

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 8:11-cv-62591

ACR ELECTRONICS, INC.,
a Florida Corporation,

Plaintiff,

v.

DME Corporation, a Florida corporation,
CCK ELECTRONICS LLC, a Florida limited liability company,
CHUNG T. TONG,
CLAUDIO CASSINA, and
KAIYU WU,

Defendants.

**PLAINTIFF ACR'S MOTION FOR PRELIMINARY INJUNCTION,
WITH INCORPORATED MEMORANDUM OF LAW**

Plaintiff ACR ELECTRONICS, INC. ("ACR"), pursuant to FED. R. CIV. P. 65(a) respectfully makes application to this Court for a preliminary injunction as follows:

I. INTRODUCTION

ACR brings this action against Defendants DME Corporation, doing business as Astronics DME ("Astronics DME"), a direct competitor of ACR, CCK Electronics LLC ("CCK"), also a direct competitor of ACR, Chung T. Tong, Claudio Cassina, and Kaiyu Wu. Until July 2010, Tong, Cassina and Wu ("the Individual Defendants") were employed by ACR with responsibility for the design and manufacturing of personal locator beacons ("PLBs") on behalf of ACR. While employed by ACR, the Individual Defendants decided to form their own competing electronics company, CCK, and abruptly resigned from their employment with ACR in July 2010. Through their newly formed company (CCK), the Individual Defendants designed and developed a PLB that ACR believes is being manufactured and heavily promoted by ACR's direct competitor, defendant Astronics DME. Defendant Astronics DME has been secretly advertising and promoting the product to retailers, *without telling them that the products could not yet be offered for sale or lease under FCC rules*. As a result of its promotional efforts, at least three retailers recently started advertising the product (called the SATRO PLB-110) on their

web sites and taking orders, although the device *still* has not been certified by the Federal Communications Commission, as required by law.¹ While CCK and Astronics DME have kept the SATRO PLB-110 under wraps until very recently and still have not made devices available to the public, available information confirms that the SATRO PLB-110 is substantially similar to ACR's cutting edge beacon, the ResQLink[®] PLB-375, which ACR started selling in July 2011, as well as its earlier generation PLBs. For Defendants' use and benefit and with the Individual Defendants' knowledge and consent, Tong:

(1) repeatedly accessed ACR's internal computer server to transfer ACR's confidential information and/or trade secrets from ACR's secured servers and file structures to his unsecured personal e-mail account (cttong9889@bellsouth.net), including ACR's list of customers, ACR's vendor's pricing and component list for PLB components, 39 Burst Technical Drawings of the test fixtures used for all of ACR's beacon products, including the PLB-375, ACR's Next Generation Beacon Core Technology and Product Development Plan, tooling costs for ACR's PLB-300, and ACR pricing for Temperature Controlled Crystallized Isolators (or "TCXOs"), which are the "heart" of what makes ACR's PLB-375 run, and vendor information; and

(2) although he had no legitimate business reason to do so, Tong also distributed by e-mail unauthorized copies of ACR's confidential and copyright protected documents, including technical drawings for the power amplification system used in ACR's PLB-375, schematics and layouts of the test fixtures used for all of ACR's beacon products, including the PLB-375, and software source code for the 39 Burst testers used in engineering and production, to two other members of CCK, Cassina and Wu, just prior to their abrupt resignations from ACR.

Through these actions, the three individuals breached their duty of undivided loyalty to ACR as well as their employment contracts with ACR and, as employees and agents of CCK and Astronics DME, copied, distributed, used and disclosed ACR's copyrighted works and trade secret information, all to unlawfully and unfairly compete against ACR. These actions constitute a breach of the Individual Defendants' duty of loyalty to ACR, a breach of their employment contracts with ACR, copyright infringement, misappropriation of trade secrets, and unfair competition. Also, Tong's unauthorized access of ACR's computer system with the knowledge and consent of Cassina and Wu, and the resultant losses to ACR, constitute a violation of the Computer Fraud and Abuse Act ("CFAA"). Further, Astronics DME's actions constitute direct and contributory false advertising under the Lanham Act.

¹ After this lawsuit was filed Aircraft Spruce, Pilotshop.com, and Bass Pro Shops removed the SATRO PLB-110 from their websites. Ex. 1 ¶ 5; Ex. 5 ¶ 4.

This motion seeks nothing more than to prevent Astronics DME and the Individual Defendants from further breaching their statutory and common law duties to ACR, which threaten ACR with irreparable harm. Specifically, ACR seeks only to prevent Defendants' continued false advertising, infringement of ACR's copyrighted works or from using or disclosing ACR's confidential or proprietary documents or information, and to preclude Defendants from launching the sale of the SATRO PLB-110 or any other device derived from the misappropriation of ACR's copyrighted works, confidential information or trade secrets.

Notably, this action does **not** seek to prevent the Individual Defendants, who are not subject to a non-compete agreement, from continuing their employment or business relationship with CCK or Astronics DME. Nor does this action seek to curtail Astronics DME's ability to freely and lawfully compete with ACR by truthfully advertising its products or by selling products to its customers that are not derived from the misappropriation of ACR's copyrighted works, confidential information or trade secrets.²

As described in more detail below, ACR has demonstrated that a preliminary injunction should issue because it is likely to prevail on the merits of its claims, is faced with irreparable harm in the absence of the injunction, and the balance of harms tilts decidedly in ACR's favor. ACR respectfully requests that the Court grant the motion.

II. MOTION FOR PRELIMINARY INJUNCTION

ACR moves that the Court, upon Plaintiff giving bond with good and solvent surety, conditioned as the law directs pursuant to Fed. R. Civ. P. 65(c), in a sum to be determined by the Court, to preliminarily enjoin and restrain Defendants, individually and collectively, together with their respective officers, agents, servants, employees, attorneys, accountants, and all persons acting in concert with them or under their inducement, encouragement or persuasion from the actions described in the attached memorandum of law, directly or indirectly, on their own behalf or on behalf of any third party, by issuing an Order:

(A) Requiring Defendants to immediately return, without retaining any copies or summaries, all of ACR's documents, property and information taken by the Individual Defendants, and precluding Defendants from infringing ACR's Copyrighted Works or from using or disclosing ACR's trade secrets, confidential or proprietary documents or information;

² If discovery reveals broader misconduct by defendants, ACR reserves the right to seek additional relief.

(B) Precluding Defendants from launching the sale of the SATRO PLB-110 or any other device derived from the misappropriation of ACR's Copyrighted Materials, confidential information or trade secrets; and

(C) Precluding Defendants from engaging in further false and/or misleading advertising, or causing third parties to do so.

