UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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                                                   :

BARETZ+BRUNELLE LLC and HOWARD   :
ROSENBERG,

                                                   :

                    Plaintiffs,   :

                                                     :

                - against -   :   **COMPLAINT**

                                                   :

KSL GLOBAL MARKET RESEARCH, LLC d/b/a :   Index No. 22 Civ. 4202 (VSB)(GWG)
DECIPHER INVESTIGATIVE INTELLIGENCE, :

                                                  :

                    Defendant.   :
- x

        Plaintiff Baretz+Brunelle LLC ("B+B") and Howard Rosenberg ("Rosenberg"),

by and through their attorneys, Slarskey LLC, allege as follows for their complaint against KSL

Global Market Research, LLC d/b/a Decipher Investigative Intelligence ("Decipher").

INTRODUCTION

1.   This is a dispute between two businesses in the legal marketplace—one

that is thriving, and another that is fearful of honest and fair competition.

2.   B+B and its executives have advised many of the most prominent law

firms and lawyers in the world, scores of AmLaw100 and 200 law firms, as well as regional and

boutique firms nationally and internationally. While B+B originated as a public relations firm

and earned its national reputation in that area, over time, its offerings have expanded to include

marketing and business consulting services.

3.   Now, B+B's offerings have expanded again, with its newly launched

service focused on advising clients in the booming "lateral" hiring environment, a popular

avenue through which law firms seek to increase revenue.

4.   To lead the service, B+B recently hired Howard Rosenberg, one of the most highly regarded executives in the legal industry.

5.   However, B+B's expansion is under threat. Its new offering — and its reputation — have come under unfair attack by Decipher, Rosenberg's former company, which has claimed a theft of its trade secrets. No such trade secrets exist. Nor does any other violation of law that should impede B+B's right to fairly compete and provide a valuable service to its client base of world-class law firms and the broader legal marketplace.

6.   Decipher is attempting, through intimidation and bullying threats against B+B and Rosenberg, to protect its turf unreasonably, unfairly, and unlawfully. B+B and Rosenberg, therefore, seek a declaratory judgment from the Court determining that they are free to compete with Decipher, unencumbered by the threat of litigation, and may proceed with the expansion of B+B's business to meet the needs of elite law firms.

PARTIES

7.   B+B is a limited liability company organized under the laws of the State of Delaware and maintains its principal place of business in New York, New York. B+B's two members are natural persons; one is a citizen of New Jersey and the other of North Carolina.

8.   B+B is a corporate advisory firm to businesses operating in the legal industry, including law firms, corporate legal departments, alternative legal services providers, and legal technology firms. B+B assists these entities in tackling their biggest challenges and capturing their greatest opportunities through communications and marketing support, strategic consulting, NewLaw services, and talent intelligence and analytics.

9.   B+B has been named "Best PR Firm" in New York and the United States by the New York Law Journal and National Law Journal, respectively, and several of its

executives have received similar industry accolades. Its client base includes many of the most highly regarded law firms, individual attorneys, and businesses in the world.

10.   Rosenberg is a partner at B+B and is a citizen of Connecticut.

11.   Decipher is a limited liability company organized under the laws of the State of Missouri and maintains its principal place of business in St. Louis, Missouri. Upon information and belief, Decipher is a sole member limited liability company, whose only member, Michael Ellenhorn ("Ellenhorn"), is a citizen of Missouri.

12.   Decipher provides pre-hire due diligence on lateral hires at midsize and large law firms both nationally and globally.

JURISDICTION AND VENUE

13.   This is an action for declaratory judgment arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

14.   This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. The Court has diversity jurisdiction since the parties are citizens of different states and the amount in controversy, based on B+B's anticipated profits, exceeds seventy-five-thousand dollars ($75,000.00).

15.   This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as Decipher, through its actions and statements described below, has expressed intention to assert claims against B+B and Rosenberg for the alleged misappropriation of Decipher's trade secrets pursuant to the Defend Trade Secrets Act, 18 U.S.C. § 1836 ("Defend Trade Secrets Act"). As a result, this action arises under the laws of the United States, the Declaratory Judgment Act, and the Defend Trade Secrets Act, and requires the Court to interpret various provisions of the Defend Trade Secrets Act.

16. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2) since B+B maintains an office in New York, New York, and a substantial part of the events giving rise to the claim occurred in this district.

