

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION

AMTOTE INTERNATIONAL INC.,)
)
Plaintiff)

v.)

Case No. 1 : 15 - CV - 47 - GNS

KENTUCKY DOWNS, LLC)
Serve: Corey Johnson, Agent)
5629 Nashville Road)
Franklin, KY 42135)

Hon. Judge Greg Stivers

REDACTED PUBLIC VERSION

and)

COREY S. JOHNSEN, in both his)
individual and corporate capacities)
2229 Branchwood Drive)
Grapevine, TX 76051-7823)
Serve: Kentucky Secretary of State)
Summons Branch)
700 Capital Ave., Ste. 86)
Frankfort, KY 40601)

and)

NICHOLAS HUGHES, in both his)
individual and corporate capacities)
2455 Long Hollow Pike)
Hendersonville, TN 37075)
Serve: Kentucky Secretary of State)
Summons Branch)
700 Capital Ave., Ste. 86)
Frankfort, KY 40601)

and)

RAYFORD T. REID, in both his)
individual and corporate capacities)
1500 Clairmont Place)
Nashville, TN 37215-1633)
Serve: Kentucky Secretary of State)
Summons Branch)
700 Capital Ave., Ste. 86)
Frankfort, KY 40601)

and)
)
)
 ENCORE GAMING, LLC)
 Serve: Tom Aronson, Agent)
 46 Hill Road)
 Louisville, KY 40204)
)
Defendants)

VERIFIED COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff AmTote International Inc. (“AmTote”) brings this Verified Complaint for Injunctive and Other Relief against Defendants Kentucky Downs, LLC (“Kentucky Downs”), Corey S. Johnsen (“Johnsen”), Nicholas Hughes (“Hughes”), Rayford T. Reid (“Reid”), and Encore Gaming, LLC (“Encore”), and for its causes of action, states as follows:

NATURE OF THE ACTION

1. This is an action for breach of contract, tortious interference with an existing contract, and threatened and actual misappropriation of trade secrets.

2. AmTote is a leading totalisator service provider for the live and historical pari-mutuel wagering industry. AmTote has expended substantial time, resources, and energy in developing confidential and proprietary information essential to the operation of its totalisator service.

3. AmTote now brings this action because it appears that its customer Kentucky Downs has improperly provided, and Defendants Reid, Johnsen, Hughes, and Encore have improperly acquired and used, AmTote’s confidential and proprietary information in order to develop a competing totalisator service at Encore, which is now being implemented at Kentucky Downs. The use of this information has provided Encore an unfair and unlawfully-obtained position in the market that it would not have had without access to AmTote’s confidential and proprietary information.

4. In implementing a competing totalisator service, Kentucky Downs has also breached its obligation to exclusively use AmTote's totalisator system.

THE PARTIES

5. Plaintiff AmTote is a Delaware corporation with its principal place of business in Hunt Valley, Maryland.

6. On information and belief, Defendant Kentucky Downs is a Kentucky limited liability company with its principal place of business in Franklin, Simpson County, Kentucky.

7. On information and belief, Defendant Johnsen is an individual domiciled at 2229 Branchwood Drive, Grapevine, Texas 76051-7823 and is President of Kentucky Downs.

8. On information and belief, Defendant Hughes is an individual domiciled at 2455 Long Hollow Pike, Hendersonville, Tennessee 37075-8718, and is General Manager and Senior Vice President of Kentucky Downs.

9. On information and belief, Defendant Reid is an individual domiciled at 1500 Clairmont Place, Nashville, Tennessee, 37215-1633, is an executive officer of Kentucky Downs, and is President of Encore, which he founded in 2013.

10. On information and belief, Defendant Encore is an Indiana limited liability company with its principal place of business in Nashville, Tennessee.

JURISDICTIONAL AND VENUE

11. This Court has original jurisdiction over this action under 28 U.S.C. § 1332 because the parties are citizens of different states and the matter in controversy exceeds \$75,000, excluding interest and costs.

12. This Court has personal jurisdiction over Kentucky Downs, Johnsen, Hughes, Reid, and Encore consistent with federal due process and the Kentucky Long Arm Statute, KRS 454.210, and venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 (a) and (c), because: (i)

Kentucky Downs' principal place of business is located in this District; (ii) Kentucky Downs, Johnsen, Hughes, Reid, and Encore conduct business in this District; (iii) Kentucky Downs, Johnsen, Hughes, Reid, and Encore have committed tortious acts in this District; (iv) a substantial part of the events or omissions giving rise to the claims occurred in this District; and (v) AmTote has been injured in this District.