III. MEMORANDUM OF LAW

A. Statement of Pertinent Facts Supported by Competent Evidence

1. ACR's Valuable Customer and Vendor Relationships, and The Individual Defendants' Access to Confidential, Proprietary Information.

ACR designs and develops sophisticated safety and survival products, and has provided safety equipment to the aviation and marine industries, as well as to the United States military, since 1956. Dkt. No. 5 ¶ 2; Ex. 1 ¶ 1.³ One piece of portable emergency equipment designed and manufactured by ACR is a 406 MHz PLB that transmits a distress signal to search and rescue (SAR) organizations to aid SAR teams in tracking and locating ships or individuals in jeopardy as rapidly as possible. Dkt. No. 5 ¶ 2; Ex. 1 ¶ 2.

Throughout their employment at ACR and solely for the purposes of fulfilling their job duties at ACR, the Individual Defendants had access to ACR's confidential and trade secret prototypes and documents, as well as ACR's secured computer servers and file structures, which contained ACR's confidential documents,⁴ copyright-protected materials and trade secrets, including but not limited to computer processes, programs or codes, customer lists or preferences, marketing strategies or new materials research, pending proposals and projects, including the PLB-375, proprietary production processes, research and development strategies, engineering data, technological data and technical drawings and schematics. Dkt. No. 5 ¶ 15; Ex. 6 ¶ 10. The Individual Defendants were given access to this valuable trade secret information and to ACR's copyright-protected works only to enable them to further ACR's interest as ACR employees. *Id.* If ACR's competitors, including Astronics DME, knew of

³ These facts are supported by the declarations of Michael Wilkerson, Brendon Lewington, Mark E. Zelek, Esq., Richard Horn, Carla B. Oakley, Esq., and Thomas Pack, attached to this Motion as Exs. 1 through 6, respectively.

⁴ ACR's computers which access its secured servers and file structures are used to connect to the internet and to conduct its business operations worldwide. Dkt. No. 5 ¶ 16; Ex. 2, ¶¶ 2 and 3.

ACR's Confidential Information, including the information in ACR's secured servers and file structures, and had unauthorized copies of ACR's copyrighted works, it would provide them with an unfair competitive advantage, and place ACR at an unfair competitive disadvantage. Dkt. No. 5 ¶ 17; Ex. 1 ¶ 8. As a result, ACR takes precautions to prevent unauthorized access to this Confidential Information by requiring a user name and password to access ACR's Customer servers and file structures and prohibits unauthorized copying, distribution and use of its copyright protected documents, software and technical drawings and schematics. Dkt. No. 5 ¶ 16; Ex. 2, ¶ 2.

Upon information and belief, CCK used ACR trade secret information in its approach to at least one of ACR's long-time and significant customers (Bass Pro) about selling Astronics DME's SATRO PLB-110. Dkt. No. 5 ¶ 15; Ex. 1 ¶¶ 2 and 7.

Moreover, without the use and benefit of ACR's confidential and proprietary information, copyrighted materials, and trade secrets, it would typically take a competitor approximately two years to conceptualize, design, certification test and obtain product approval by appropriate government agencies for a PLB. Dkt. No. 5 ¶ 38; Ex. 6 ¶ 14. In particular, it typically takes approximately two years just to write the testing software such as the 39 Burst Test Code written by ACR employees and registered by ACR that was copied and distributed without authorization by Tong to Wu prior to their abrupt resignations and formation of their company, CCK. Dkt. No. 5 ¶ 38; Ex. 6 ¶ 14. ACR had 10-12 engineers working on the development of its PLB-375 product, who collectively devoted approximately 17,785 hours to create the product. Dkt. No. 5 ¶ 38; Ex. 6 ¶ 14. Among other things, ACR perfected a new and proprietary method for its critically important GPS antenna to work properly, which required extensive testing and innovation given the small size of the device. Dkt. No. 5 ¶ 38; Ex. 6 ¶ 3. The deployable and re-stowable antenna feature is unique to ACR and has high value to differentiate it from competitors. Dkt. No. 5 ¶ 38; Ex. 6 ¶ 3. In particular, it has significant value to the PLB owner as it enables the PLB to perform a real test by sending a signal to the satellite networks and to confirm that it has been received. Dkt. No. 5 ¶ 38; Ex. 6 ¶ 3.

The Individual Defendants were placed on notice of their obligations and restrictions concerning confidential or trade secret information and works through the policies of ACR. For example, ACR's Employee Handbook (Section 112 Non-Disclosure) provided to each of the Individual Defendants at the beginning of their employment with ACR, states in pertinent part:

The protection of confidential business information and trade secrets is vital to the interests and the success of ACR. Such confidential information includes, but is not limited to, the following examples:

- compensation data;
- computer processes, programs or codes;
- customer lists or preferences;
- financial information;
- marketing strategies or new materials research;
- pending projects and proposals;
- proprietary production processes;
- research and development strategies;
- engineering data, formulae or prototypes; and
- technological data or prototypes.

Employees may be required to sign a non-disclosure agreement as a condition of employment. Employees who improperly use or disclose trade secrets or confidential business information will be subject to disciplinary action, up to and including termination of employment and legal action, even if they do not actually benefit from the disclosed information.

Dkt. No. 5 ¶ 18; Ex. 4 ¶ 6. In addition, ACR's IT Policy makes clear that email is intended to be a business tool, to be used by employees **for business purposes only**.⁵ Ex. 4 ¶ 8 (emphasis added).

Tong, Cassina and Wu also signed an agreement with ACR regarding non-disclosure and assignment of invention at the beginning of their employment on December 8, 2004, July 5, 2005, and November 6, 2006, respectively. Dkt. No. 5 ¶ 19; Ex. 4 ¶ 5. In particular, Paragraph 1 of the Employee Confidential Information & Assignment of Invention Agreement states in pertinent part:

I will not disclose to anyone outside of the Company, or use in other than Company business, any confidential information or

⁵ ACR is a business unit of Cobham plc, and Cobham's IT policy is applicable to ACR employees. Ex. 4 ¶ 8. Given the valuable and confidential information to which its employees have access, all of ACR's employees are reminded each time they log onto the computer system that they are agreeing to abide by the IT policy, by the following pop-up screen:

"Please be aware that by logging into this workstation/domain, you are agreeing to the terms of all of the IT policies in effect at ACR Electronics, Inc. You should only use your own username and password and should not divulge them to anyone. If you have any questions, call the IT department."

material relating to the business of the Company, whether owned by the Company or someone else, either during or after my employment, except with the Company's written permission.

Dkt. No. 5¶ 19; Exs. 4 D-F.