17. This Court has general personal jurisdiction over Decipher because it maintains continuous and systematic business activities in New York and this judicial district, including soliciting business from and executing business contracts and other deals with various New York-based law firms to perform its services, having employees (including Rosenberg and Ellenhorn) meet in person with New York-based clients to perform its services and maintain ongoing business relationships, and having its employees attend, host, and speak at New York-based legal market events, including events organized by, among others, the Legal Marketing Association, American Lawyer Media, Sandpipers Partners, in furtherance of its business growth and objectives.

FACTUAL ALLEGATIONS

18. B+B's historic services include public relations, marketing, market research, and management and operational consulting, but its newest offering helps law firms to support, and make better decisions around, lateral hires. One of the products in that offering is a report that provides deep-dive due diligence on lateral candidates, which B+B terms a "Lateral Intelligence Report."

19. A similar product was conceived of and brought to market in 2015 by Rosenberg and his former partner, Ellenhorn, through Decipher, a company they co-founded.

20. At the time, Decipher was the only company offering a similar product to the legal market. And it enjoyed great success as the only game in town. Until now.

21. In full and absolute compliance with all laws and contracts, B+B hired Rosenberg as a partner in February 2022 to build and launch a competitive offering to Decipher.

22. This case involves Decipher's meritless and puzzling claim that B+B is somehow not allowed to do that.

A. **The Genesis of Decipher**

23. Before Rosenberg co-founded Decipher, his previous experience was in law firm management, dating back to 1998. His jobs included a variety of executive and management roles, including Chief Operating Officer of Baker & McKenzie LLP ("Baker McKenzie") in Washington, D.C., Business Development Strategist for Debevoise & Plimpton LLC's private equity practice in New York, and Managing Director of Berwin Leighton Paisner (now Bryan Cave Leighton Paisner LLP) in London, England.

24. At these firms, Rosenberg was, at times, responsible for, among other things, the extensive lateral partner recruitment process, including playing a role in the attracting and hiring of candidates, the on-boarding process, and continued oversight of new hires. From this work, Rosenberg learned of the high degree of risk and economic harm associated with failed lateral hires.

25. In 2012, while working at Baker McKenzie, Rosenberg met Ellenhorn, who, at that time, was a Director and Head of U.S. Operations for Fox Rodney Search ("Fox Rodney"), a nationally known legal recruitment and executive search consultancy which specializes in placing attorneys – more specifically, law firm partners with large books of business – at law firms.

26. Sometime in the middle of 2014, Rosenberg met with Ellenhorn in New York, at which time Ellenhorn expressed his belief that the typical legal recruiting business model had become outdated and noted his trouble building and maintaining long-term consistency with his business given the episodic, transactional nature of recruiting.

27.   Rosenberg explained that recruiting services would be better served using a subscription-based business model to capture recurring revenue. Rosenberg's idea emanated from his experience creating and ultimately selling a similar business when employed by Berwin Leighton Paisner.

28.   In response, Ellenhorn noted that Fox Rodney was, on a limited basis, preparing research-based intelligence reports on certain United Kingdom-based lateral hire candidates as a favor to clients to deepen their client relationships.

29.   This idea – the preparation and sale of pre-hiring intelligence reports on lateral lawyer candidates – ultimately become the basis of Decipher, the business that Rosenberg and Ellenhorn co-founded.

30.   Decipher did not start as Decipher, though. Rather, initially, Rosenberg suggested to Ellenhorn that they jointly prepare a business plan, complete with financial projections, likely risks, and other factors based on the aforementioned subscription-based model, and present it to the partners at Fox Rodney.

31.   Rosenberg and Ellenhorn prepared the business plan and were invited to discuss it in depth at a Fox Rodney partners' meeting in London in 2014.

32.   Following their presentation of the business plan to Fox Rodney partners, Fox Rodney agreed to pursue it through a newly formed entity, FRS Insight , a wholly owned subsidiary of Fox Rodney and vehicle through which to sell this product as a line of business separate from Fox Rodney's recruiting services.

33.   Rosenberg was offered the role of FRS Insight's Chief Executive Officer, which he accepted. Rosenberg was based in New York and reported to Ellenhorn, who was based in Missouri.

34.   Shortly after launch, FRS Insight won its first major contract with a top-10 global law firm; other business opportunities soon followed, proving its potential for much greater success.

