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United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VINYL INTERACTIVE, LLC, a Delaware  
Limited Liability Company,

No. C 09-0987 CW

Plaintiff,

ORDER GRANTING  
PLAINTIFF'S MOTION  
FOR A PRELIMINARY  
INJUNCTION, AS  
MODIFIED

v.

ANTHONY GUARINO, an individual; and  
EDUCATIONDYNAMICS, LLC, a Delaware  
Limited Liabiltiy Company,

Defendants.

\_\_\_\_\_ /

Plaintiff Vinyl Interactive, LLC, charges Defendants Anthony Guarino and EducationDynamics, LLC (Eddy) with misappropriating its trade secrets. Vinyl now moves for a preliminary injunction prohibiting Defendants from engaging in such misappropriation and from serving Vinyl's clients or using companies that promote Vinyl's product. Defendants oppose the motion. The matter was heard on April 23, 2009. Having considered oral argument and all of the papers submitted by the parties, the Court grants the motion, as modified.<sup>1</sup>

\_\_\_\_\_  
<sup>1</sup>Vinyl is reminded that General Order 45, which concerns the Electronic Case Filing system, provides, "Documents which the filer has in an electronic format must be converted to PDF from the word processing original, not scanned, to permit text searches and to facilitate transmission and retrieval."

## BACKGROUND

1  
2 Vinyl is in the business of online "lead generation." "Lead  
3 generation" is the process of identifying potential customers for a  
4 particular client. Vinyl generates leads for a number of  
5 educational institutions such as colleges, universities and trade  
6 schools. In this context, a "lead" is information about an  
7 individual who is interested in pursuing educational opportunities  
8 and may potentially choose to enroll in the client's school.

9 This lawsuit concerns a lead generation operation run by Vinyl  
10 called "Free College Scholarships" (FCS). As part of this project,  
11 Vinyl maintains a website through which interested individuals may  
12 fill out a "lead form" that requests their contact information and  
13 asks certain questions designed to gauge the "quality" of the lead.  
14 "Quality" refers to the likelihood that the individual will  
15 ultimately enroll in the client's school. Vinyl states that  
16 quality is a "key metric" in the lead generation business because  
17 clients are willing to pay higher rates for high quality leads than  
18 for those leads which are not likely to materialize into actual  
19 enrollment. In exchange for filling out the lead form, individuals  
20 visiting the FCS website are entered into a raffle through which  
21 they can win a scholarship.

22 Individuals are directed to the FCS website through  
23 advertisements deployed by "publishers" whose services Vinyl  
24 purchases. The ads are typically either emails or hyperlinks on  
25 other websites. Hyperlinks can take various forms. One is a  
26 "banner," a graphic advertisement box located on a particular  
27 webpage. Another is a "search ad," a link that appears among a

1 list of search results and relates to the search terms that were  
2 entered. In the case of email ads, the publisher is the sender of  
3 the email. In the case of banner ads, the publisher is either the  
4 website's owner or another entity that pays the owner to display  
5 the banner. In the case of search ads, the publisher is generally  
6 an entity that has purchased keyword advertising on a search site.

7 In addition to engaging publishers directly to deploy its  
8 advertisements, Vinyl also relies on the services of PubNet, a  
9 "publisher network."<sup>2</sup> PubNet maintains relationships with a number  
10 of publishers and, for a fee, distributes Vinyl's ads to them.

11 Guarino began working as a marketing analyst for Vinyl's FCS  
12 project in July, 2006, shortly after he graduated from college.  
13 According to Vinyl, Guarino was a key member of the FCS team who  
14 had access to the company's confidential information. As a  
15 condition of his employment, Guarino was required to sign a  
16 document entitled "Employee Proprietary Information and Inventions  
17 Agreement." By signing the document, Guarino agreed to "hold in  
18 strictest confident" and not to "disclose, use, lecture upon or  
19 publish any of the Company's Proprietary Information." Malach Dec.  
20 Ex. 2 ¶ 1.1 The agreement defines "Proprietary Information" as  
21 "any and all confidential and/or proprietary knowledge, data or  
22 information," including but not limited to:

23 (a) trade secrets, inventions, mask works, ideas,  
24 processes, formulas, source and object codes, data,  
25 programs, other works of authorship, know-how,  
26 improvements, discoveries, developments, designs and  
27 techniques . . . (b) information regarding plans for

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28 <sup>2</sup>"PubNet" is a pseudonym; Vinyl considers the actual identity  
of the company to be confidential.