In addition, ACR's Employee Conduct and Work Rules policy provided to each of the Individual Defendants at the beginning of their employment with ACR, strictly prohibits:

- Theft or inappropriate removal or possession of Company property, equipment, materials, products, documents or records.
- Unauthorized use of telephones, mail system, or other Company-owned equipment.
- Unauthorized disclosure of business "secrets" or confidential information.

Dkt. No. 5¶ 20; Ex. 4 ¶ 7.

Each of the Individual Defendants also acknowledged his obligation not to provide services to ACR's competitors while still employed by ACR. In addition, each of the Individual Defendants acknowledged, in writing, his assignment of all right, title and interest in any invention, discovery, improvement or idea, patentable or not, in Paragraph 4 of their agreement non-disclosure and assignment of invention agreements signed at the beginning of their employment. Dkt. No. 5¶ 21; Ex. 4 ¶ 5. To further maintain and protect the confidentiality of its trade secrets and confidential information, ACR had a strict policy regarding visitors in the workplace that was in effect at all times that the Individual Defendants were employed by ACR.

Dkt. No. 5¶ 23; Ex. 4 ¶ 9.

2. The Individual Defendants' Formation of CCK and Their Misuse and Misappropriation of Confidential, Proprietary Trade Secrets.

In the weeks immediately before the Individual Defendants formed CCK and they abruptly left ACR's employment, they engaged in unlawful and disloyal acts by accessing and using ACR's Confidential Information, copyrighted materials and trade secrets in a manner that was unauthorized or exceeded the scope of the authority granted to them by ACR and for the benefit of themselves, CCK and Astronics DME with no legitimate business purpose and against ACR's policies. For example, unbeknownst to ACR at the time:

- On June 9, 2010, Tong forwarded to his personal e-mail address (cttong9889@bellsouth.net) a list of anticipated customers for an ACR product that was under development (the Iridium TXT-100), which he requested and obtained from ACR's Sales Manager for North America. This list included,

among other customers, Bass Pro. Customers for the TXT-100 product would be the same as those who would purchase PLBs.⁶ Ex. 1, ¶ 7; Ex. 6 ¶ 11.

- On June 28, 2010, Tong made an unauthorized copy of a trade secret computer program that is used to test PLBs (“39 Burst Test Code”) and distributed it without authorization by e-mail to Wu. Specifically, Tong accessed ACR’s secure server and, without authorization, copied separate files for the test code, bundled them together into a single zip file and, without authorization, distributed the unauthorized copies via e-mail to Wu. Ex. 1, ¶ 7; Ex. 6 ¶ 11.
- On June 28, 2010 – on the same day that Tong distributed the unauthorized copy of the 39 Burst Test Code to Wu -- Tong also forwarded to his personal e-mail address, links for a compact flash memory card adapter received from a former ACR engineer. That former engineer worked extensively on the design, development and testing of ACR's PLB-375, and upon information and belief, currently works with some or all of the defendants either as an employee or contractor. Ex. 1, ¶ 7; Ex. 6 ¶ 11.
- On June 29, 2010, Tong sent an e-mail from his ACR e-mail to ACR’s vendor (Rakon) requesting a CD of data for the reel T2900, Date code JJ JK, for the TCXO E4672LFT that was previously shipped to ACR. Tong stated that the requested CD was received, but was “lost.” The following day, Tong sent another e-mail to the vendor stating that he would like to get the back-up CD “as soon as you can get it” and that he is “trying to catch up between old issues and a couple new projects here at ACR.” Notably, the TCXO is a fundamental component of ACR’s PLBs. Ex. 1, ¶ 7; Ex. 6 ¶ 11.
- On June 30, 2010, Tong forwarded to his personal e-mail address an e-mail from ACR’s vendor (Rakon) with an attached quotation for PLB components. In addition to containing confidential information concerning ACR and its vendor’s supplier agreement and pricing structure for key components for its PLBs, Tong’s e-mail forwarded to his personal e-mail account contained sensitive information regarding ACR and Rakon’s confidential supplier agreement(s). Ex. 1, ¶ 7; Ex. 6 ¶ 11.
- On June 30, 2010, Tong requested and obtained from another ACR electrical engineer, unauthorized copies of the technical drawings and schematics for the three circuit boards for the 39 Burst test set-up, which were developed and designed internally by ACR employees. Soon thereafter, Tong distributed unauthorized copies of the 39 Burst Technical Drawings via e-mail from his ACR e-mail account to his personal account, thereby transferring ACR’s confidential information and copyrighted documents from its secured servers and file structures to his unsecured personal e-mail account, along with the Bill of Materials for the three circuit boards, including the list of components and ACR’s internal part numbers. Ex. 1, ¶ 7; Ex. 6 ¶ 11.

⁶ Notably, Bass Pro was one of the first, if not the first, retailer to list the SATRO PLB-110 on its website.

- On July 14, 2010 – less than two weeks before they left ACR’s employment -- Tong without authorization distributed from his ACR e-mail to Cassina, among other things, an unauthorized copy of the technical drawings for the power amplification system used in the PLB-375, which is relevant to how power is used and how long the device works, as well as the results of testing the life of the battery in the device, both of which are very important for a safety device such as a PLB. In particular, low power consumption is one of the, if not the most critical factor(s) because it helps reduce cost, size and weight, which are all key features touted by both the PLB-375 and the Astronics DME’s SATRO PLB-110 device. Ex. 1, ¶ 7; Ex. 6 ¶ 11. An expedited application to register the copyright in schematics from which these technical drawings were copied (the ACR PLB Reference Schematics – PLB350 and PLB375), is pending. Ex. 5, ¶ 5.
- On the very same date that the Individual Defendants registered their company CCK with the Secretary of State and while still employed by ACR (July 19, 2010), Tong sent an e-mail from his ACR e-mail account to his personal e-mail account, thereby transferring ACR’s proprietary and confidential information and trade secrets to an unsecured personal e-mail account. Specifically, Tong distributed an unauthorized copy of ACR’s “Next Generation Beacon Core Technology and Product Development Plan” drafted April 1, 2010, to his personal e-mail account. This highly confidential document describes ACR’s collaborative development plan needed to produce a Core Beacon reference design that is capable of supporting the next generation of ACR PLB/EPIRB (Emergency Position Indicating Radio Beacon) products (including the PLB-375 launched by ACR on or about July 12, 2011) and Cobham Avionics (CA) Emergency Locator Transmitters (“ELT”) products used in the aviation industry. Moreover, this document sets forth the specific features to be included in the PLB-375 design. Tong had no legitimate business reason to do so, and his actions violated ACR’s policies. Ex. 1, ¶ 7; Ex. 6 ¶ 11.
- On July 21, 2010, Tong requested and obtained a copy of the tooling costs for the PLB-300 from a mechanical engineer employed by ACR. Approximately fifteen minutes after receiving this confidential information, Tong forwarded it via e-mail to his personal e-mail account. Ex. 1, ¶ 7; Ex. 6 ¶ 11.