BACKGROUND

AmTote and its Development of the Totalisator

13. AmTote is a world-leading totalisator equipment and service provider for pari-mutuel wagering systems and is one of only four such providers in North America. AmTote designs and manufactures totalisator systems for pari-mutuel wagering, and provides installation, coordination, training, maintenance and technical support for the operation of these systems. AmTote totalisator systems are an integrated combination of hardware, software and business processes for handling, calculating, paying out and reporting on pari-mutuel wagers for authorized pari-mutuel wagering entities.

14. AmTote provides totalisator services to over eighty authorized pari-mutuel wagering entities in the United States and processes over one billion transactions per year.

15. Pari-mutuel wagering is a betting system wherein all the amounts of money wagered by a group of players on each of the possible outcomes of a contest (e.g., a live or historical horse race) are pooled and the payoff odds are calculated by sharing the pool, minus standard deductions such as taxes and house take, amongst all winning bets. Pari-mutuel wagering is authorized in 43 States in the United States, all provinces in Canada and approximately 65 other countries in the world.

16. Pari-mutuel wagering is regulated by the Commonwealth of Kentucky and is an exception to the Commonwealth's general prohibition on "fixed-odds" wagering.

17. In contrast to traditional fixed-odds wagering where the payout odds are determined in advance of the betting pool being closed, in pari-mutuel wagering the final payout is not determined until the betting pool is closed.

18. In horse racing, the pari-mutuel wagering on a race often extends into the millions of dollars with many different types of outcomes to be wagered (e.g., win, place, show, across the board, etc. for each horse in a given race). The calculations of the odds for the possible outcomes and for various eventualities require extensive processing in a short period of time.

19. Modern pari-mutuel wagering in the United States was made possible by the provision by AmTote of its automatic totalisator. A totalisator calculates the odds for a given wager at the time the wager is placed and a ticket is issued displaying the odds.

20. AmTote developed and installed the first electromechanical totalisator in the United States at Arlington Park in 1933.

21. AmTote has since been at the forefront of innovation in totalisator development to meet the demands of consumers. Notable developments include the development by AmTote of the first cash/sell totalisator terminal, the first regional hub totalisator system and the first Microsoft Windows-based totalisator system.

22. AmTote has invested great energy and resources in the creation and continual development of totalisator systems, many aspects of which AmTote maintains as confidential, proprietary, and trade secret information.

23. As pari-mutuel wagering is regulated by the Commonwealth of Kentucky, AmTote also devotes substantial resources to develop its systems in a manner that complies with the regulator's requirements.

24. Based on its extensive experience in implementation and operation of totalisator systems, AmTote has built in the capacity for its totalisator systems to generate detailed diagnostic reports for the purpose of rapid identification and solving of operational problems that may arise during implementation and operation, as well as the detailed reports required by the relevant regulations.

Measures to Protect AmTote's Proprietary Information

25. The source code of AmTote's Spectrum Software application and its wagering terminals, the protocols for communications between various hardware components, the physical and component-level hardware configuration, peripheral items, the particular business processes for implementation of the AmTote totalisator systems, diagnostic reports and report-generating software created by AmTote for the purpose of rapid identification and solving of any problems, information derived from such reports, ancillary aspects, and know-how and techniques for ensuring all aspects of the totalisator system work well together, are proprietary and confidential to AmTote and are made available only to select employees of AmTote and/or to limited third parties that have entered into confidentiality agreements with AmTote.

26. AmTote implements multiple levels of security to ensure that these various inter-working aspects remain confidential and proprietary to AmTote.

27. For example, all source code is maintained in a secured facility in Maryland and only machine-executable code is allowed offsite. Access is further limited by firewalls and password protection. The transmission of any wagering data is obfuscated or encrypted depending on network configuration. Diagnostic reports used for ongoing operation and maintenance of an AmTote system implemented at a specific location are to be viewed and used only by authorized personnel. Hardware design of wagering terminals is maintained as

confidential through physical locking mechanisms to which only authorized personnel are provided access.

28. With respect to its employees, AmTote further protects its information by requiring employees to sign agreements containing confidentiality covenants; maintaining an employee security awareness program to inform, educate and help employees comply with information security policies; disciplining, including terminating, employees in violation of AmTote's information security policies; limiting physical access to confidential information to authorized employees by means of a key card system; utilizing unique user ids and computer passwords; monitoring who is given access to confidential information; and requiring all confidential and proprietary materials to be used for company purposes only.

