECF Nos. 317, 313.

On November 2, 2022, Defendants filed a certification which stated that “Defendants have discontinued the provision of life insurance quoting and quotation services and the use of life insurance quoters on the websites at the domain names www.naaip.org and www.beyondquotes.com.” ECF Nos. 319, 315. With the instant motion, Plaintiff contends that Defendants violated the permanent injunction by filing a false and an untimely certification and that Plaintiff “continues to be harmed” because the BeyondQuotes and NAAIP websites continue to use Plaintiff's trade secrets. ECF No. 349 at 6, 10.

EVIDENCE PRESENTED

In support of this claim, Plaintiff presented the following evidence at the contempt hearing on February 9, 2022:

1. Tyler Unfer

Mr. Unfer testified that he is an employee of Plaintiff's counsel. On November 7, 2021, Mr. Unfer visited www.baricinsurance.com and completed a form to obtain a life insurance quote.² He subsequently received an email from an insurance agent, Eric Savage. On February 9, 2022, Mr. Unfer called Mr. Savage and received an insurance quote.

2. Nancy Miracle

Ms. Miracle is the software design expert Plaintiff retained to testify at the bench trial. At the contempt hearing she stated that she was subsequently retained by Plaintiff in early November 2021 to examine two websites: www.beyondquotes.com and www.naaip.org and assess Defendants' compliance with the permanent injunction. On the BeyondQuotes website, Ms. Miracle used the default information that automatically appeared on the screen and clicked "Compare Plans." ECF No. 380-1 at 7. This generated a list of insurance companies with boxes to click to "Contact Agent." ECF No. 380-1 at 11. Ms. Miracle then searched the underlying code that created that image page and found names of insurance companies along with certain values, as well as a link to NAAIP. According to Ms. Miracle, this information was also visible in the address bar of the browser when the "Contact Agent" button was activated. Ms. Miracle testified that the information she observed on the BeyondQuotes website was "consistent" with what she observed on Compulife's database when she prepared for the trial in 2020.

² Robert Barney, Compulife's CEO, later testified that this is an NAAIP website.

Ms. Miracle also visited the NAAIP website in early November 2021 which advertised that members could create their own websites containing quote engines. She viewed the webpages of two NAAIP members that contained life insurance quoters. She clicked on “Get Instant Quote” and when she printed the results, she received the underlying source code including a list of parameters and premium amounts. This information is not visible unless the page is printed. Ms. Miracle testified that “the parameters are values” that “will produce a rating summary for the user” and based on this she believed that the NAAIP website was producing insurance quote information. Ms. Miracle testified that the information she observed on the NAAIP website was “the type of information in the Compulife database.”³ Ms. Miracle testified that the BeyondQuotes website had since been changed and the insurance quoter had been removed.

3. Robert Barney

Mr. Barney, Compulife’s CEO, testified that the premiums listed in the exhibits attached to Ms. Miracle’s declaration “are from Compulife.” He testified that he believes the screenshots he took of the NAAIP website on January 11, 2022 (ECF No. 402-1 at ¶ 4) establish that Defendants are still using a quote engine on their websites. Mr. Barney testified that “for a period of time” after the permanent injunction was issued, the BeyondQuotes website “continued to offer . . . the same

³ In her declaration, Ms. Miracle concluded “that the defendants are still using Compulife’s Transformative Database to provide life insurance quoting and quotation services” (ECF No. 380-1 at ¶ 9), however, on cross-examination Ms. Miracle admitted that Compulife’s CEO, Robert Barney, told her this and she did not independently make this determination herself.

quotes,” but that at some point after Plaintiff filed its motion for contempt on December 20, 2021, “the ability to do quotes ended.”

Mr. Barney testified that before the BeyondQuotes website was altered to remove the insurance quoter, the annual premiums for each product could be found in the source code, although it is not displayed in a format typically used by insurance companies when providing quotes to customers. Mr. Barney testified that the premiums displayed in the source code were not current and were “close to three years old.” Mr. Barney acknowledged that before the BeyondQuotes website was changed and it still purported to provide an insurance quoter, visitors who entered their personal information would only be brought to a page listing insurance companies with an action button to “Contact Agent.” Mr. Barney admitted that even when the website claimed to offer insurance quotes, it did not display insurance premium amounts.

Mr. Barney also looked at various NAAIP websites during December 2021 through February 8, 2022, and when he printed the results, he recognized the annual and monthly premiums listed to be “Compulife’s information.” He acknowledged on cross-examination that NAAIP websites do not display quotes to the end user; they are only visible when the page is printed.

LEGAL STANDARDS

It is well settled that courts have “inherent power to enforce compliance with their lawful orders through civil contempt.” *Citronelle–Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991) (citing *Shillitani v. United States*, 384

U.S. 364, 370 (1966)). Nevertheless, “civil contempt is a severe remedy,’ so it follows that the burden to show contempt should be a high one.” *In re Roth*, 935 F.3d 1270, 1277 (11th Cir. 2019) (quoting *Taggart v. Lorenzen*, __ U.S. __, 139 S. Ct. 1795, 1802, 204 L. Ed. 2d 129 (2019)). “A party seeking civil contempt bears the initial burden of proving by clear and convincing evidence that the alleged contemnor has violated an outstanding court order.” *Mesa v. Luis Garcia Land Serv., Co.*, 218 F. Supp. 3d 1375, 1379-80 (S.D. Fla. 2016) (citing *S.E.C. v. Greenberg*, 105 F. Supp. 3d 1342 (S.D. Fla. 2015)).