1 research, development, new products, marketing and  
2 selling, business plans, budgets, and unpublished  
3 financial statements, licenses, prices and costs,  
4 suppliers and customers; and (c) information regarding  
5 the skills and compensation of other employees of the  
6 Company.

7 Id. ¶ 1.3.

8 In May, 2008, Guarino decided to move to Seattle from the San  
9 Francisco Bay Area, where Vinyl is located. He submitted his  
10 resignation on approximately May 19, but Vinyl asked him to  
11 continue working for the company remotely from Seattle until he  
12 found a new job, apparently to facilitate the transition of his  
13 replacement.

14 While searching for employment, Guarino responded to a job  
15 advertisement for a position with World Class Strategies, a  
16 division of Eddy. Eddy is a competitor of Vinyl's in the online  
17 lead generation business. Eddy offered Guarino the position and  
18 gave him a \$10,000 signing bonus. Guarino has submitted a  
19 declaration stating that Eddy offered him the bonus because he was  
20 considering accepting a competing offer from another company that  
21 would have paid him a higher salary. However, a declaration  
22 submitted by Eddy's Senior Vice President for Media Services states  
23 that the bonus "was intended to compensate for a lower salary than  
24 Mr. Guarino said he was making for Vinyl." Poraj-Kuczewski Dec.

25 ¶ 9. Guarino asserts that he did not agree to join Eddy and did  
26 not meet with any of its employees before he moved to Seattle.  
27 Eddy has not clearly identified the dates or substance of its  
28 initial contacts with Guarino.

Around the time it hired Guarino, Eddy began developing a new

1 product, JumpStart. Like FCS, JumpStart sells leads to educational  
2 institutions, and thus the two products are in direct competition  
3 with each other. Moreover, like FCS, JumpStart induces individuals  
4 to supply their contact information by offering them the chance to  
5 win a scholarship. Defendants consider JumpStart to be  
6 distinguishable from FCS because it is ostensibly merit-based, in  
7 that scholarship recipients are chosen based on the strength of a  
8 100-150 word essay.<sup>3</sup> JumpStart was not the first product of Eddy's  
9 to offer leads to educational institutions. However, Eddy's  
10 previous efforts differed from FCS in material respects. For  
11 example, one project of Eddy's generated leads by running  
12 advertisements in print publications directing individuals to visit  
13 a website where they would enter their identifying information for  
14 a chance to win a scholarship. Other projects targeted specific  
15 demographic groups as sources of leads. JumpStart was apparently  
16 Eddy's first lead generation product that was targeted at a general  
17 demographic pool, was based on a scholarship incentive and relied  
18 on electronic advertising.

19 On approximately June 23, 2008, Guarino told Vinyl that he had  
20 accepted a new job, but he apparently did not identify his new  
21 employer. Guarino states that, on approximately June 27, 2008, he  
22 told Vinyl that his new position was with Eddy. Although the  
23 details are not clear, it does not appear that Eddy informed  
24 Guarino before he started that he would be working on a new project

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25  
26 <sup>3</sup>In an instant message exchange with a Vinyl employee, Guarino  
27 stated that the essay requirement exists primarily to ensure that  
28 only high-quality leads are generated. Evans Dec. Ex. 1 at 1.

1 that was identical in all material respects to FCS. In any event,  
2 he did not inform anyone at Vinyl of this fact.