35.   Over time, however, Rosenberg was told by prospective clients that they did not want to hire FRS Insight because of a perceived conflict of interest with Fox Rodney, its parent company, which commercially benefitted from its involvement in both the recruitment and "independent" intelligence reporting services provided by FRS Insight.

36.   As a result, in September 2015, Rosenberg and Ellenhorn acquired FRS Insight from Fox Rodney and renamed it Decipher. Rosenberg and Ellenhorn owned 15% and 85% of the business, respectively. Rosenberg's title was Co-founder and Chief Executive Officer, and Ellenhorn's title was Co-founder and General Counsel.

37.   To finance the transaction, Rosenberg and Ellenhorn secured a significant bank loan. The bank involved in the transaction suggested Ellenhorn and Rosenberg's agreement include a two-year non-compete and non-solicit provision to protect all parties' interests in the event Rosenberg or Ellenhorn departed the company.

38.   Decipher was a success. During the next three years, the company obtained a significant amount of business, soliciting and securing business in most major U.S. cities, as well as London. By the end of 2018, it had contractual relationships with approximately 30 law firms, a staff of approximately 15 individuals, and annual recurring revenues were in excess of $3.5 million. Its success was fueled by the fact that no other business had a similar product or service offering for law firms.

B.   **Rosenberg Departs Decipher**

39.   By 2019, despite Decipher's success, the relationship between Rosenberg and Ellenhorn began to sour: decisions were being made without Rosenberg's input, arguments

about business terms associated with a large client contract occurred, and there were general disagreements about the business' future direction.

40.   In September 2019, Rosenberg departed Decipher. Ellenhorn acquired Rosenberg's 15% equity interest in the company and, as part of the sale of his interest, Rosenberg signed a separation agreement, which affirmed the previously referenced two-year non-compete and non-solicit provisions.

41.   In October 2019, in compliance with certain other provisions of the separation agreement, Rosenberg collected and sent to Decipher a 55+ pound box containing all the materials he had in his possession, including company materials, notes, notebooks, USB drives, business cards, marketing collateral, mockups of product development, intelligence reports, client correspondence, and financial statements.

42.   In September 2021, Rosenberg's two-year non-compete and non-solicit restrictions expired.

C.   Rosenberg Begins a New Venture

43.   In December 2021, Rosenberg reached out to Spencer Baretz, Co-Founder of B+B, via LinkedIn to explore possible synergies associated with B+B's current offering and a new recruiting/intelligence capability Rosenberg could launch and oversee.

44.   Following extensive discussion and meetings over the ensuing months, in February 2022, Rosenberg joined B+B as a partner and head of its new Talent Intelligence & Analytics practice.

D.   Decipher sends B+B and Rosenberg "Cease and Desist" Letters

45.   On March 14, 2022, Decipher sent B+B and Rosenberg separate "Cease and Desist" letters.

46.   With respect to the letter directed to Rosenberg, Decipher cited Rosenberg's "statutorily imposed obligations regarding the misuse of trade secrets" pursuant to the Missouri Uniform Trade Secret Act ("MUTSA") and the Defend Trade Secrets Act ("DTSA"), and demanded, *inter alia*, that he cease the "improper and illegal use of [Decipher's] trade secrets, proprietary, and confidential information . . . ."

47.   Decipher also threatened "to immediately file suit" and to seek its "actual, consequential and punitive damages, all damages and remedies provided by state and federal statutes, and for the disgorgement of any and all profits earned by [Rosenberg] and those who have worked in concert with [Rosenberg], as well as disgorgement of any head start revenues generated."

48.   Decipher did not detail what "trade secrets" or "proprietary" and "confidential" information Rosenberg purportedly used (or is using), how the use of such information is violative of the MUTSA or DTSA, or the basis for Rosenberg's purported liability under these statutes.

49.   With respect to the letter directed to B+B, Decipher demanded that B+B "immediately take all necessary actions to investigate and prevent any improper use of [Decipher's] Protection Information," including "trade secrets . . . and other propriety and confidential information" resulting "from any improper actions of . . . Rosenberg."

50.   Decipher also threatened immediate litigation, which would "likely include" claims pursuant to the MUTSA and DTSA and would "seek to disgorge all profits improperly earned by [B+B and Rosenberg]."

51.   Decipher did not detail what "trade secrets" or "proprietary" and "confidential" information B+B or Rosenberg purportedly used (or are using), how the use of

such information is violative of the MUTSA or DTSA, or the basis for B+B or Rosenberg's purported liability under these statutes.

