IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CAE INTEGRATED, LLC and CAPITAL ASSET EXCHANGE AND TRADING, LLC, Plaintiffs, v. MOOV TECHNOLOGIES INC. and NICHOLAS MEISSNER, Defendants.	§ § § § § § § § § § §	1:21-CV-377-RP

ORDER

Before the Court is Plaintiffs CAE Integrated, LLC and Capital Asset Exchange and Trading, LLC's (collectively "CAE") Motion for a Preliminary Injunction, (Mot. Prelim. Inj., Dkt. 100). Defendants Moov Technologies, Inc. ("Moov") and Nicholas Meissner ("Meissner") filed responsive briefing, (Moov Resp. & Meissner Resp., Dkts. 105 & 107), and CAE filed a reply, (Dkt. 110). The Court held a hearing on the motion, (Prelim. Inj. Hr'g, Dkts. 115–16), at which it took evidence and witness testimony and heard arguments by the parties. Having considered the briefing, the arguments made at the hearing, the evidence, and the relevant law, the Court will deny the motion.

I. BACKGROUND

This case concerns the market for used semiconductor manufacturing equipment. Semiconductor manufacturing relies on proprietary processes that make use of highly specialized equipment. Because of the degree of specialization, the resale market for this equipment is quite limited and illiquid. (Mot. Prelim. Inj., Dkt. 100, at 7). A used equipment market does exist, however, and is largely built around intermediaries. The market as a whole is opaque, and buyers and sellers often prefer to keep their identities concealed, turning to the intermediaries to conduct their sales.

(*Id.*). CAE is one such intermediary, matching buyers and sellers to facilitate equipment sales. Its traders use its proprietary platform, relying on decades of experience compiling data on participants in the market. (*Id.* at 8). CAE claims that it holds two types of trade secrets related to its business: (1) data about its clients and their equipment that is held in its database, and (2) the platform itself. (Compl., Dkt. 1, at 9–12).

Defendant Moov is a competitor of CAE's founded in 2017 by two former CAE traders. (*Id.* at 12). Defendant Meissner is currently employed by Moov. From 2008 to 2018 he worked as a trader at CAE. (*Id.* at 9). In 2012 and 2014 he signed confidentiality and nondisclosure agreements with CAE, agreeing not to disclose or duplicate the company's proprietary information. (*Id.*). During his tenure at CAE, he developed a wealth of knowledge about the industry and relationships with a number of customers. (*Id.*). Meissner was fired by CAE in May 2018. In July of that year, he signed a separation agreement that included one-year noncompete and nonsolicitation terms, as well as a release of claims against Meissner by CAE. (*Id.* at 11–12). Following the expiration of his noncompete agreement, Meissner was hired by Moov in June 2019.

At issue in this action are thousands of CAE documents saved to Meissner's personal Google Drive account. During his time at CAE, Meissner's files were set to sync automatically to his personal Google Drive account, (*Id.* at 11), which he routinely used to transmit photographs and other large files for business purposes. Until 2016, Meissner had a MacBook laptop which he used for both personal and business matters. That year, the company switched over to PC computers for all employees. (Mot. Prelim. Inj., Dkt. 100, at 10). Meissner retained his MacBook for personal use but, when it stopped working, turned it over to CAE hoping to have it repaired. CAE has retained possession of the laptop since 2016. (Prelim. Inj. Hr'g, Dkts. 115–16).

Moov began to experience rapid growth around 2019, and by 2020 had attracted significant investments. At that time, CAE engaged in an investigation of Meissner's laptop, which it had

retained since 2016. CAE discovered that Meissner had been syncing its documents to his Google Drive, and found thousands of files from his time at CAE saved to his personal cloud account. CAE claims these files constitute its proprietary information and trade secrets. The files include purchase orders and invoices for sales to customers, as well as information on contacts at those companies, their specific equipment needs, and pricing history. They also include photographs of equipment and information on various products. CAE claims that Meissner brought the information contained on the Google Drive to Moov when he began working there, and used it to build Moov's customer base and compete with CAE in the market.