3 Guarino's last day with Vinyl was June 30, 2008. At  
4 approximately 4:30 p.m. that day, he had a "final wrap up call"  
5 with Vinyl's Director of Marketing. The director testified, "There  
6 should have been nothing else for Guarino to do with Vinyl after  
7 this." Morrell Dec. ¶ 6. However, at 6:30 p.m., Guarino accessed  
8 a file on Vinyl's server that contained a comprehensive set of data  
9 concerning Vinyl's publishers. Later that night, Guarino accessed  
10 another file containing information about Vinyl's publishers.  
11 Vinyl considers the information in both of these files to be  
12 confidential. Guarino states in his declaration that he accessed  
13 these files

14 entirely within my capacity as a Vinyl analyst.  
15 Specifically, I wanted to ensure that the changes I had  
16 made to the previous day's traffic had proved beneficial  
17 for Vinyl. At no time did I use this information for any  
18 other purpose, nor did I retain this information or use  
19 it at [sic] any way at Eddy.

20 Guarino Dec. ¶ 15.

21 Although the details are not clear from the record, Guarino  
22 became JumpStart's Project Manager shortly after he began his  
23 employment with Eddy in July, 2008, if not as soon as he started.  
24 Eddy has not explained how Guarino came to be assigned to the  
25 JumpStart project rather than to one of the other lead generation  
26 projects Eddy claims was the focus of its initial discussions with  
27 Guarino. Nor has it clearly addressed the relationship between its  
28 decision to develop and launch JumpStart and its decision to hire  
Guarino, which apparently took place close in time.

1 On July 21, 2008, after Guarino had begun his new position  
2 with Eddy, he initiated an instant message conversation with a  
3 Vinyl employee. He asked the employee to send him "the table of  
4 competing sites [Guarino had] put together in the Comp Intel  
5 database." Hirschorn Dec. Ex. 1. The employee complied with  
6 Guarino's request. According to Vinyl, "Comp Intel" stands for  
7 "competitive intelligence," and the file, which took over 150 hours  
8 to produce, contained highly confidential information about  
9 competing sites. The Vinyl employee was later disciplined for  
10 sending the file to Guarino. Guarino states that he requested only  
11 a portion of the Comp Intel database, and that the table he  
12 received did not contain any confidential information. He  
13 maintains the table could have been created by an entry level  
14 analyst in a few hours using free online tools, and he simply did  
15 not want to re-do work he had already done.

16 On August 12, 2008, Guarino had an instant message  
17 conversation with another Vinyl employee, during which he remarked  
18 that an Eddy manager was "surprised" when Guarino told him that  
19 Vinyl generates leads that are sold to Eddy through PubNet. Vinyl  
20 explains this disclosure and its significance as follows:

21 In the lead generation business, there are occasions when  
22 competitors sell leads to one another; directly, or  
23 indirectly through a network. For example, if one of  
24 Vinyl's customers -- call it "Metropolis College" --  
25 agrees to purchase only 100 leads from Vinyl in a given  
26 month, and Vinyl has already filled up that allocation,  
27 Vinyl might sell additional leads suitable for Metropolis  
28 College to another lead generation company that also has  
an agreement with Metropolis College to provide it with  
100 leads that month, but which so far has not provided  
that many leads.

PubNet is a network of publishers. Lead generation

1 companies like Vinyl and EDDY can develop their own list  
2 of publishers with whom they deal directly, and/or deal  
3 with a network like PubNet, which in turn has the direct  
4 relationship with publishers. It is in PubNet's interest  
5 not to reveal its own publisher list, as otherwise the  
6 lead generation companies could just go directly to those  
7 publishers and cut out PubNet, saving money by avoiding  
8 having to pay PubNet's markup.

9 The fact that Vinyl was generating leads for EDDY through  
10 PubNet was subject to a confidentiality agreement between  
11 PubNet and Vinyl, was not known to EDDY, (as evidenced by  
12 Ian's surprise at learning it), and should not have been  
13 revealed by Guarino.

14 Pl.'s Mot. at 9-10. Vinyl and Eddy subsequently engaged in  
15 negotiations for the sale of leads directly from Vinyl to Eddy.  
16 However, the two companies could not reach an agreement. On  
17 January 30, 2009, Eddy instructed PubNet not to provide it with any  
18 further leads generated by Vinyl.