On July 6, 2010, Wu informed ACR for the first time that he was resigning his employment. Ex. 4 ¶ 3. That same day, Cassina informed ACR for the first time that he also was resigning. Ex. 4 ¶ 2. Three days later on July 9, 2010, Tong informed ACR for the first time that he too was resigning, and advised ACR’s Human Resources Director that he was going to Vietnam, and planned to do some consulting work when he returned. Ex. 4 ¶ 4. They each left ACR about fourteen days or less after turning in their letters of resignation. Ex. 4 A-C. On July 19, 2010 – just three days after Wu left his employment at ACR, and while Tong and Cassina were still ACR employees – the Individual Defendants registered CCK as a limited liability company with the Florida Secretary of State and listed all Individual Defendants as

officers. Ex. 5 ¶ 2. Upon information and belief, CCK is competing with ACR, particularly with respect to beacon products, including PLB, EPIRB and ELT. Ex. 1, ¶ 9; Ex. 6, ¶ 14. Notably, in the Fall of 2010, Tong asked a former ACR Sales Director if he should develop a PLB or an EPIRB. Ex. 6 ¶ 5. Given that the Individual Defendants, through their counsel, registered their new company with the State of Florida on July 19, 2010, it is self-evident that they planned to form the company and compete with ACR prior to that date.

By not informing ACR of their resignation until well after they decided to form a company and directly compete with ACR, the Individual Defendants were able to, and did, engage in unauthorized access to ACR's servers and file structures, their ACR email accounts, ACR's copyrighted works, and other ACR Confidential Information and trade secrets for the use and benefit of ACR's direct competitors, as well as to engage in substantial unauthorized copying and distribution of ACR's copyright-protected materials. Ex. 1, ¶ 7; Ex. 6 ¶¶ 11-13. The Individual Defendants did not bring the Confidential Information, copyrighted works and trade secrets to ACR when they were hired. To the contrary, a team of ACR employees – at great investment and expense to ACR and over an extended period of time – developed the 39 Burst Test Code, the 39 Burst Technical Drawings and the other confidential documents at issue here. Ex. 6 ¶ 12. The 39 Burst Test Code combined with the 39 Burst Technical Drawings, are critical pieces for the design, testing, and manufacture of a beacon. Ex. 6 ¶ 12. The electrical schematics represent the design of the test equipment needed to measure the parameters of ACR's beacon products. Ex. 6 ¶ 12. Likewise, the ACR PLB Reference Schematics – PLB350 and PLB375 are highly confidential and valuable tools to enable the design and manufacture of PLBs. If ACR's competitors, including CCK and Astronics DME, had ACR's copyrighted works and knew of ACR's confidential and proprietary information, it would provide them with an unfair competitive advantage because it would save them at least tens of thousands of dollars in equipment and development costs and would dramatically shorten the time it would otherwise take Defendants to develop, test, certify and launch a PLB device, and would place ACR at an unfair competitive disadvantage. Ex. 6, ¶ 14.

ACR has reason to believe that the Individual Defendants are using this misappropriated information and unauthorized copies to the benefit of themselves, CCK and Astronics DME, in violation of their statutory, contractual and common law obligations to ACR. Ex. 6, ¶ 14. ACR has suffered and will continue to suffer damages through these unlawful acts, including injury to customer and vendor relationships and injury to its goodwill. Ex. 1, ¶¶ 4 and 6; Ex. 6, ¶ 14.

Retailers only sell a limited number of products, and losing even one account can have significant and irreparable harm. Ex. 1 ¶ 6. Likewise, PLB devices like those at issue here are typically one-time purchases for the end user, who is not likely to replace the device for several years. *Id.* Recognizing the limited window of opportunity for sales and concerned due to the great success of ACR's ResQLink[®] PLB-375, defendants clearly did all they could to come up with a competitive product, and even went so far as to advertise and promote it and cause retailers to advertise and promote it during the holiday shopping season and well before obtaining FCC certification as required by law.

As the result of the Individual Defendants' unauthorized access to ACR's computer system after they decided to form their own company to compete with ACR, ACR has suffered over \$5000.00 in losses. Specifically, ACR's Director of Product Development, Director of Information Technology, and Internet Services Manager, have collectively expended time valued at over \$6, 987.90 to determine what documents and information were improperly accessed and sent outside of the company's secured servers and file structures during the period of June and July 2010. Ex. 2 ¶ 8; Ex. 6 ¶ 13.

3. ACR's Continuing Pre-Litigation Efforts to Stop the Individual Defendants' Unlawful Conduct.

ACR has engaged in good-faith, continuing, efforts to stop Defendants from using and benefiting from ACR's confidential, proprietary information. Ex. 4 ¶ 11 and Exs. J-L. Unfortunately, these efforts have been unsuccessful. Specifically, less than two months after the Individual Defendants' resignations, on September 15, 2010, ACR sent letters via certified mail to each of the Individual Defendants enclosing copies of the "Employee Confidential Information & Assignment of Invention Agreement" signed by all of the Individual Defendants and reminding them of their contractual obligations. Ex. 4 ¶ 11. ACR further put the Individual Defendants on notice that if ACR became aware of a violation of their agreements, ACR would seek any and all remedies available to it. *Id.* Moreover, ACR, through its counsel, sent letters to each of the Defendants on December 6, 2011, demanding that they immediately stop the promotion and sales of the SATRO PLB-110, and any PLB, ELT or EPIRB (or any other device) that includes or is based upon any trade secret and proprietary information, documents and other materials obtained from ACR, and stop all use of any ACR information, documents and other materials. Ex. 7. To date, ACR has received no response from any of the Defendants.

The SATRO PLB-110 is a competitive product that is remarkably similar to ACR's PLB-375 and shares many parts in common with the ACR proprietary beacon design. Ex. 6 ¶ 4. For example, the SATRO PLB-110 data sheet on Astronics DME's website depicts an actual sized image of the product which shows that it has an antenna system remarkably similar to ACR's proprietary antenna system and unlike that used by any other manufacturer. Ex. 6 ¶ 4. In addition, the picture of the SATRO PLB-110 on the data sheet shows the use of three 2/3 A size battery cells to power the PLB, another design feature unique to ACR's PLB-375 which hit the market in July 2011. Ex. 6 ¶ 4. The SATRO PLB-110 also uses the same microprocessor that ACR uses on one of its PLBs, for which Wu wrote all of the highly confidential coding while at ACR. It would have been impossible to design, test, tool and have ready for sale the SATRO PLB-110 within twelve months after the Individual Defendants abruptly left their employment at ACR without the use and benefit of ACR's confidential information and trade secrets they took with them. Ex. 6 ¶ 14. In light of Astronics DME's recent announcement of its anticipated launch in December 2011, this motion has become necessary.