CAE filed suit against Moov and Meissner on April 29, 2021. (Compl., Dkt. 1). It raised five claims: (1) misappropriation of trade secrets under the Defend Trade Secrets Act ("DTSA"), 18 U.S.C. § 1836 *et seq.*; (2) misappropriation of trade secrets under the Texas Uniform Trade Secrets Act ("TUTSA"), Tex. Civ. Prac. & Rem. Code §§ 134A *et seq.*; (3) breach of contract under Texas and California common law against Meissner alone, in reference to the 2012 and 2014 nondisclosure agreements and 2018 separation agreement he signed with CAE; (4) fraud in the inducement under Texas Common Law against Meissner, alleging that he made misrepresentations regarding his possession of CAE files on his personal Google Drive account when he entered the 2014 and 2018 agreements; and (5) breach of fiduciary duty by Meissner alone for his conduct while an employee and member of CAE. (Compl., Dkt. 1, at 21-31).

In the course of litigation, Meissner turned over access to his Google Drive to a third-party expert. He no longer has access to the cloud service, nor does Moov. (Counsel Email, Defs.' Ex. 163). Following extensive disputes regarding discovery, CAE filed the instant Motion for Preliminary Injunction on November 1, 2021. (Mot. Prelim. Inj., Dkt. 100). Moov and Meissner filed their Responses on November 8 and November 10, respectively. (Moov Resp. & Meissner Resp.,

Dkts. 105 & 107). CAE filed its Reply on November 12. (Reply, Dkt. 110). On November 15 and 16, 2021, the Court held a hearing on the Motion. ((Prelim. Inj. Hr'g, Dkts. 115–16).

II. LEGAL STANDARD

A preliminary injunction is an extraordinary remedy, and the decision to grant such relief is to be treated as the exception rather than the rule. *Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1050 (5th Cir. 1997). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to 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. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The party seeking injunctive relief carries the burden of persuasion on all four requirements. *PCI Transp. Inc. v. W. R.R. Co.*, 418 F.3d 535, 545 (5th Cir. 2005). Here, the Court's analysis begins and ends with its finding that CAE has not met its burden to show that it is likely to succeed on the merits of its claims.

III. DISCUSSION

CAE seeks an injunction prohibiting Meissner and Moov from interacting with a large number of CAE's clients or contacts during the pendency of litigation. Specifically, it asks the Court to enjoin Defendants from (1) use, disclosure, reproduction or publication to any parties of CAE's confidential information; and (2) contacting, soliciting, marketing to, or transacting with approximately two hundred individuals and companies identified by CAE. It also asks that the Court order Defendants to return any originals or copies of documents containing CAE data. (Proposed Order, Dkt. 100-37, at 3).

In any motion for a preliminary injunction, the movant bears the burden of establishing its likelihood of success on the merits. The Court finds that CAE has failed to produce sufficient evidence to meet its burden to this end. CAE points to thousands of documents that it claims Meissner stole and subsequently brought to Moov for its use. However, amidst the hundreds of

exhibits, testimony from three expert witnesses, and two days of arguments, there remains little direct evidence that any of CAE's trade secrets were ever in Moov's possession, much less that it used or threatened to use any such information. (Prelim. Inj. Hr'g, Dkts. 115–16).

The Court heard testimony from several witnesses, including Defendant Meissner. Meissner's testimony included explanation of the context of his use of the MacBook laptop, the public nature of the majority of the documents on the Google Drive, his extensive industry experience leading to personal knowledge of and relationships with many industry players, his lack of knowledge of the CAE documents he continued to possess after his termination, and his efforts to delete any remaining documents before starting at Moov. (Prelim. Inj. Hr'g, Dkts. 115–16). The Court finds Meissner credible in his testimony, which painted a picture of Moov as a small company using unremarkable means to establish itself in a market and compete with an existing player.

In its closing argument, CAE narrowed its focus to customer identities as the primary form of alleged trade secrets that it accused Defendants of misappropriating. (Hr'g. Tr., Dkt. 23, at 3–4, 8). Absent evidence that Defendants used any information in the allegedly misappropriated documents save for the customer identities, the Court finds that CAE must demonstrate a likelihood of success on its trade secrets claim with respect to the customer identities specifically in order to sustain its burden for an injunction at this stage. As Defendants have shown, many of the customers CAE claims as protected were already in Moov's database before it began its relationship with Meissner. (Prelim. Inj. Hr'g, Dkts. 115–16). There can be no doubt that those contacts are not trade secrets. The question is much closer regarding customers that were added once Meissner joined Moov, which he readily admits he came to know of through his time working at CAE. However, with regard to these customers, too, the Court finds that it falls short. *See Marek Brother Sys., Inc. v. Enriquez*, No. 3:19-CV-01082, 2019 WL 3322162, at *4 (N.D. Tex. July 24, 2019); *Trilogy Software, Inc.*

v. Callidus Software, Inc., 143 S.W.3d 452, 466 (Tex. App.—Austin 2004, pet. denied) ("It is the burden of the party claiming secrecy status to prove secrecy.").