19 Vinyl did not learn about JumpStart until September 23, 2008,  
20 when it received an email from PubNet advising of JumpStart as a  
21 "new offer" for advertising. Vinyl received the email because it  
22 has a publisher affiliate that is on the PubNet network of  
23 publishers. Eddy apparently did not intend for Vinyl to be  
24 informed about JumpStart, as Eddy had directed PubNet to keep the  
25 offer "private." On September 23, 2008, a Vinyl employee initiated  
26 an instant message conversation with Guarino to determine whether  
27 Guarino was involved in JumpStart. The two had the following  
28 exchange:

SteveVinylInteractive: JumpStart Scholarship huh?=  
24

anthony: hah  
25

anthony: i don't know what ur talking about  
26

anthony: hah  
27

1 SteveVinylInteractive: haha RIGHT  
2 anthony: where did u hear that  
3 SteveVinylInteractive: i have my connections  
4 SteveVinylInteractive: =)  
5 anthony: does rob know  
6 SteveVinylInteractive: haha he does but not sure he put 2 n 2  
7 together  
8 . . .  
9 anthony: hah tell people that ask about me that I took an old  
product that we ha[d]

10 Evans Dec. Ex. 1 at 1 (time stamps removed). The two engaged in a  
11 brief discussion about some of the differences between CFS and  
12 JumpStart. Approximately twenty minutes later, Guarino again  
13 inquired about whether people at Vinyl knew of his involvement with  
14 JumpStart:

15 anthony: did anyone connect JumpStart to me yet  
16 SteveVinylInteractive: no i dont think so  
17 anthony: do you think they will be pissed  
18 SteveVinylInteractive: nah  
19 SteveVinylInteractive: i mean everyone knows you left and work  
for a competitor  
20 anthony: it wasnt my idea. actually had no idea when i  
21 interviewed  
22 anthony: the ceo asked me the 1st day about it

23 Id. at 3 (time stamps omitted).

24 The next day, a Vinyl employee discovered that an unknown and  
25 unauthorized user was listed among the users with access to Vinyl's  
26 Google Analytics account. According to the employee, Google

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1 Analytics is a service that

2 provides a tremendous amount of information about Vinyl's  
3 websites, showing, among other things, information about  
4 publishers, analysis of the internet traffic to each of  
5 Vinyl's websites, which publishers' sites the visitors  
were referred from, where the users are located, and so  
on. Such information is of great value to Vinyl and  
could be of great value to a competitor.

6 Millen Dec. ¶ 2. The employee sent an email to the address that  
7 was listed for the unknown user, requesting his or her identity and  
8 asking how he or she obtained access to the account. She received  
9 no reply.

10 Vinyl management soon learned of Guarino's involvement with  
11 JumpStart and, on September 26, 2008, sent Eddy and Guarino a  
12 cease-and-desist letter. Eddy, through its counsel, responded a  
13 few days later. In its response, Eddy claimed that its hiring of  
14 Guarino was proper and denied having misappropriated any of Vinyl's  
15 confidential information. It played down Guarino's role with  
16 JumpStart, describing him as a client account manager. This  
17 appears to have been literally true, in that Guarino's title had  
18 been changed to "client account manager" by the time the letter was  
19 written, but Eddy failed to mention that Guarino had been the  
20 JumpStart Project Manager until shortly after Eddy received the  
21 cease-and-desist letter. With respect to the unauthorized access  
22 of Vinyl's Google Analytics account, Eddy stated that the account  
23 was "tied to Mr. Guarino's personal Google e-mail account and  
24 logged him in automatically when he accessed Google mail." Carlin  
25 Dec. Ex. 4 at 3. However, in an October 9, 2008 affidavit that  
26 Eddy provided to Vinyl, Guarino stated that, after leaving Vinyl,  
27 he had intentionally logged in to Vinyl's Google Analytics account

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1 out of curiosity, in order to determine whether his previous  
2 efforts to search "for traffic publishers that were misrepresenting  
3 Vinyl's offers" had been continued after his departure. Id. Ex. 5  
4 at 2.

5 Vinyl was not satisfied with the explanations contained in  
6 Eddy's response to its cease-and-desist letter and in Guarino's  
7 affidavit. After attempting to resolve the matter informally,  
8 Vinyl filed the present lawsuit in state court, asserting claims  
9 for, among other things, breach of contract, interference with  
10 contractual relations, misappropriation of trade secrets and unfair  
11 competition. Defendants later removed the action to federal court.

