



Higher Regional Court Düsseldorf

I-2 U 31/16

Order of 17 January 2016

Operative Part

I.

In partial amendment of the Senate order of 14 December 2016, it is ordered against the intervener of the plaintiff that the L.-contracts, which are labelled as STRICTLY CONFIDENTIAL, and the W.S. of T.M.R. as well as those parts of the plaintiff's response to the appeal of 14 October 2016, Part 2/2, which deals with the content of the aforementioned documents and which is identified as STRICTLY CONFIDENTIAL in the header, may only be brought to the attention of the intervener's legal representatives, who, for their part, are obliged to maintain secrecy with regard to the said content vis-à-vis any person, including the intervener they represents and her employees.

II.

With regard to the defendant, the Senate considers the following cease-and-desist letter to be appropriate:

1.

The defendant undertakes vis-à-vis the plaintiff to use the L. contracts identified as STRICTLY CONFIDENTIAL and the W.S. of T.M.R. and those parts of the plaintiff's response to the appeal of 14 October 2016, Part 2/2, which deal with the content of the aforementioned documents and are identified in the header as STRICTLY CONFIDENTIAL, exclusively for procedural purposes in the present legal dispute and otherwise to maintain silence vis-à-vis everyone. Within her company, the defendant will pass on the aforementioned confidential information only to a maximum of 4 employees who are to be named by her and identified with regard to their function in business operations. In addition, the defendant may make the confidential information available to external experts designated by name and address who assist her in the litigation.



2.

The defendant shall ensure, in an appropriate manner, that those employees and experts to whom she has disclosed confidential information maintain confidentiality. The same shall apply in respect of the defendant's employees after they have ceased to be part of their service.

3.

For each infringement committed by an employee or expert employed by her, the defendant shall be liable like for her own infringements in accordance with subsection 4 below.

4.

The defendant undertakes to pay the plaintiff a contractual penalty of € 1 million for each breach of the aforementioned obligation of secrecy.

5.

Excluded from the obligation of confidentiality are such information which

a)

have been known to the defendant prior to the plaintiff's notification in the case (response part 2/2),

b)

have been subsequently made available to the defendant by a third party without any infringement of the law,

c)

have subsequently become available to the defendant from publicly available sources.

In cases b) and c), the obligation of confidentiality shall cease at the moment when the information in question is provided to the defendant by a third party or becomes available to the defendant.



6.

For the objection of otherwise obtained knowledge the defendant burdens the burden of proof.

The defendant can only be heard with the objection if she

a)

in cases 5(a), within a period of three weeks from the date of service of the response to the appeal Part 2/2, specifies to the court, indicating her source of information, the information for which prior knowledge is to be invoked, and

b)

in the cases 5.b) and 5.c), within a period of 3 weeks commencing with the subsequent acquisition of knowledge by the defendant, specifies to the court, indicating her source of information and the time of acquisition of knowledge, the confidential information of which she has subsequently become aware.

The notification must also be made to the court file if the legal dispute has already been resolved at the time in question.

III.

The defendant receives a period of 3 weeks within which she can submit a corresponding offer to the plaintiff for the conclusion of an injunction contract.

The plaintiff is then given a period of two weeks in which to accept the offer of contract submitted to her.

[...]



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