E.   B+B Launches Talent Intelligence & Analytics Practice

52.   On May 23, 2022, B+B launched its Talent Intelligence & Analytics Practice, headed by Rosenberg, which includes valuable pre-hire intelligence on lateral candidates, onboarding support, and analytics on performance and integration.

53.   More specifically, B+B will provide law firms with: (1) detailed intelligence reports on prospective lateral hires, allowing for more deeply informed decisions on the strategically important lateral hires to which firms devote significant resources; (2) personalized marketing, business development, and communications plans for laterals to transition their full books of business, promote their growth, and ensure their overall success at their new firm; (3) lateral integration planning, including long-term impact on revenue and market reputation; and (4) analytics-based technology tools to maximize the success of lateral transitions and integration.

54.   With its new Talent Intelligence & Analytics Practice, B+B and Rosenberg will build, and expand, upon B+B's 20-year industry experience, its expertise in other areas (including communications and marketing, strategic consulting, and NewLaw services), and its vast (and already-existing) client base, with an eye toward competing with – and surpassing – companies, like Decipher, in the field.

55.   Notably, while there may be some overlap in the type of services B+B will offer with those offered by Decipher, B+B's services are far more expansive. While Decipher largely limits its services to pre-hire due diligence, B+B will act as a one-stop shop for all pre-*and post*-hire services.

56.   More importantly, by launching its new Talent Intelligence & Analytics Practice and providing certain similar services to those offered by Decipher, B+B and Rosenberg are not using any of Decipher's "trade secrets," nor violating any trade secret statute. Decipher has no trade secrets. Decipher is simply afraid of an innovative and better-positioned competitor entering the field.

57.   The general concept of pre-hire due diligence and background investigation, and the organization of such information into digestible form, is a widely understood concept, and is performed in countless industries. This, naturally, includes interviews with individuals who know or have interacted with target potential hires.

58.   Even to the extent Decipher subjectively believes that it has claimed some type of legal stake to the concept of pre-hire due diligence and background investigation, it publicizes – indeed, *advertises* – its methods of service on its multiple media platforms.

59.   For example, Decipher's website[1] outlines the precise steps it undertakes when developing and creating investigative due diligence reports, including, but not limited to, the methods used during its investigative interviews:

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[1] *See* https://decipherglobal.com/solutions/ (last visited May 22, 2022).

Diligence

Investigative Background Report

Goal: The purpose of every Diligence is to investigate a lateral candidate's book of business, legal skills, and ability to work with others.

Source: Decipher reaches out to a number of carefully-sourced attorneys and incorporates actual verbatim comments from source interviews with clients, former colleagues, market peers and opposing counsel.

Security: During source interviews, a lateral candidate is never asked about in isolation. Source interviews are approached from the perspective of market research and a lateral candidate is always asked about amongst a larger cohort of similarly situated practitioners.

Dossier

Objective Intel Background Screen

Goal: Potential issues illuminated by Dossier include financial impropriety, problematic social media posts, incomplete/inaccurate work history, amongst others.

Source: Decipher uses multiple public, private, and proprietary databases to uncover the most important objective intelligence and relay it to our clients in a synthesized and easily-digestible report.

Security: We have five Fair Credit Reporting Act (FCRA) certified members on staff and follow established policies and procedures vetted rigorously by outside counsel.

Debrief

Enhanced Referencing

Goal: Professional referencing breaks through the standard veneer of professional references to elicit candid source commentary that will provide much-needed intelligence with the utmost confidentiality.

Sources: We conduct in-depth interviews with either eight (8), or four (4) candidate-provided references that include former colleagues and clients. These references will provide specific and relevant intelligence about a candidate's technical skills, cultural fit and business development abilities from individuals who know the candidate best.

Security: We only contact specific individuals provided by the candidate or client.

Discover

Talent Market Survey

Goal: By working closely with the firm, we delve very deeply into the criteria and characteristics that will "move the dial" in your desired practice area.

Source: Discover utilizes our investigative intelligence platform to identify relevant and leading talent, fully consistent with your specific strategic growth criteria. We then identify senior performing partner/teams as well as emerging top-tier talent that is often operating below the radar screen.

Confidentiality: Interviews are always conducted on the premise that conversations are strictly confidential and none of the comments would be attributed to the source in any way.

60.   Similarly, Decipher's LinkedIn page[2] touts its "confidential double-blind process," again, specifically identifying its interviewing method.