12 Vinyl now seeks a preliminary injunction prohibiting  
13 Defendants from:

- 14 1. Using any of Vinyl's publishers or networks who  
15 promote FCS, in connection with the promotion,  
16 advertising or marketing of JumpStart, directly or  
17 indirectly;
- 18 2. Generating leads through JumpStart for any  
19 advertisers for whom Vinyl generates leads through  
20 FCS; and
- 21 3. Using, disclosing, or attempting to use or disclose,  
22 either directly or indirectly, any and all Vinyl trade  
23 secrets or confidential information.

24 Pl.'s Mot. at 1.

#### 25 LEGAL STANDARD

26 "A plaintiff seeking a preliminary injunction must establish  
27 that he is likely to succeed on the merits, that he is likely to  
28 suffer irreparable harm in the absence of preliminary relief, that  
the balance of equities tips in his favor, and that an injunction  
is in the public interest." Winter v. Natural Res. Def. Council,

1 Inc., \_\_\_ U.S. \_\_\_, 129 S. Ct. 365, 374 (2008). "[T]he required  
2 showing of harm varies inversely with the required showing of  
3 meritoriousness." Indep. Living Ctr. of S. Cal., Inc. v. Shewry,  
4 543 F.3d 1047, 1049 (9th Cir. 2008) (quoting Rodeo Collection, Ltd.  
5 v. W. Seventh, 812 F.2d 1215, 1217 (9th Cir. 1987)). "When the  
6 balance of harm 'tips decidedly toward the plaintiff,' injunctive  
7 relief may be granted if the plaintiff raises questions 'serious  
8 enough to require litigation.'" Id. (quoting Benda v. Grand Lodge  
9 of the Int'l Ass'n of Machinists & Aerospace Workers, 584 F.2d 308,  
10 315 (9th Cir. 1978)).

#### 11 DISCUSSION

##### 12 I. Likelihood of Success on the Merits

13 To state a claim for misappropriation of trade secrets under  
14 California law, a plaintiff must allege:

15 (1) Acquisition of a trade secret of another by a person  
16 who knows or has reason to know that the trade secret was  
acquired by improper means; or

17 (2) Disclosure or use of a trade secret of another  
18 without express or implied consent by a person who:

19 (A) Used improper means to acquire knowledge of the  
trade secret; or

20 (B) At the time of disclosure or use, knew or had  
21 reason to know that his or her knowledge of the  
trade secret was:

22 (i) Derived from or through a person who had  
utilized improper means to acquire it;

23 (ii) Acquired under circumstances giving rise  
24 to a duty to maintain its secrecy or limit its  
use; or

25 (iii) Derived from or through a person who owed  
26 a duty to the person seeking relief to maintain  
27 its secrecy or limit its use; or

1 (C) Before a material change of his or her position,  
2 knew or had reason to know that it was a trade  
secret and that knowledge of it had been acquired by  
3 accident or mistake.

4 Cal. Civ. Code § 3426.1(b). The term "improper means" is defined  
5 as "theft, bribery, misrepresentation, breach or inducement of a  
6 breach of a duty to maintain secrecy, or espionage through  
7 electronic or other means." Id. § 3426.1(a). The term "trade  
secret" is defined as:

8 [I]nformation, including a formula, pattern, compilation,  
9 program, device, method, technique, or process, that:

10 (1) Derives independent economic value, actual or  
11 potential, from not being generally known to the  
12 public or to other persons who can obtain economic  
value from its disclosure or use; and

13 (2) Is the subject of efforts that are reasonable  
under the circumstances to maintain its secrecy.

14 Id. § 3426.1(d).

15 Vinyl asserts that the following information represents its  
16 trade secrets: 1) the identity of the publishers it uses; 2) the  
17 rates it pays to its publishers; 3) the quality of leads and  
18 conversion rates for each of its publishers; 4) the prices it gets  
19 for leads from its advertiser clients; 5) the identity of  
20 advertisers that support FCS; 6) the questions it places on lead  
21 forms to produce better results from certain publishers; 7) its  
22 profit margins for various advertisers; 8) the methods it uses to  
23 identify publishers; 9) its methods for reporting and tracking the  
24 quality of leads produced by its publishers; 10) its methods for  
25 deciding how much volume it seeks from each publisher, i.e., its  
26 "mix of high quality low volume publishers" and "low quality high  
27 margin publishers"; and 11) its data on and analysis of its

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1 competitors' products. Pl.'s Mot. at 17; Poynter Dec. ¶ 6.