Specifically, the movant must establish that: 1) the allegedly violated order was valid and lawful; 2) the order was clear and unambiguous; and 3) the alleged violator had the ability to comply with the order.” *Mesa*, 218 F. Supp. 3d at 1380 (citing *F.T.C. v. Leshin*, 618 F.3d 1221, 1232 (11th Cir. 2010)). “In determining whether a party is in contempt of a court order, the order is subject to reasonable interpretation . . . [and the court] will construe any ambiguities or uncertainties in such a court order in a light favorable to the person charged with contempt.” *Georgia Power Co. v. N.L.R.B.*, 484 F.3d 1288, 1291 (11th Cir. 2007) (citations omitted).

“Once a movant establishes by clear and convincing evidence that a court order has been violated, the burden of production shifts to the purported contemnor to produce evidence explaining his noncompliance.” *W. Sur. Co. v. Mercury Corp.*, No. 12-22938-CIV, 2014 WL 12498014, at *6 (S.D. Fla. Dec. 10, 2014) (J. Otazo-Reyes) (citing *Watkins*, 943 F.2d at 1301), report and recommendation adopted, No. 12-22938-CIV, 2015 WL 11921404 (S.D. Fla. Jan. 21, 2015) (J. Zloch). “At the hearing,

the alleged violator is permitted to show either that he did not violate the court order or that he was excused from complying.” *Hendershott v Ostuw*, No. 9:20-CV-80006, 2021 WL 3008867, at *2 (S.D. Fla. July 2, 2021) (J. Rosenberg) (citing *Chairs v. Burgess*, 143 F.3d 1432, 1436 (11th Cir. 1998)).

“[F]ailure to meet the strict requirements of an order does not necessarily subject a party to a holding of contempt.” *BUC Int'l Corp. v. Int'l Yacht Council Ltd.*, No. 02-60772-CIV, 2004 WL 7340355, at *4 (S.D. Fla. Feb. 27, 2004) (quoting *Dunn v. New York State Dep't of Labor*, 47 F.3d 485, 490 (2d Cir. 1995), report and recommendation adopted, No. 02-60772-CIV, 2004 WL 7340357 (S.D. Fla. Mar. 17, 2004). As the Eleventh Circuit has stated, “[c]onduct that evinces substantial, but not complete, compliance with the court order may be excused if it was made as part of a good faith effort at compliance.” *BUC Int'l Corp.*, 2004 WL 7340355, at *4 (quoting *Howard Johnson Co. v. Khimani*, 892 F.2d 1512, 1516 (11th Cir. 1990)).

Unlike criminal contempt, the purpose of civil contempt is not to punish the contemnor or to vindicate the Court’s integrity; rather “civil contempt is remedial because it serves to enforce compliance with a court order or to compensate an injured party.” *U.S. Commodity Futures Trading Comm'n v. S. Tr. Metals, Inc.*, No. 14-22739-CIV, 2017 WL 2875427, at *3 (S.D. Fla. May 15, 2017) (J. Torres), report and recommendation adopted, No. 14-22739-CIV, 2017 WL 3835692 (S.D. Fla. Sept. 1, 2017)).

DISCUSSION

Applying the foregoing legal standards to the evidence adduced at the hearing, I find that Plaintiff has failed to satisfy its burden of establishing by clear and convincing evidence that Defendants are in contempt of the permanent injunction. Specifically, I find that Plaintiff failed to establish that Defendants violated the provisions of either paragraph 4 or 5 of the Final Judgment.

Paragraph 4 of the Final Judgment

The primary purpose of paragraph 4 of the Final Judgment was to permanently enjoin Defendants (as well as other unnamed individuals) from using Plaintiff's "trade secret compilation" of term life insurance information. At the conclusion of the contempt hearing, Plaintiff's counsel argued that "Defendants continue to use [Plaintiff's] information, and they continue to compete unfairly with [Plaintiff by] using it." However, Plaintiff did not establish this alleged violation by clear and convincing evidence.

First, Plaintiff never identified the entities or individuals currently in control of the websites that are purportedly violating the injunction; nor did Plaintiff present any evidence that Defendants, or anyone affiliated with them, have control over the websites. Plaintiff's failure to prove that Defendants continue to have control over these websites more than a year after the bench trial is fatal to one of the elements necessary to establish contempt: that "the alleged violator had the ability to comply with the order." *Mesa*, 218 F. Supp. 3d at 1380. Thus, even if I found that the websites at issue violated the injunction, Plaintiff's motion must fail because it has not proven who, if any, of the enjoined individuals is responsible for the content on

those websites. *See Sovereign Mil. Hospitaller Ord. of Saint John of Jerusalem of Rhodes & of Malta v. Fla. Priory of Knights Hospitallers of Sovereign Ord. of Saint John of Jerusalem Knights of Malta*, No. 09-81008-CIV, 2019 WL 4731984, at *7 (S.D. Fla. July 10, 2019) (J. Reinhart), report and recommendation adopted, No. 09-CIV-81008-RAR, 2019 WL 4730235 (S.D. Fla. Aug. 7, 2019) (J. Ruiz); *See also ADT LLC v. Sec. Networks, LLC*, No. 12-81120-CIV, 2017 WL 2113410, at *3 (S.D. Fla. Mar. 16, 2017) (J. Hurley).