B. Applicable Legal Standards

1. Preliminary Injunction Standard.

“There is a need for immediate injunctive relief when employers are threatened by conduct of former employees that would irreversibly alter the status quo.” *See, Mech. Servs., Inc. v. Brody*, No. 8:08-CV-1151-T-30EAJ, 2008 WL 4613046, at *15 (M.D. Fla. Oct. 15, 2008) (internal quotations and citation omitted). That is the case here. To prevail on a motion for a preliminary injunction, the party seeking the injunction must demonstrate: (1) a substantial likelihood that the movant will ultimately prevail on the merits; (2) that it will suffer irreparable injury if the injunction is not issued; (3) that the threatened injury to the movant outweighs the potential harm to the opposing party; and (4) that the injunction, if issued, would not be adverse to the public interest. *See Charles Schwab & Co., Inc. v. McMurry*, No. 2:08-cv-534-FTM-29SPC, 2008 WL 5381922 at *1 (M.D. Fla. Dec. 23, 2008).

2. Substantial Likelihood of Prevailing on Claim for Copyright Infringement.

To state a claim for copyright infringement, Plaintiff must demonstrate: (i) that it owns a valid copyright in the works at issue; and (ii) that the infringer copied original elements of those works. *Calhoun v. Lillenas Publishing*, 298 F.3d 1228, 1232 (11th Cir. 2002); *Feist*

Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 349, 111 S.Ct. 1282, 113 L. Ed. 2d 358 DB2/ 22844692.5

(1991). A copyright registration certificate is “*prima facie* proof of the existence of a valid copyright.” 17 U.S.C. § 401(c); *see C.B. Fleet Co., Inc. v. Unico Holdings, Inc.*, 510 F. Supp. 2d 1078, 1081 (S.D. Fla. 2007). ACR registered both the 39 Burst Test Code and the 39 Burst Technical Drawings and obtained U.S. Copyright Registration Nos. TXu 1-774-182 (39 Burst Test Code) and TXu 1-775-483 (39 Burst Technical Drawings). Ex. 5, ¶ 3. In addition, ACR applied to register the copyright in the ACR PLB Reference Schematics – PLB350 and PLB375, and expect a registration to issue by year end. Ex. 5, ¶ 5. (The 39 Burst Test Code, the 39 Burst Technical Drawings and the ACR PLB Reference Schematics – PLB350 and PLB375, together, constitute the “Copyrighted Works.”) Thus, ACR has satisfied the first element of its copyright infringement claim.

As to the second element, ACR has presented competent evidence that Tong, for the use and benefits of Defendants, copied and distributed, without ACR’s authorization, the Copyrighted Works when (i) on June 28, 2010, he copied the 39 Burst Test Code, (ii) on June 28, 2010, distributed it to Wu; (iii) on June 30, 2010, he copied the 39 Burst Technical Drawings; (iv) on June 30, 2010, he distributed to his personal e-mail the 39 Burst Technical Drawings; and (v) on July 14, 2010, he made an unauthorized copy of excerpts of the ACR PLB Reference Schematics – PLB350 and PLB375 and distributed that copy by email to Cassina. Astronics DME, CCK, Cassina and Wu vicariously and/or contributorily infringed ACR’s copyrighted works by using to their benefit and profiting from Tong’s direct infringement of ACR’s Copyrighted Works while declining to exercise their right to stop or limit it. Upon information and belief, the Individual Defendants and CCK entered into a business or contractual relationship with Astronics DME for the development and sale of the SATRO PLB-110.

Because it is evident that Defendants infringed ACR’s Copyrighted Works, either directly or indirectly through Tong, ACR has a substantial likelihood of prevailing on its copyright infringement claim, and a preliminary injunction is appropriate in this matter.

3. Substantial Likelihood of Prevailing on Claim Under the CFAA.

The CFAA prohibits certain conduct involving unauthorized access to computers. *See* 18 U.S.C. § 1030(a)(1)-(a)(7). The CFAA also permits, “[a]ny person who suffers damage⁷ or loss by reason of a violation of [this] section [to] maintain a civil action against the violator to obtain

⁷ The term “damage” is defined in subsection (e)(8) to mean “any impairment to the integrity or availability of data, a program, a system, or information.” 18 U.S.C. § 1030(e)(8).

compensatory damages and injunctive relief or other equitable relief.” *Id.* § 1030(g). For this statute, the term “loss” is defined in subsection (e)(11) to include “any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense.” *See* 18 U.S.C. § 1030(e)(11). *See also EF Cultural Travel BV v. Explorica, Inc.*, 274 F.3d 577, 585 (1st Cir. 2001) (loss under CFAA includes remedial and investigative expenses incurred by plaintiff); *Shurgard Storage Ctrs., Inc. v. Safeguard Self Storage, Inc.*, 119 F. Supp. 2d 1121, 1126-27 (W.D. Wash. 2000) (same).

Defendants violated subsection (a)(2)(C) of 18 U.S.C. § 1030, which prohibits “intentionally access[ing] a computer without authorization or exceed[ing] authorized access, and thereby obtain[ing] . . . information from any protected computer”;⁸ and subsection (a)(4), which prohibits “knowingly and with intent to defraud,⁹ access[ing] a protected computer without authorization, or exceed[ing] authorized access, and by means of such conduct further[ing] the intended fraud and obtain[ing] anything of value.”

The Individual Defendants’ conduct violated the CFAA by accessing files, e-mail and documents at a time when they were acting in their own self-interest and adversely to ACR, they exceeded their authority under ACR’s written policies. Although the Eleventh Circuit Court of Appeals has not directly addressed this issue, the Seventh Circuit Court of Appeals and other District Courts have held that once an employee is working for himself or another, his authority to access the present employer’s computer ends, even if he or she is still employed at the present employer. *Int’l Airport Ctrs., LLC v. Citrin*, 440 F.3d 418, 420-21 (7th Cir. 2006); *Hewlett-Packard Co. v. Byd:Sign, Inc.*, No. 6:05-CV-456, 2007 WL 275476 (E.D.Tex. Jan. 25, 2007). Although there are also cases that hold otherwise, those cases are distinguishable because ACR has written computer access policies that govern this analysis. Courts have held that where, as here, an employer has written computer access policies governing an employee’s computer

⁸ The term “protected computer” is defined by the Act to include any computer “used in or affecting interstate or foreign commerce or communication.” 18 U.S.C. § 1030(e)(2)(B). Courts have held that a connection to the internet is “affecting interstate commerce or communication” for purposes of a CFAA claim. 18 U.S.C. 1030(e)(2)(b); *see also, Cont’l Group., Inc. v. KW Prop. Mgmt., LLC et al.*, 622 F. Supp. 2d 1357, 1370 (S.D. Fla. 2009) (citing *U.S. v. Trotter*, 478 F.3d 918, 921 (8th Cir. 2007); and *Paradigm Alliance, Inc. v. Celeritas Techs., LLC*, 248 F.R.D. 598, 601 (D. Kan. 2008).