2 Through the declarations it has submitted to the Court, Vinyl  
3 has established that most, if not all, of this information is  
4 likely protectable as a trade secret. Eddy could use this  
5 information, which is not generally available, to identify ways in  
6 which JumpStart could better compete against FCS. The information  
7 thus has independent economic value.<sup>4</sup> There is also direct  
8 evidence that Guarino accessed some of this information after  
9 starting work with Eddy. Moreover, the circumstances surrounding  
10 Guarino's hiring and the genesis of the JumpStart program -- and  
11 Eddy's failure to explain these matters fully -- is circumstantial  
12 evidence that Eddy intended to rely on Guarino's knowledge of  
13 Vinyl's confidential information in order to obtain an unfair  
14 advantage in its development of a product to compete with FCS.

15 Defendants argue that the information that Vinyl seeks to  
16 protect is not a trade secret. They note that the "identities of  
17 publisher entities are and always have been within the knowledge of  
18 companies in the lead generation industry." Defs.' Opp. at 14.  
19 This may be the case, but Vinyl seeks to protect not the identities  
20 of publishers generally, but rather the identities of the  
21 publishers it has chosen to rely upon, as well as a host of

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23 \_\_\_\_\_  
24 <sup>4</sup>In addition, Vinyl has also taken reasonable measures to  
25 prevent the information from being disseminated, as it is required  
26 to do. See Cal. Civ. Code § 3426.1(d)(2). Defendants fault Vinyl  
27 for "allowing" Guarino to continue to access its Google Analytics  
28 account after he left the company. But the record reflects that  
Guarino accessed the account without Vinyl's knowledge, and Vinyl  
made reasonable efforts to determine the identity of the  
unauthorized user and prohibit the user from accessing the account  
once it learned of the breach.

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1 information about the rates it pays to those publishers and the  
2 quality of leads the publishers generate. And although Defendants  
3 contend that "lead generation companies [are] aware of each other's  
4 costs and pricing through general methods of doing business," they  
5 have not submitted a declaration from a knowledgeable individual  
6 stating as much. Instead, they rely on conclusory attorney  
7 argument. To support their position, they point to the efforts  
8 between Vinyl and Eddy to negotiate Eddy's direct payment for leads  
9 generated by Vinyl, and to the informal exchanges that took place  
10 between Guarino and Vinyl employees after Guarino left Vinyl. But  
11 the negotiations do not evidence the broad proposition Defendants  
12 advance, and the exchanges do not demonstrate that the information  
13 Vinyl seeks to protect is generally known in the lead generation  
14 business.<sup>5</sup>

15 Defendants also argue that Vinyl is not likely to succeed on  
16 the merits because there is no evidence that they have used any of  
17 the information they may have obtained, for their own pecuniary  
18 gain or to Vinyl's pecuniary disadvantage. Even accepting  
19 Defendants' characterization of California law, however, discovery  
20 has not yet commenced, and it would be unreasonable to require  
21 Vinyl to demonstrate in connection with the present motion the  
22 precise ways in which Defendants may have used Vinyl's trade  
23 secrets, given that Defendants are the only ones who possess such

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24  
25 <sup>5</sup>Nor do the exchanges demonstrate that Vinyl did not take  
26 reasonable efforts to maintain the secrecy of its proprietary  
27 information. There is no indication that Vinyl management ever  
28 approved the dissemination of the information that is the subject  
of this motion. Moreover, the employee who sent Guarino the Comp  
Intel file was disciplined for doing so.

1 information. At this point, it is sufficient for Vinyl to  
2 demonstrate a fair likelihood that, through Guarino, Eddy acquired  
3 proprietary information of Vinyl's that could be used to Vinyl's  
4 disadvantage. Vinyl has made such a showing.<sup>6</sup> The success-on-the-  
5 merits factor thus supports granting Vinyl's motion.