29. Visitors to any AmTote facility must sign in and be escorted by an AmTote employee.

30. With respect to AmTote's customers that must be provided with access to the proprietary information, AmTote requires these clients to sign agreements containing confidentiality and anti-reverse engineering covenants, and limits the disclosure of confidential information to the minimum necessary.

31. AmTote's proprietary information is not generally known in the industry and is valuable because AmTote derives economic value from the information being kept confidential.

32. AmTote's confidential and proprietary information has been developed over the course of many years, has great value to AmTote, and the improper acquisition of this information would give a competitor an opportunity to pursue development of a totalisator that would not otherwise have been available or would not have been commercially feasible due to

the significant time, effort, and resources required, in any event yielding an unfair competitive advantage to the competitor.

AmTote's Relationship with Kentucky Downs

33. On November 10, 2011, AmTote entered into a Totalisator Service Agreement (the "Agreement") with Kentucky Downs by which AmTote would provide totalisator equipment and services for horse race pari-mutuel wagering. A true and accurate copy of the Agreement is attached as Exhibit A (filed under seal).

34. Section 2 of the Agreement [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

35. On February 10, 2012, AmTote and Kentucky Downs agreed on a first amendment to the Agreement to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. A true and accurate copy of the first amendment to the Agreement is attached as Exhibit B (filed under seal).

36. On March 18, 2015, AmTote and Kentucky Downs agreed on a second amendment to the Agreement [REDACTED]

[REDACTED]

[REDACTED]. A true and accurate copy of the second amendment to the Agreement is attached as Exhibit C.

37. Section 6.2 of the Agreement provides for [REDACTED]

[REDACTED]

[Redacted text block]

38. In Section 8.1 of the Agreement, Kentucky Downs agreed that [Redacted]

[Redacted text block]

39. Section 9 of the Agreement requires Kentucky Downs to: [Redacted]

[Redacted text block]

40. Section 12.3 of the Agreement provides that [REDACTED]

[REDACTED]

[REDACTED]

41. In carrying out the terms of the Agreement, AmTote installed terminals and provided totalisator and wagering systems at Kentucky Downs. To become operational, Kentucky Downs staff required a great deal of training on AmTote's systems and historic horse racing. AmTote provided extensive initial onsite training to Kentucky Downs personnel from August 15, 2011 to August 30, 2011 to educate them on the totalisator aspects of historical racing. AmTote thereafter provided substantial ongoing technical and operational training and support.

42. AmTote also provided Kentucky Downs personnel with access to its detailed totalisator system reports. In addition to the reports being accessible via administrator terminals, administrator-accessible user interfaces were provided at wagering terminals to enable the administrators to generate various terminal-specific reports. The administrator employees of Kentucky Downs were trained by AmTote to generate and access these reports for the purpose of rapidly solving operational problems. Furthermore, as a matter of course, AmTote provided Kentucky Downs with a subset of these reports on a nightly basis.

43. Access to and provision of these reports to Kentucky Downs was necessary to enable ongoing and uninterrupted operation of pari-mutuel wagering terminals and processing of wagers. However, because the nature and contents of the reports provided detailed insight into the operation and design of AmTote's totalisator system, this access was always provided under the [REDACTED]

[REDACTED].

44. On information and belief, as executives of Kentucky Downs, Reid, Johnsen, and Hughes had access to, and did in fact access, this proprietary and confidential information regarding AmTote's totalisator service.

45. At a number of meetings, AmTote specifically provided Johnsen and Hughes with additional proprietary and confidential information about AmTote's totalisator system, including information about the design of the system and its terminal-server communication protocols.

Founding of Encore and Competing Totalisator Services

46. On information and belief, Reid, with assistance from Johnson and Hughes, founded Encore in 2013 to provide, *inter alia*, a competing totalisator service, while Reid, Johnsen, and Hughes were executive officers of Kentucky Downs with access to AmTote's confidential and proprietary information.

47. On information and belief, Encore is a startup operation having limited personnel and limited testing equipment and facilities.

48. On information and belief, Encore has invested insufficient time, money and ingenuity to be able to independently produce a fully operational totalisator system that is capable of properly handling the processing of pari-mutuel wagers for live or historical racing and that meets regulatory requirements.

49. On information and belief, Reid, Johnsen, and Hughes with full knowledge of Kentucky Downs' contractual obligations to AmTote, provided AmTote's confidential and proprietary information to Encore, and misused this information in the development of a totalisator system for Encore. On information and belief, Encore accepted this confidential and proprietary information from Reid, Johnsen, and Hughes, despite knowing that it constituted business and technical information that had been developed for AmTote, using AmTote's time and resources.