Second, Plaintiff failed to meet its burden of establishing that the websites at issue are using Plaintiff's trade secret information. Ms. Miracle only testified that the information she observed in the source code of these websites was "the type of information in the Compulife database." However, Ms. Miracle admitted that she did not conduct an independent analysis to confirm whether the information was in fact Plaintiff's trade secret. Likewise, in his testimony, Mr. Barney summarily concluded that the premium amounts he observed in the source code for the BeyondQuotes and NAAIP websites were "Compulife's information." Mr. Barney did not offer any support for this conclusion. He did not explain what comparison or analysis he undertook in making this determination. Accordingly, I find that Mr. Barney's testimony that these websites continued to use Compulife's trade secrets after the entry of final judgment, was conclusory and lacked the proper foundation. Mr. Barney's testimony, by itself, is inadequate to justify a finding of contempt. As noted above, the burden for proving contempt is high and it cannot rest on assumptions or assertions that are not supported by a solid evidentiary foundation.

Paragraph 5 of the Final Judgment

With paragraph 5 of the final judgment, Plaintiff sought to have Defendants “immediately discontinue the provision of life insurance quoting and quotation services and the use of life insurance quoters” on the BeyondQuotes and NAAIP websites. The injunction required Defendants to file a certification within five business days of the final judgment affirming that this activity had ceased.⁴ Defendants filed their certification on November 2, 2021. ECF No. 319. In his closing Plaintiff’s counsel argued that the certification was false because “the websites at issue continued to provide life insurance quoting and quotation services in life insurance quoters.”

Again, I find that Plaintiff has failed to establish Defendants’ contempt by clear and convincing evidence. First, paragraph 5 does not define the terms “life insurance quotation services” or “life insurance quoters.” Although Plaintiff may have considered these terms to be unambiguous when counsel drafted the injunction, the hearing testimony revealed that the parties have very different understandings of what these terms mean. Because I find that Defendants’ interpretation is reasonable, I must conclude that the language of the injunction is ambiguous and that this uncertainty must be viewed in the light most favorable to Defendants, as the alleged contemnors. *See Georgia Power Co. v. N.L.R.B.*, 484 F.3d at 1291.

⁴ According to this Court’s calculations, Defendants’ certification should have been filed by October 28, 2021.

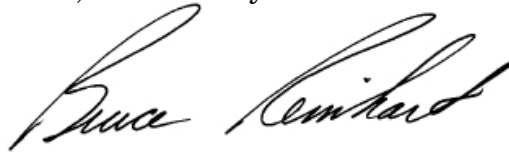
Indeed, Plaintiff's witnesses acknowledged that neither the BeyondQuotes nor the NAAIP websites displayed life insurance quotes to users who hoped to obtain this information after inputting their personal information. On its face, this testimony appears to show that Defendants as the alleged contemnors (or whoever controls these websites) engaged in a good faith effort to comply with the injunction. It is a reasonable interpretation of the injunction to believe that a "life insurance quoter" is an internet service that will instantaneously calculate and display the current price to purchase a specific life insurance policy based on the insured's personal information. Plaintiff has not demonstrated that any of the websites at issue provide such a service. Rather, upon using the "quoter" devices on these websites, the user will only receive an email asking him to contact a life insurance agent. If the user is especially savvy in the ways of internet technology, he or she may be able to locate the website's source code and discern from some jumbled and unformatted text an outdated premium value which will indicate what such a policy might have cost three years ago. Neither of these outcomes provides what a typical user would expect or what the "life insurance quoter" is presumably designed to do: namely, generate and display an instantaneous, current and accurate quote for purchasing a life insurance policy.

There is a vast difference between what Plaintiff now claims it wanted to accomplish with the proposed injunction it submitted to the Court and what the injunction actually required. Comparing the injunction as written with what these

websites currently offer, I find that these websites no longer provide life insurance quoters and thus, they are in compliance with the mandates of the injunction.

Finally, even assuming Defendants' belatedly-filed certification constitutes a violation of the injunction, I find that the brief delay did not rise to the level of contemptuous conduct. Given that Defendants filed their certification a mere two business days after it was due, I will excuse this technical non-compliance.

DONE and ORDERED in Chambers at West Palm Beach, Palm Beach County, in the Southern District of Florida, this 1st day of March 2022.

A handwritten signature in cursive script, appearing to read "Bruce Reinhart".

BRUCE E. REINHART
UNITED STATES MAGISTRATE JUDGE