6 III. Irreparable Harm, Balance of Hardships and the Public Interest

7 The Court presumes that Vinyl will suffer irreparable harm if  
8 its proprietary information is misappropriated. See Lillge v.  
9 Verity, 2007 WL 2900568, at \*7 (N.D. Cal.) ("[T]he risk of losing  
10 established customers to defendants' new business due to  
11 defendants' improper use of plaintiff's proprietary information  
12 would obviously create lasting, irreparable harm.") However, the  
13 Court agrees with Defendants that the relief requested in the first  
14 and second prongs of the injunction Vinyl seeks is overbroad. To  
15 prohibit Eddy from using any of the publishers or publishing  
16 networks that promote FCS, or from generating leads for any of  
17 Vinyl's educational clients, would go beyond simply preventing Eddy  
18 from gaining an unfair advantage. Instead, it would effectively  
19 eliminate Eddy's ability to compete with Vinyl. This would be  
20 against the public interest, which favors competition. It would  
21 also result in hardship to Eddy, which would effectively be forced  
22 to shut down its JumpStart operations.

23 \_\_\_\_\_  
24 <sup>6</sup>As Vinyl notes, the evidence supports the conclusion that  
25 Guarino's disclosure to Eddy that PubNet was providing Eddy with  
26 leads generated by Vinyl ultimately resulted in Eddy deciding no  
27 longer to accept such leads from PubNet. Although Defendants  
28 maintain that Eddy's decision was based on the low quality of leads  
generated by Vinyl, there are at least serious questions concerning  
whether Vinyl was damaged by Guarino's disclosure.

United States District Court  
For the Northern District of California

1 In contrast, the third prong of the requested injunction,  
2 which simply enjoins Eddy from using Vinyl's proprietary  
3 information, would further the public's interest in prohibiting  
4 unfair competition. In addition, it would not work any hardship on  
5 Eddy, which has no right to use the information in the first place.  
6 Accordingly, the Court will grant this relief.

7 CONCLUSION

8 For the foregoing reasons, the Court GRANTS Vinyl's motion for  
9 a preliminary injunction (Docket No. 13), as modified.<sup>7</sup> Defendants  
10 and their agents, servants, employees and attorneys, as well as  
11 entities working in concert with them, are hereby enjoined, pending  
12 the resolution of this action, from directly or indirectly  
13 accessing, viewing, using, relying upon, maintaining in their  
14 files, disseminating or disclosing the following types of  
15 information, to the extent the information is not demonstrably  
16 available to anyone in the lead generation business who seeks it:

- 17 1. The identity of the publishers Vinyl uses;
- 18 2. The rates Vinyl pays to its publishers;
- 19 3. The quality of leads and the conversion rates for each of  
20 Vinyl's publishers;
- 21 4. The rates Vinyl is paid for leads from its advertiser  
22 clients;
- 23 5. The identity of advertisers that support Vinyl's FCS

24  
25 <sup>7</sup>To the extent that the Court relied upon evidence to which  
26 the parties objected, the objections are overruled. The Court did  
27 not rely on any inadmissible evidence in reaching its decision. To  
the extent the Court did not rely on evidence to which the parties  
objected, the objections are overruled as moot.

United States District Court  
For the Northern District of California

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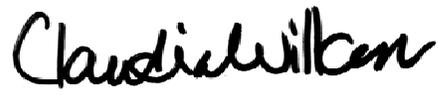
project;

- 6. Vinyl's profit margins associated with its advertisers;
- 7. The methods Vinyl uses to identify publishers;
- 8. Vinyl's methods for reporting and tracking the quality of leads produced by its publishers;
- 9. Vinyl's methods for deciding the volume it seeks from each of its publishers; and
- 10. Vinyl's data on and analysis of its competitors' products.

This preliminary injunction will take effect upon Vinyl's posting a bond in the amount of \$10,000.

IT IS SO ORDERED.

Dated: 5/1/09



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CLAUDIA WILKEN  
United States District Judge