50. On February 12, 2015, Encore announced in a press release that it would be entering the historical horse race wagering market as a systems, platform, totalisator and game provider. Encore could not feasibly have developed these products and services using available time and resources except with reference to and reliance on AmTote's confidential and proprietary information.

51. On March 18, 2015, which is the same day that Johnsen signed the second amendment to the Agreement with AmTote on behalf of Kentucky Downs (extending its term until the close of business on December 31, 2015), Johnsen wrote to John Ward, Executive Director of the Kentucky Horse Racing Commission, requesting approval to continue with a different provider of pari-mutuel wagers, terminals and totalisator system.

52. In the letter, Johnsen explained Kentucky Downs would no longer be using the Race Tech system for which AmTote was providing totalisator services for pari-mutuel wagers, after the close of business on March 29, 2015 and that, moving forward, Kentucky Downs would utilize Encore as its new provider for terminals, pari-mutuel wagers and totalisator system.

53. In the executive summary attached to the March 18 letter, Kentucky Downs requested approval for the operation of 500 Encore terminals, an increase of 110 from the 390 previously operational terminals, approval for 21 pari-mutuel wagers, and the use of the Encore totalisator system.

54. According to the materials filed with the March 18 letter, Encore had been working with the Kentucky Horse Racing Commission for approximately 10 months to become approved to offer pari-mutuel wagers and the Encore terminals, and to provide the Encore totalisator system for historical horse racing.

55. On March 23, 2015, Kentucky Downs received permission from the Kentucky Horse Racing Commission to install 250 Encore terminals for testing.

56. On March 29, 2015, at the close of business, the Race Tech system that had been serviced by the AmTote totalisator was switched off. On March 30, 2015, Kentucky Downs closed to the public and AmTote's equipment and terminals were removed. On April 1, 2015, 250 additional Encore terminals were installed at Kentucky Downs, which has now reopened to the public with the Encore System and 500 Encore terminals on April 2, 2015.

COUNT I

BREACH OF CONTRACT

57. AmTote hereby repeats, realleges and incorporates by reference the allegations contained in paragraphs 1 through 56.

58. The Agreement is a valid and enforceable contract. The restriction on reverse engineering and the confidentiality covenants are reasonable in scope and are reasonably necessary to protect legitimate protectable interests in AmTote's technical and business information.

59. AmTote has fully performed all of its obligations under the Agreement.

60. Kentucky Downs has breached the Agreement in at least one of the following ways:

- a. Procuring and utilizing competing totalisator services from Encore;
- b. Reverse engineering of AmTote's confidential and proprietary information;
- c. Removing confidential and proprietary information from AmTote;
- d. Providing confidential and proprietary information to others outside of AmTote;

- e. Utilizing or disclosing AmTote's confidential and proprietary information for a purpose other than for the benefit of AmTote;
- f. Adversely interfering with the business of AmTote.

61. These actions have caused damage to AmTote in the form of lost sales, as well as the loss of investment in years of product testing and development.

WHEREFORE, AmTote prays for the following relief:

- a. That AmTote be awarded liquidated and additional compensatory damages in an amount to be proven at trial in excess of \$75,000;
- b. That AmTote be awarded punitive and/or exemplary damages for willful and malicious conduct;
- c. That AmTote be awarded the costs and expenses related to the lost investment in the development of its totalisator;
- d. That AmTote be awarded attorneys' fees and the costs of this action as permitted by law;
- e. That Kentucky Downs disgorge any monies obtained as a result of the improper actions alleged herein;
- f. That Kentucky Downs be enjoined from utilizing or disclosing the proprietary and confidential information removed from AmTote;
- g. That Kentucky Downs reveal all third parties to whom it revealed AmTote's confidential and proprietary information; and
- h. That AmTote be awarded such other and further relief as the Court deems just and equitable.

COUNT II

TORTIOUS INTERFERENCE WITH EXISTING CONTRACT

62. AmTote hereby repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 56.

63. AmTote entrusts its totalisator services customers with certain confidential and proprietary information, in return for which it requires its customers to execute nondisclosure and confidentiality agreements, like the Agreement with Kentucky Downs.

64. Johnsen, Hughes, Reid, and Encore had full knowledge of the contractual relationship between AmTote and Kentucky Downs.

65. Despite having knowledge of this contractual relationship, Johnsen, Hughes, Reid, and Encore caused Kentucky Downs to breach its contractual obligations by utilizing the totalisator services of Encore during the term of the Agreement, and by funneling AmTote's confidential and proprietary information to Johnsen, Hughes, Reid, and Encore.