61.   Accordingly, any claim of "trade secret" status purportedly attaching to Decipher's due diligence service is negated by virtue of its failure to take reasonable steps to

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[2] *See* https://www.linkedin.com/company/decipher-investigative-intelligence (last visited May 22, 2022).

keep such information secret, including its voluntary decision to market its company by detailing its interviewing and compilation methods.

CAUSE OF ACTION

FIRST CAUSE OF ACTION
(Declaratory Judgment)

62.   The Declaratory Judgment Act provides in relevant part:

> In a case of an actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

28 U.S.C. § 2201(a).

63.   As described above, Decipher advised B+B and Rosenberg of its belief that B+B and Rosenberg used (or were using) Decipher's "trade secrets" and "proprietary" or "confidential" information in violation of the MUTSA and DTSA.

64.   Decipher has not identified the "trade secrets" and "proprietary" or "confidential" information B+B and Rosenberg purportedly used (or are using), how the use of such information is violative of the MUTSA or DTSA, or the basis for B+B or Rosenberg's purported liability under these statutes.

65.   B+B and Rosenberg do not believe that they have used (or are using) any of Decipher's "trade secrets" or "proprietary" and "confidential" information nor violated the MUTSA or DTSA in any manner. Upon information and belief, Decipher has no trade secrets to protect.

66.   B+B and Rosenberg do not believe that any information or investigatory methods which Decipher may subjectively claim are "trade secrets," or "proprietary" and "confidential" information, qualify as "trade secrets" pursuant to the MUTSA or DTSA.

67.   There is a substantial and justiciable controversy between B+B and Rosenberg, on the one hand, and Decipher, on the other, as to: (1) whether any information Decipher subjectively identifies as "trade secrets" or "proprietary" and "confidential" information qualify as "trade secrets" pursuant to the MUTSA or DTSA; (2) whether B+B and Rosenberg have used (or are using) any of Decipher's "trade secrets" or "proprietary" and "confidential" information; (3) whether B+B and Rosenberg violated (or are violating) the MUTSA or DTSA in any manner; and (4) whether Decipher has any legitimate right to continue to threaten to interfere with B+B's launch of its Talent Intelligence & Analytics Practice and/or threaten to seek the disgorgement of B+B's anticipated profits.

68.   Without Court intervention, B+B and Rosenberg will be left uncertain of their legal rights while avoidable damages allegedly accrue until Decipher sees fit to file suit at a moment, and in such manner, to most impactfully disrupt B+B's business.

69.   Accordingly, B+B and Rosenberg request the Court to determine the rights and obligations of B+B, Rosenberg, and Decipher, and seek the following declarations from this Court:

    a.   The purported "trade secrets" and "proprietary" or "confidential" information identified by Decipher do not qualify as a trade secret under the MUTSA and/or DTSA;

    b.   B+B and Rosenberg have not improperly utilized or misappropriated any of Decipher's "trade secrets" or "proprietary" or "confidential" information for the purposes of gaining an unfair commercial advantage or otherwise;
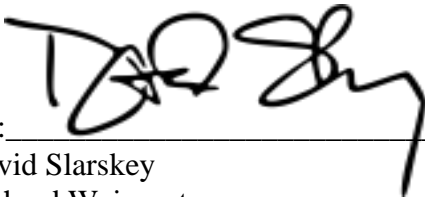
c. Decipher has failed to take reasonable measures to keep any purported

"trade secrets" or "proprietary" and "confidential" information secret; and

d. B+B and Rosenberg have not violated any section of the MUTSA and/or

DTSA.

WHEREFORE, Plaintiffs demand judgment against Defendant for an Order:

a. Declaring that the purported "trade secrets" and "proprietary" or "confidential" information identified by Decipher does not qualify as a trade secret under the MUTSA and/or DTSA;

b. Declaring that B+B and Rosenberg have not improperly utilized or misappropriated any of Decipher's "trade secrets" or "proprietary" or "confidential" information for the purposes of gaining an unfair commercial advantage or otherwise;

c. Declaring that B+B and Rosenberg have not violated any section of the MUTSA and/or DTSA;

d. Awarding B+B and Rosenberg pre- and post-judgment interest;

e. Awarding B+B and Rosenberg the costs of this action, including reasonable attorneys' fees and expenses; and

f. Awarding B+B and Rosenberg such other and further relief as the Court may deem just and proper.

Dated: May 23, 2022
       New York, New York

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