⁹ Defraud in this context simply means wrongdoing. *Shurgard Storage Ctrs., Inc. v. Safeguard Self Storage, Inc.*, 119 F. Supp. 2d 1121, 1126-27 (W.D. Wash. 2000).

access, it is those policies that determine whether the employee exceeded his authority to access its computer under the CFAA. *See Cont'l Group, Inc. v. KW Property Mgmt., LLC et al.*, 622 F. Supp. 2d 1357, 1372 (S.D. Fla. 2009) (“an employer...clearly has a right to control and define authorization to access its own computer systems”); *see also Ervin & Smith Advertising & Publications, Inc. v. Ervin, et al.*, No. 8:08-cv-459, 2009 U.S. Dist. LEXIS 8096 (D. Neb. Feb. 3, 2009); *Hewlett-Packard Co.*, 2007 WL 275476 at *12-13.

In this case, ACR’s policies state that “email is intended to be a business tool, to be used by employees for business purposes only,” and employees, including the Individual Defendants, are prohibited, either during or after their employment, from using or disclosing confidential information or material relating to the business of ACR. Ex. 4 ¶ 8. This includes but is not limited to compensation data, computer processes, programs or codes, customer lists or preferences, financial information, marketing strategies or new materials research, pending projects and proposals, proprietary production processes, research and development strategies, engineering data, formulae or prototypes and technological data or prototypes. *Id.* Moreover, ACR’s Rules of Conduct policy applicable to the Individual Defendants’ employment, provides that employees must protect and preserve the company’s interests, including its Confidential Information, and refrain from theft or inappropriate removal or possession of Company property, equipment, materials, products, documents or records, unauthorized use of telephones, mail system, or other Company-owned equipment and unauthorized disclosure of business “secrets” or confidential information. In fact, the Individual Defendants acknowledged their obligation not to provide services to ACR’s competitors while still employed by ACR, as reflected in their signed Non-Disclosure Agreements. Ex. 4 G. Finally, the Individual Defendants assigned all right, title and interest in any invention, discovery, improvement or idea, patentable or not, as part of their employment agreements with ACR. Ex. 4, ¶ 5 and Exs. D-F. Thus the Individual Defendants clearly exceeded the scope of the authorization to access ACR’s computer systems granted to them as ACR employees.

Here, ACR has suffered loss as defined under the CFAA as a result of the Individual Defendants’ prohibited actions in an amount in excess of the \$5,000 jurisdictional limit in “response costs” to date based on internal investigation costs. Courts, including the Southern and Middle District Courts of Florida, have found response costs, such as internal investigative costs of computer forensic consultant(s) to investigate the integrity of its computers following the wrongdoer’s alleged unauthorized access, to be a “loss” that counts toward the jurisdictional

threshold of \$5,000. See *EF Cultural Travel*, 274 3d at 584-85; *Lockheed Martin Corp. v. Speed*, No. 6:05-cv-1580-Orl-31KRS, 2006 U.S. Dist. LEXIS 53108 (M.D. Fla. 2006); *Pharmerica, Inc. v. Arledge*, No. 8:07-cv-486-T26MAP, 2007 U.S. Dist. LEXIS 19992 (M.D. Fla. 2007); *Frees, Inc. v. McMillian*, No. 05- cv-1979, 2007 U.S. Dist. LEXIS 57211 at *8 (W.D.La. Aug. 6, 2007) (“[t]he cost of hiring an expert to investigate the computer damage is clearly a ‘reasonable cost’ sufficient to constitute ‘loss’ under the CFAA”); see also *Pacific Aerospace & Elec., Inc. v. Taylor*, 295 F. Supp. 2d 1188, 1197 (E.D. Wash. 2003); *U.S. v. Middleton*, 231 F.3d 1207, 1214 (9th Cir. 2000). In this case, ACR has spent well over \$5,000.00 in internal investigation costs as a direct result of the Individual Defendants’ unauthorized computer access. Ex. 2 ¶ 8; Ex. 6 ¶ 13

Because it is evident that the Individual Defendants exceeded the scope of their authority in accessing ACR’s computer systems, and ACR has suffered a resulting loss in an amount in excess of the statutory threshold, ACR has a substantial likelihood of prevailing on its claim under the CFAA, and a preliminary injunction is appropriate in this matter.

4. Substantial Likelihood of Prevailing on Claim Under the Lanham Act

To prevail on a claim of false advertising under Section 43 of the Lanham Act (15 U.S.C. § 1125), the plaintiff must establish that: (1) the advertisements of the opposing party were false or misleading; (2) the advertisements deceived, or had the capacity to deceive, consumers; (3) the deception has a material effect on purchasing decisions; (4) the misrepresented product or service affects interstate commerce; and (5) the movant has been – or is likely to be – injured as a result of the false advertising. *Hickson Corp. V. N. Crossarm Co., Inc.*, 357 F.3d 1256, 1260 (11th Cir. 2004).

ACR has a substantial likelihood of prevailing on its Lanham Act claim because it has met its burden of showing that Defendant Astronics DME represented to consumers in advertising and promotional communications to consumers that the SATRO PLB-110 would be available for sale in December 2011, and encouraged retailers to advertise and promote the SATRO PLB for sale to end users, notwithstanding the fact that the device was not approved by the FCC, as required before the product may be offered for sale or for lease. Ex. 3 ¶ 4; Ex. 5 ¶ 4. Defendant Astronics DME also failed to correct and update its advertising and promotions to retailers regarding the status of its efforts to obtain FCC approval, and failed to advise them that they were not permitted to offer the product for sale or lease until it was FCC approved. Ex. 3 ¶ 4, Ex. C. As a result, at least three retail web site advertised and promoted the SATRO PLB,

going to far as to list the price of \$299 and making it appear that the product could be added to one's "check out cart" and purchased. Ex. 5 ¶ 4. Failure to disclose that the SATRO PLB was not FCC approved, and that it could not be sold or leased until it was FCC approved, is material to consumers and in blatant violation of FCC rules. 47 C.F.R. § 2.801.-03. Likewise, continued marketing and promotion of the SATRO PLB with seriously out-of-date information about the anticipated FCC approval date, was and is false and/or materially misleading. Ex. 3 ¶ 4, Ex. C. Indeed, throughout the critical 2011 holiday buying season, Defendant Astronics DME continues to advertise and promote on its web site that the SATRO PLB will be available for sale in December 2011, even though Defendant Astronics DME knows that the device is not likely to be approved for sale until at least February or, more likely, March 2012. Ex. 6, ¶ 7. These acts and omissions harm ACR in that consumers (both retailers and end users) rely upon these false and/or misleading statements in attempting to purchase a SATRO PLB product in place of an ACR PLB product, or cause consumers to delay in making any purchases at all by creating false expectations regarding the availability of the SATRO PLB product.