In order to establish that the customer identities Meissner brought to Moov constitute a trade secret under TUTSA, CAE must establish that the information 1) has independent economic value; 2) is not readily ascertainable by others; and 3) that CAE took reasonable measures to keep the identities secret. Tex. Civ. 3 & Rem. Code § 134A.002(6); *see A.M. Castle & Co. v. Byrne*, 123 F. Supp. 3d 909, 915 (S.D. Tex. 2015) (To be protectable, information must be "neither generally known by others in the same business nor readily ascertainable by an independent investigation."); *Guy Carpenter & Co. v. Provenzale*, 334 F.3d 459, 467 (5th Cir. 2003) ("Texas courts consistently consider three factors when determining whether a customer list is a trade secret: (1) what steps, if any, an employer has taken to maintain the confidentiality of a customer list; (2) whether a departing employee acknowledges that the customer list is confidential; and (3) whether the content of the list is readily ascertainable.").

As CAE correctly notes, a trade secret "may be . . . a list of customers." *Rugen v. Interactive Bus. Sys., Inc.*, 864 S.W.2d 548, 552 (Tex. App. 1993). However, "[c]ustomer relationships do not qualify as trade secrets just because a company invests time and money to cultivate those relationships." *BCOWW Holdings, LLC v. Collins*, No. SA-17-CA-00379-FB, 2017 WL 3868184, at *15 (W.D. Tex. Sept. 5, 2017) (citing *Aerosonic Corp. v. Trodyne Corp.*, 402 F.2d 223, 230 (5th Cir. 1968) (noting that an "advantageous business relationship" between an employer and its customer is not a trade secret). "The word 'secret' implies that the information is not generally known or readily ascertainable by independent investigation." *Rugen,* 864 S.W.2d at 552 (citing *Allan J. Richardson & Assocs., Inc. v. Andrews*, 718 S.W.2d 833, 837 (Tex. App.—Houston [14th Dist.] 1986, no writ)). "If the names and addresses of customers and vendors on a party's customer list are readily ascertainable, . . . it is not protectable as a trade secret." *A.M. Castle*, 123 F. Supp. 3d at 916; *see*

BCOWW Holdings, 2017 WL 3868184, at *14. Most consequential, then, is whether the identities of customers, as opposed to their contact information, could be obtained by Moov and Meissner independent of Meissner's history with CAE. After all, "[t]he fact that [Defendant] may have learned this information . . . . by virtue of his position . . . , or that it might take longer for a member of the general public to discover it does not render non-secret identities and contact information a secret. . . ." *Thoroughbred Ventures, LLC v. Disman*, No. 4:18-CV-00318, 2018 WL 3752852, at *6 (E.D. Tex. Aug. 8, 2018).

CAE is correct that customer identities "may be" trade secrets. *See Ruven*, 864 S.E.2d at 552; *Trilogy Software,* 143 S.W.3d at 466 (citations omitted) ("[I]nformation that a firm compiles regarding its customers may enjoy trade secret status under Texas law."). But it does not follow that they must be trade secrets. Were this the case, "it would amount to a *de facto* common law non-compete prohibition." *Id.* at 467; *see Marek Brother*, 2019 WL 3322162, at *4. As the Court indicated in its remarks at the close of the hearing, public policy counsels against imputing trade secret protections to the identities of market participants, as such broad protections would effectively prohibit individuals like Meissner, who leave an employer, to continue to work in the industry. (Hr'g. Tr., Dkt. 119-1, at 7, 9). That trade secret protections do not extend this far "is the very reason why many employers insist upon non-compete agreements: to protect their goodwill and to prohibit former employees (for a reasonable period of time) from being able to take advantage of that time and investment to their detriment." *BCOWW Holdings*, 2017 WL 3868184, at *15. Indeed, "a customer list of *readily ascertainable* names and addresses will not be protected as a trade secret." *Zoecon Industries, a Div. of Zoecon Corp. v. Am. Stockman Tag Co.*, 713 F.2d 1174, 1179 (5th Cir. 1983) (citation omitted) (emphasis added); *see BCOWW Holdings,* 2017 WL 3868184, at *15 ("TUTSA protects an employer's secrets, not its relationships.").