66. The interference by Johnsen, Hughes, Reid, and Encore was willful and intentional.

67. This interference was accomplished with improper motive and through improper means.

68. By their conduct, Johnsen, Hughes, Reid, and Encore intentionally interfered with AmTote's existing contractual relationship with Kentucky Downs.

69. Johnsen's, Hughes', Reid's, and Encore's actions proximately damaged AmTote, entitling AmTote to recover compensatory and punitive damages.

WHEREFORE, AmTote prays for the following relief:

- a. That AmTote be awarded the costs and expenses related to the lost investment in the development of its confidential and proprietary information improperly received by Johnsen, Hughes, Reid, and Encore;
- b. That AmTote be awarded compensatory damages in an amount to be proven at trial in excess of \$75,000;
- c. That AmTote be awarded punitive and/or exemplary damages for willful and malicious conduct;
- d. That AmTote be awarded attorneys' fees and the costs of this action as permitted by law;
- e. That Johnsen, Hughes, Reid, and Encore disgorge any monies obtained as a result of the improper actions alleged herein;
- f. That Johnsen, Hughes, Reid, and Encore be enjoined from utilizing or disclosing the proprietary and confidential information removed from AmTote;
- g. That Johnsen, Hughes, Reid, and Encore reveal all third parties to whom they revealed AmTote's confidential and proprietary information; and
- h. That AmTote be awarded such other and further relief as the Court deems just and equitable.

COUNT III

ACTUAL AND THREATENED MISAPPROPRIATION OF TRADE SECRETS AND CONFIDENTIAL INFORMATION

70. AmTote hereby repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 56.

71. The proprietary business and technical information of AmTote constitute trade secrets because AmTote derives independent economic value from that information, such information is not generally known nor readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and because the information is the subject of reasonable efforts to maintain its secrecy.

72. AmTote invested substantial time and millions of dollars in developing and maintaining its confidential and proprietary information. AmTote's confidential and proprietary information is not known outside of AmTote and could be learned by others, if at all, only by the expenditure of prohibitive time, effort and expense.

73. Kentucky Downs, Johnsen, Hughes, Reid, and Encore have actually misappropriated and/or threaten to inevitably misappropriate AmTote's trade secrets without AmTote's consent in violation of the Kentucky Uniform Trade Secrets Act ("KUTSA"). KRS § 365.880 et seq.

74. Kentucky Downs, Johnsen, Hughes, Reid, and Encore knew or had reason to know that information supplied to them, acted on by them or forming the basis of their activities was utilized, removed improperly or derived from persons having a duty to maintain the secrecy of such information.

75. Kentucky Downs, Johnsen, Hughes, Reid, and Encore have been and/or will be unjustly enriched by the misappropriation of AmTote's trade secrets and/or confidential information, and will continue to threaten to use, actually use, divulge, acquire and/or otherwise misappropriate AmTote's trade secrets and confidential information.

76. Kentucky Downs', Johnsen's, Hughes', Reid's, and Encore's misappropriation has been willful and malicious.

77. As a result of the misappropriation of AmTote's trade secrets, AmTote has been injured and/or Kentucky Downs, Johnsen, Hughes, Reid, and Encore have been individually, or in concert with others, unjustly enriched.

WHEREFORE, AmTote prays for the following relief:

- a. That AmTote be awarded the costs and expenses related to the lost investment in the development of its confidential and proprietary information improperly received by Johnsen, Hughes, Reid, and Encore;
- b. That AmTote be awarded compensatory damages in an amount to be proven at trial in excess of \$75,000;
- c. That AmTote be awarded punitive and/or exemplary damages for willful and malicious conduct;
- d. That AmTote be awarded attorneys' fees and the costs of this action as permitted by law;
- e. That Kentucky Downs, Johnsen, Hughes, Reid, and Encore disgorge any monies obtained as a result of the improper actions alleged herein;
- f. That Kentucky Downs, Johnsen, Hughes, Reid, and Encore be enjoined from utilizing or disclosing the proprietary and confidential information removed from AmTote;
- g. That Kentucky Downs, Johnsen, Hughes, Reid, and Encore reveal all third parties to whom they revealed AmTote's confidential and proprietary information; and
- h. That AmTote be awarded such other and further relief as the Court deems just and equitable.

/s/ Reva D. Campbell

Reva D. Campbell, rcampbell@bgdlegal.com

BINGHAM GREENEBAUM DOLL LLP

101 South Fifth Street

3500 National City Tower

Louisville, Kentucky 40202

(502) 587-3554

(502) 540-2268 (facsimile)

COUNSEL FOR PLAINTIFF

AMTOTE INTERNATIONAL INC.

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