5. Substantial Likelihood of Prevailing on Claim Under the FUTSA

To prevail on a claim for misappropriation of trade secrets under Florida law and prove a violation of the Florida Uniform Trade Secrets Act ("FUTSA"), *Fla. Stat.* § 688.001, *et seq.*, ACR must demonstrate that Defendants misappropriated trade secret information from ACR of which ACR made reasonable efforts to maintain the secrecy, resulting in damages. *See Fla. Stat.* § 688.004; *Lee v. Cercoa, Inc.*, 433 So.2d 1, 2 (Fla. 4th DCA 1983). Misappropriation of a trade secret occurs where a person who knows or has reason to know that the trade secret was acquired by improper means acquires the trade secret of another or where a person who has obtained the trade secret by improper means discloses or uses the trade secret of another without express or implied consent. *See Fla. Stat.* at § 688.002(2). ACR has a substantial likelihood of prevailing on this claim.

Here, the Individual Defendants accessed ACR's servers and file structures containing trade secret information for the use and benefit of all of the Defendants. Exs. 2, ¶ 6, Ex. 6, ¶ 11. During the time that they were planning to form CCK to compete with ACR, Tong suddenly started transferring ACR's confidential information relating to ACR's innovative beacon technology developed at significant investment and expense to ACR, including: customer list(s), vendor information, including pricing information, component lists for PLB components, the

copyrighted 39 Burst Technical Drawings, ACR's Next Generation Beacon Core Technology and Product Development Plan, tooling costs for ACR's PLB-300, and pricing for TCXO's, which are the "heart" of what makes ACR's PLB-375 run. In addition, although he had no legitimate reason to do so and at a time when he was acting in his own self-interest to compete with ACR, Tong also e-mailed confidential ACR documents to Cassina and Wu, including technical drawings for the power amplification system used in ACR's PLB-375, schematics and layouts of the test fixtures used for all of ACR's beacon products, including the PLB-375, and software source code for the 39 Burst testers used in engineering and production. Exs. 6, ¶ 11. All of this information constitutes trade secret information. *See, e.g. Furmanite Am., Inc. v. T.D. Williamson, Inc.*, 506 F. Supp. 2d 1134, 1145 (M.D. Fla. 2007) (databases of customer information can contain confidential, trade secret information) (citations omitted); *Lynch v. Silcox*, No. 01-8800-CIV, 2001 WL 1200656 (S.D. Fla. Oct. 4, 2001) (customer list was protected trade secret); *East v. Aqua Gaming, Inc.*, 805 So.2d 932, 933-34 (Fla. 2d DCA 2001) (same); *Kavanaugh v. Stump*, 592 So.2d 1231, 1232 (Fla. 5th DCA 1992).

The Individual Defendants had no legitimate purpose for taking this information. Rather, this information was taken to use and disclose to CCK and Astronics DME. Under these circumstances an injunction is warranted to prevent harm flowing from the Defendants' unlawful acts. *See Bimbo Bakeries USA, Inc. v. Botticella*, 613 F.3d 102, 118 (3d. Cir. 2010) (upholding grant of preliminary injunction where employee engaged in "suspicious" activity prior to leaving, including accepting employment with competing employer without notifying current employer); *Hatfield v. AutoNation*, 939 So. 2d 155, 156-158 (Fla. 4th DCA 2006) (upholding grant of temporary injunction where employee removed documents that contained "highly sensitive information and actual sales and operations ... as well as programs that, if known, could give a competitor an advantage").

Further, ACR made reasonable efforts to maintain the secrecy of this information, including protecting it with login and password requirements, giving access to the Individual Defendants in confidence, and requiring that the Individual Defendants acknowledge in writing their obligations to preserve the confidentiality of this information. *See Furmanite Am., Inc.*, 506 F. Supp. 2d at 1141-42; *Silcox*, 2001 WL 1200656 at *5 (similar measures taken to protect trade secrets found to "demonstrate the importance that [the Company] places on the information"). Accordingly, Defendants had reason to know that ACR expected that its employees would

maintain the secrecy of the information. ACR is likely to prevail on this claim, and its request for preliminary injunction should therefore be granted.

6. Substantial Likelihood of Prevailing on Claim for Breach of the Duty of Loyalty Against the Individual Defendants.

It is well-established under Florida law that an employee owes a duty of loyalty to his or her employer. *See, e.g., Life Mktg. of Fla., Inc. v. A.I.G. Life Ins. Co.*, 588 So.2d 663, 665 (Fla. 5th DCA 1991); *McMurry*, 2008 WL 5381922 at *1. To meet the obligations of that duty, “an employee may not engage in disloyal acts in anticipation of his future competition, such as using confidential information acquired during the course of his employment or soliciting customers and other employees prior to the end of his employment.” *Furmanite Am., Inc.*, 506 F. Supp.2d at 1149 (citations omitted); *Ins. Field Servs., Inc.*, 384 So.2d at 307-308; *Think Vacuums, Inc. v. March*, No. 09-cv-61883, 2011 U.S. Dist. LEXIS 12558 at *6-7 (S.D. Fla. Feb. 9, 2011). Nor may an employee “carry on a rival business during his employment” and/or “engage in disloyal acts in anticipation of his future competition.” *Id.* The Individual Defendants engaged in precisely the types of disloyal acts prohibited under Florida law when they engaged in activities for their own self-interest and adverse to ACR, accessed ACR’s servers and file structures and used ACR’s computer system for Defendants’ benefit, and accessed and gathered Confidential Information to take with them to their employment with CCK and/or to use for CCK and/or Astronics DME’s benefit while still employed by ACR. Ex. 1, ¶ 7; Ex. 6, ¶ 11.

Where an employee uses confidential information gained during his employment in breach of his duty of loyalty, it is appropriate to preliminarily enjoin the employee from further use of that information by prohibiting the employee from soliciting former clients. *Ins. Field Servs., Inc.*, 384 So.2d at 307-309 (affirming grant of injunction and award of damages where employees had breached duty of loyalty by competing with their former employer while still employed by the former employer); *McMurry*, 2008 WL 5381922 at *4 (finding that former employer would be irreparably harmed if former employee who took former employer’s confidential client contact information were permitted to continue to solicit former clients while working for a competitor, and granting preliminary injunction to former employer). Therefore, ACR is substantially likely to prevail on this claim, and respectfully submits that the requested preliminary injunction should issue in this case.