CAE cites a laundry list of cases finding customer identities protectable where other customer information is also at issue. *See Daily Instruments Corp. v. Heidt*, 998 F. Supp. 2d 553, 569 (S.D. Tex. 2014) (granting preliminary injunction where customer identities were among many types of data misappropriated); *Albert's Organics, Inc. v. Holzman*, 445 F. Supp. 3d 463, 473-474 (N.D. Cal. 2020) (same); *OROS, Inc. v. Dajani*, No. 1:19-cv-351, 2019 WL 2361047, at *3 (E.D. Va. June 4, 2019) (same). CAE argues that Meissner too took data in addition to the mere identities of customers. (CAE Br., Dkt. 120, at 10). But CAE has failed to establish that Defendants accessed or used any information beyond the identities of CAE contacts. Thus, it is the identities alone that must meet the definition of trade secrets. Further, the cases CAE cites are not determinative here, where the characteristics of the industry and the circumstances under which Meissner gained the information create difficulties in extending trade secret protections to the customer identities. (CAE Br., Dkt. 120, at 7–13).

The circumstances here are distinguishable from those in the cases CAE cites, (*Id.*), and tend to support a finding that the customer identities do not constitute trade secrets. As the parties repeatedly note, the used semiconductor equipment industry is a closed system with a limited number of players. (*See, e.g.*, Mot. Prelim. Inj., Dkt. 100, at 7). As such, the universe of potential customers is not unbounded, as it may be in other industries. See e.g., *York v. Hair Club for Men*, L.L.C., No. 01-09-00024-CV, 2009 WL 1840813, at *2 (Tex. App.—Houston [1st] 2009, no pet.) (per Bland, J.) (upholding injunction regarding misappropriation of customer list in hair loss treatment industry). These market characteristics makes it likely that competitors will have contact with the same potential customers simply by virtue of competing in the industry. *See Aerosonic Corp. v. Trodyne Corp.*, 402 F.2d 223, 229–31 (5th Cir. 1968) (quoting *Renpak, Inc. v. Oppenheimer*, 2nd D.C.A. Fla., 1958, 104 So.2d 642, 645–46) ("'[W]here a former employee . . . sells to members of a readily ascertainable class, the knowledge of names of the customers of the employer which a former

employee has is not a "trade secret" . . . Absent special circumstances, there is no prohibition of an employee soliciting customers with which his former employer had prior dealings.").

It is virtually unavoidable that someone who has participated in the used semiconductor equipment industry for as long as Meissner has will have contact with a significant number of the major industry players. By changing employers, Meissner did not forfeit his right to transact with those customers. Rather, the limited number of potential customers makes it more likely that those with an understanding of the industry could independently discover those same customers. *Cf. Keystone Life Ins. Co. v. Mktg. Mgmt.*, Inc., 687 S.W.2d 89, 91 (Tex. App. 1985) (upholding injunction where customer list was obtained as part of a deal and subsequently misused, and "was not generally available to persons in the business of selling group insurance."). Because the market is so bounded, there is a high probability that any given company will be a CAE customer, or potential customer, simply by existing in the industry. Indeed, Moov developed contacts with many CAE customers simply by attending industry conventions. (Prelim. Inj. Hr'g, Dkts. 115–16). Thus, CAE's argument that the fact that companies were potential buyers of its products—rather than market participants in general—makes them protectable is unavailing. (See CAE Br., Dkt. 120, at 12).

CAE has failed to produce evidence sufficient to meet its burden of demonstrating a likelihood of success on any of its claims. *See Marek Brother*, 2019 WL 3322162, at *4 (finding the evidence "insufficient for the court to conclude, based on the paucity of factual specificity, whether the [client contact] information was acquired and maintained with considerable secrecy such that it might be entitled to trade secret protection."). Accordingly, the Court finds that it would be improper to grant preliminary injunctive relief.

III. CONCLUSION

For these reasons, **IT IS ORDERED** that CAE's Motion for Preliminary Injunction, (Dkt. 100), is **DENIED**.

SIGNED on December 22, 2021.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE