

IN THE IOWA DISTRICT COURT IN AND FOR WINNESHIEK COUNTY

<p>TOPPLING GOLIATH, INC. dba TOPPLING GOLIATH BREWING CO.,</p> <p>Plaintiff,</p> <p>v.</p> <p>THEW BREWING COMPANY, LLC and CHRIS FLENKER</p> <p>Defendants.</p>	<p>CASE NO.</p> <p>PETITION and REQUEST FOR INJUNCTIVE RELIEF</p>
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COMES NOW the Plaintiff, Toppling Goliath, Inc. dba Toppling Goliath Brewing Co., and for its Petition and Request for Injunctive Relief, states as follows:

PARTIES AND JURISDICTION

1. Plaintiff, Toppling Goliath, Inc. dba Toppling Goliath Brewing Co. (hereinafter “TGBC”) is an Iowa Corporation with its principal place of business in Decorah, Iowa. TGBC is a regional brewery that creates and sells craft beer to thirteen states and brews more than 30 beers.

2. TGBC has become world-renown for IPAs, pale ales, and barrel-aged stouts. Its Kentucky Brunch Brand Stout was named #1 Beer in the World by Ratebeer and Beer Advocate. Ratebeer has named TGBC the second best brewery in the world.

3. Defendant Thew Brewing Company, LLC (hereinafter “Thew”) is an Iowa Limited Liability Company, formed with its principal place of business in Cedar Rapids, Iowa.

4. Defendant Chris Flenker (“Flenker”) is an individual residing in Cedar Rapids, Iowa.

5. This court has jurisdiction over the parties and the subject matter of this action.

6. Venue is proper pursuant to Iowa Code § 616.7 and 616.18.

7. The amount in controversy meets the jurisdiction of this court.

FACTS

8. On or about March 17, 2015, Flenker began employment with TGBC as a brewer eventually earning the title of head brewer.

9. In connection with his employment, Flenker had access to nearly all of TGBC’s confidential and proprietary information developed by and belonging to TGBC.

10. In consideration of his employment with TGBC, Flenker signed an employment agreement on March 17, 2015 that contains, among other things, the following reasonable restriction on his conduct following termination of his employment with TGBC:

During the period commencing on the date hereof and ending two (2) years after the termination of the Employee’s employment for any reason, the Employee shall not engage in or own or control an interest in, or act as a principal, director or officer of, or consultant to, any firm or corporation (i) engaged in a venture or business substantially similar to that of the Employer or (ii) which is in direct or indirect competition with the Employer. Employee acknowledges that Employer’s business is unusual and requires special skills, which the Employer has provided to Employee through training and other support services; accordingly, Employee agrees not to compete for the time period set forth above, in a geographic area extending one hundred and fifty miles in all directions from the City of Decorah, Iowa.

11. In reliance on Flenker's covenant not to compete, TGBC provided him access to extensive confidential and proprietary information, including access to its recipes, formulas, processes and techniques.

12. On or about January 3, 2017, Flenker told TGBC owner, Clark Lewey, that, with the knowledge he had gained working at TGBC, he intended to open a brewery with his brother. Flenker was terminated from his employment with TGBC as a result.

13. On or about March 21, 2018, Flenker appeared on a podcast: "A Lo-Fi Iowa Beer Podcast" during which he represented that he was brewer and co-owner of Thew Brewing, which had opened for public sales on or about March 16, 2018.

14. In early May 2018 Travis and Haley Flenker, co-owners of Thew Brewing, appeared on the Havin' One podcast in which they represented that Flenker is the head brewer of Thew Brewing.

15. By violating his contractual obligations, Flenker demonstrated that he cannot be trusted to comply with his commitments and that his employment with Thew Brewing has resulted in and will result in damage to TGBC if he is allowed to continue working at Thew.

COUNT I: BREACH OF CONTRACT (FLENKER)

16. The covenant not to compete included in the employment agreement between Flenker and TGBC is valid and enforceable.

17. TGBC complied with its obligations under Flenker's agreement by, among other things, employing Flenker, paying him, and giving him access to its confidential information.

18. Flenker has breached his obligation under the agreement by engaging in, owning and/or controlling an interest in, or acting as a principal, director or officer of, or consultant to, a firm or corporation (i) engaged in a venture or business substantially similar to that of the TGBC or (ii) which is in direct or indirect competition with TGBC.

19. Flenker's actions have caused TGBC damage, and unless stopped, will continue to irreparably injure TGBC such that money damages will be an inadequate remedy.

WHEREFORE plaintiff TGBC respectfully requests judgment in an amount sufficient to compensate it for defendants' breach of contract, for preliminary and permanent injunctive relief and for such other relief as the court deems proper.