7. Substantial Likelihood of Prevailing on Claim for Breach of Contract

To prevail on a claim for breach of contract under Florida law, Plaintiff must establish: (i) the existence of a contract; (ii) material breach of that contract; and (iii) damages resulting from the breach of contract. *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1272 (11th Cir. 2009). The Employee Confidential Information & Assignment of Invention Agreements signed by the Individual Defendants are valid and enforceable contracts, which the Individual Defendants materially breached by copying, distributing and disclosing ACR's confidential information, copyrighted material and trade secrets to CCK and Astronics DME and by using that information for the use and benefit of Defendants, thereby resulting in damage to ACR. Ex. 4 ¶ 10 Therefore, ACR is substantially likely to prevail on its breach of contract claim, and respectfully submits that the requested preliminary injunction should issue in this case.

8. Substantial Likelihood of Prevailing on Claim for Unfair Competition.

Florida courts have also recognized that “the Florida common law of unfair competition is an ‘umbrella for all statutory and nonstatutory causes of action arising out of business conduct which is contrary to honest practice in industrial or commercial matters.’” *Exch. Int'l, Inc. v. Vacation Ownership Relief, LLC*, No. 6:10-cv-1273-Orl35DAB, 2010 U.S. LEXIS 127414 at *12-13 (M.D. Fla. Oct. 27, 2010) (citation omitted). Defendants' misappropriation of ACR's Confidential Information, copyrighted materials and trade secrets constitutes unfair competition. For the reasons set forth above, as a result of the unfair advantage obtained by Defendants by the Individual Defendants' misappropriation of ACR's Confidential Information, copyrighted materials and trade secrets to third parties, Defendants have and continue to unfairly compete with ACR and infringe on its copyright rights. Ex. 1 ¶ 9. Plaintiff has a substantial likelihood of success on this claim.

9. The Remaining Requirements for a Preliminary Injunction are Satisfied.

The remaining requirements for a preliminary injunction are satisfied. Once the moving party has demonstrated a likelihood of success on the merits of a copyright infringement claim, irreparable harm is presumed. *Stoneworks, Inc. v. Empire Marble and Granite, Inc.*, No. 98-2017, 1998 U.S. Dist. LEXIS 21762, *16 (S.D. Fla. Nov. 19, 1998). Likewise, if the court finds that a former employee used a specific trade secret in his new employment, then there is a presumption of irreparable injury. *Lovell Farms, Inc. v. Levy*, 641 So. 2d 103, 105 (Fla. 3d DCA 1994). Moreover, irreparable harm is presumed in cases of breach of non-compete agreements

and confidentiality provisions where the employee revealed specific trade secrets to his new employer. *Concept*, 553 So. 2d at 1325. As a result of Defendants' unlawful conduct, ACR has suffered and will continue to suffer substantial financial and reputational injury, including damage to ACR's reputation and goodwill, by the continued infringement of ACR's copyright rights and use of misappropriated confidential and trade secret information. *AutoNation*, 939 So. 2d at 157 (where plaintiff could only speculate as to amount of damage from disclosure of secrets, this supported finding of irreparable harm to grant preliminary injunction); *Bimbo Bakeries USA, Inc.*, 613 F.3d at 118 (threat of irreparable harm flowing from trade secret misappropriation justified enjoining competitor's employment of plaintiff's former employee); *McMurry*, 2008 WL 5381922 at *4 (granting injunction because of threat of irreparable harm from misappropriation of trade secrets). Absent an injunction, ACR will have no adequate make-whole remedy at law.

In addition, the harm to ACR outweighs any potential harm to Defendants. ACR seeks equitable relief so that it may conduct its business without unlawful interference and unfair competition. Granting an injunction will do no more than compel Defendants to comply with their obligations under federal and Florida law, as well as their valid contracts. Such relief cannot be said to harm the Defendants as it would simply restore the status quo. *Pharmerica, Inc. v. Arledge*, No. 8:07-cv-486, 2007 U.S. Dist. LEXIS 19992, *23 (M.D. Fla. Mar. 21, 2007). Defendants have no right to falsely advertise a product that is not FCC certified, or to keep ACR's information or to use it for their benefit in competition against ACR, particularly given that the information was developed at great expense and effort by ACR. *Id.* ACR, on the other hand, has a statutorily protected right to preserve its most confidential, copyrighted and proprietary information in a manner that shields ACR from damage that could be caused by someone acquiring or disclosing the information through improper means, and to face fair competition in the marketplace. *Id.* This is particularly true where, as here, the relief sought is extremely narrow, and would not limit the Individual Defendants' employment with CCK or Astronics DME except as related to the misappropriated Confidential Materials, copyrighted materials, and trade secrets. Nor would the issuance of a preliminary injunction prohibit Defendants from conducting any business with truthful advertising, or selling any product that is not derived from the misappropriation of ACR's Confidential Materials, Copyrighted Works, and trade secrets. On the other hand, the denial of a preliminary injunction would cause ACR to lose customers, business opportunities, copyright protections, and trade secrets, which cannot be

compensated by an award of damages. ACR acted promptly to address the Defendants' wrongful acts as soon as their long-secret activities were disclosed, and requires immediate relief before its customers are irretrievably divered and before the Defendants obtain FCC certification for a product based on ACR's proprietary information and works. This potential harm clearly and greatly outweighs the consequences of the preliminary injunction to Defendants.

Finally, the public interest weighs in favor of injunctive relief. The public interest will not be harmed by granting this Motion because the public's enjoyment of the products and the business services at issue does not depend upon who provides those services. Moreover, the public interest is served by protecting the trade secrets, copyrighted materials, and the confidential and proprietary information of businesses such as ACR who invest a great deal of resources in developing intellectual property to serve its customers. *Id.* The public has an interest in protecting business from theft of confidential information such as what occurred here. *Id.* The public likewise has an interest in being protected from false and misleading advertising, and from the further unlawful promotion for the sale of a safety product that is not FCC certified. Granting equitable relief thus will serve, rather than hinder, the public interest and is appropriate here not only because it would help protect ACR from the harm that its competitors could inflict by granting an unfair advantage, but also because it protects the advancement of honest business enterprises and the economic well-being of the nation as a whole.

IV. CONCLUSION

On the basis of the foregoing legal principles and the facts of this case, Plaintiff respectfully requests that the relief sought be granted by this Court.

Dated: December 21, 2011

Respectfully submitted

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CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I hereby certify that on December 21, 2011, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

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