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FILED
CLERK, U.S. DISTRICT COURT
SEP 19 2006
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

(Psend)
ENTER
JS6

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

12 NXIVM CORPORATION, f/k/a
EXECUTIVE SUCCESS PROGRAMS,
13 INC., and FIRST PRINCIPLES, INC.

14 Plaintiff,

15 vs.

16 JOHN HOCHMAN, an individual

17 Defendant.

No. CV-06-4176 R (RZx)

Hon. Manuel L. Real
Courtroom "8"

~~PROPOSED~~ ORDER
GRANTING THE MOTION TO
DISMISS PLAINTIFFS'
COMPLAINT AND ACTION
FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF
CAN BE GRANTED

[F.R.C.P., Rule 12(b)(6)]

DATE: Sept. 5, 2006
TIME: 10:00 a.m.
PLACE: Courtroom "8"

Action Filed: June 30, 2006

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2006 AUG -9 PM 3:56

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES, CA
BY [Signature]

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23 IT IS HEREBY ORDERED that the F.R.Civ. P. 12(b)(6) Motion to Dismiss
24 Complaint and Action for failure to state a claim upon which relief can be granted,
25 filed by JOHN HOCHMAN, M.D., which came on regularly for hearing before the
26 above titled court on September 5, 2006, is GRANTED.

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DOCKETED ON CM
SEP 21 2006

(31)

1 The Court hereby grants the Motion to Dismiss Complaint and actions on
2 the following grounds:


3 1. Plaintiffs' first cause of action for misappropriation of trade secrets
4 hereby dismissed with prejudice. Plaintiffs have failed to allege facts showing an
5 improper use of trade secrets. (*Sargent Fletcher, Inc. v. Able Corporation*, 110
6 Cal.App.4th 1658, 1668 (2003).)

7 2. Plaintiffs' second cause of action for violation of section 43(a) of the
8 Lanham Act, 15 U.S.C. § 1125(a), is hereby dismissed with prejudice. Dr.
9 Hochman is not engaged in competition with plaintiffs; thus, he did not receive a
10 commercial advantage from any materials plaintiffs might regard as a trade secret.
11 (*Halicki v. United Artists Communications, Inc.*, 812 F.2d 1213, 1214 (9th Cir.
12 1987).)

13 3. Plaintiffs' third cause of action for unfair competition
14 based upon California Business & Professions Code §§ 17200 and 17500 is
15 hereby dismissed with prejudice. A cause of action for unfair business practices
16 cannot be stated where a related Lanham Act claim fails. (*Denbicare U.S.A. v.*
17 *Toys "R" Us*, 84 F.3d 1143, 1152-53 (9th Cir. 2003).)

18 4. Plaintiffs' fourth cause of action for conversion is hereby dismissed
19 with prejudice. Dr. Hochman did not deprive plaintiffs of the use and enjoyment of
20 tangible property. (*Collin v. American Empire Ins. Co.*, 21 Cal. App. 4th 787, 812
21 (1994).)

22 DATED: Sept. 19, 2006



Honorable Manuel L. Real
United States District Judge

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1706 S. Figueroa Street, Los Angeles, California 90015.

On August 9, 2006, I served the foregoing document described as:

[PROPOSED] ORDER GRANTING THE MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND ACTION FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

(BY MAIL)

I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

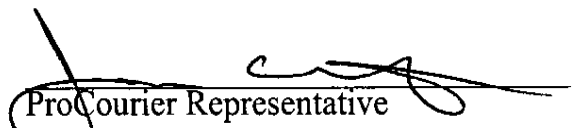
Executed on _____, at Los Angeles, California.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on August 9, 2006, at Los Angeles, California.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Pro Courier Representative

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SERVICE LIST

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FILED