COUNT II: MISAPPROPRIATION OF TRADE SECRETS, IOWA CODE CHAPTER 550 (FLENKER AND THEW BREWING)

20. In the course of his employment Flenker received confidential and proprietary information including but not limited to TGBC's recipes, formulas, processes and techniques.

21. Upon information or belief Flenker disclosed and used TGBC's confidential and proprietary information in his role with Thew knowing that the information was acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use.

22. Further, upon information and belief, Thew disclosed and used TGBC's confidential and proprietary information knowing that the information is derived from or through a person who owes a duty to maintain the information's secrecy or limit its use.

23. The confidential and proprietary information defendants misappropriated derives independent economic value from not generally being known to, and not being readily ascertainable through proper means by other persons who can obtain economic value from its disclosure and use.

24. This confidential and proprietary information was, and is, the subject of efforts by TGBC to maintain its confidentiality.

25. By misappropriating TGBC's trade secrets and other intellectual property, Flenker and Thew Brewing have an unfair business advantage.

26. TGBC has been damaged by Flenker and Thew Brewing's misappropriation of its trade secrets and is entitled to injunctive and other relief within the meaning of Iowa Code § 550.3, 550.4 and Iowa common law.

27. Defendants' combined intent and concerted efforts to orchestrate the misappropriation of plaintiff's trade secrets amounts to civil conspiracy and thus, establishes joint and several liability among the defendants.

28. Defendants' actions were willful and wanton and in reckless disregard of TGBC's rights, entitling TGBC to punitive damages.

WHEREFORE, plaintiff TGBC respectfully requests judgment in an amount sufficient to compensate it for defendants' misappropriation, for punitive damages, for preliminary and permanent injunctive relief, and for costs and attorney's fees.

**COUNT III: TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCY
(FLENKER AND THEW BREWING)**

29. TGBC, at all times relevant, produced and sold craft beer in eight states, including the state of Iowa.

30. TGBC had a valid and reasonable expectation that it would derive future economic benefit from the continued sale of craft beer in the state of Iowa without competition from Flenker for a period of two years and within 150 miles of plaintiff's Decorah, Iowa business location after Flenker taking leave from his employment with plaintiff.

31. Defendants knew of plaintiff's business expectancy.

32. Defendants intentionally and improperly interfered with that expectancy by opening a competing business within two years and 150 miles of the TGBC's business with the express purpose to harm TGBC.

33. As a result of defendants' intentional acts, TGBC's business has been disrupted.

34. Defendants' interference has resulted in damage to TGBC.

35. Defendants' combined intent and concerted efforts to orchestrate the tortious interference with business expectancy amounts to civil conspiracy and thus, establishes joint and several liability among the defendants.

36. Defendants' acted maliciously and wantonly in interfering with TGBC's business expectancy and TGBC is therefore entitled to punitive damages.

WHEREFORE, plaintiff TGBC respectfully requests judgment in an amount sufficient to compensate it for defendants' interference with business expectancy, for punitive damages, for preliminary and permanent injunctive relief, and for costs and attorney's fees.

COUNT IV: TORTIOUS INTERFERENCE WITH CONTRACT (THEW BREWING)

37. TGBC had a valid and existing employment contract with Flenker.

38. Thew knew of the contract no later than April 3, 2018.

39. Thew intentionally and improperly interfered with the contract by continuing to employ and/or consult with Flenker.

40. Thew's interference caused Flenker not to perform the contract.

41. TGBC has been damaged as a result of Thew's improper interference.

42. Thew acted maliciously and wantonly in interfering with TGBC's contract with Flenker and TGBC is, therefore, entitled to punitive damages.

WHEREFORE, plaintiff TGBC respectfully requests judgment in an amount sufficient to compensate it for defendants' interference with contract, for punitive damages, for preliminary and permanent injunctive relief, and for costs and attorney's fees.

COUNT V: REQUEST FOR INJUNCTIVE RELIEF

43. Defendants should be enjoined from the continued violation of the non-compete agreement. Further, because defendants have blatantly violated the

contract, the term of the injunction should be extended to provide TGBC the full benefit of Flenker's contract.

44. Flenker's continued ownership or association with Thew Brewing will inevitably result in the continued disclosure of TGBC's confidential information and Flenker should not be allowed to continue his ownership/association therewith.

45. Pursuant to Iowa R. Civ. P. 1.1504 plaintiff states that it has not previously presented to and been refused any petition for injunctive relief in this case.

WHEREFORE plaintiff TGBC respectfully requests judgment in an amount sufficient to compensate it for defendants' breach of contract, for preliminary and permanent injunctive relief and for such other relief as the court deems proper.

Respectfully submitted,

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