



21 Roszel Road, P.O. Box 5226
Princeton, NJ 08540-5226
main 609.924.0808
fax 609.452.1888

WRITER'S DIRECT DIAL: (609) 734-6358

October 3, 2024

Via ECF:

Honorable Robert Kirsch, U.S.D.J.
United States District Court for the District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, NJ 08608

Re: *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, Case No.: 3:23-cv-01368-RK-RLS

Dear Judge Kirsch:

Pursuant to Your Honor's judicial preferences, Cambridge Mobile Telematics, Inc. ("CMT") requests a pre-motion conference and permission to move pursuant to Rule 12(b)(6) to dismiss Sfara, Inc.'s ("Sfara") amended counterclaims for breach of contract (Counts III–VI). The Court has already dismissed Sfara's breach of contract claims once. Dkt. Nos. 127 ("Op."), 128. The Court should dismiss them again, this time with prejudice, at least because Sfara has failed to "cure the deficiencies identified" in the Court's Order dismissing Sfara's original breach of contract claim. Dkt. No. 128 at 2. Sfara's amended Count V should be dismissed for the additional reason that it fails to state a plausible claim.

Background. Sfara's original breach of contract claim asserted that TrueMotion breached a March 2016 NDA between TrueMotion and Sfara (then known as Apio Systems). Sfara failed to attach the NDA to its original pleading. Sfara has never explained why it held the NDA back from its original pleading.

The Court dismissed Sfara's original breach of contract claim as barred by both Delaware and New Jersey's statutes of limitations. *See Op.* at 8. The Court found that "[w]hile Sfara attempts to invoke the discovery rule by contending that it does not and cannot know when CMT first used [Sfara's] confidential information, it is apparent from the face of Sfara's allegations that *TrueMotion*, CMT's predecessor, used the confidential information by September 6, 2016 at the latest—well outside the statute of limitations period." *Id.* at 9 (emphasis in original). The Court added that "[i]n an abundance of caution, the Court will dismiss Sfara's breach of contract counterclaim without prejudice to allow Sfara the opportunity to provide more information about the scope of the NDA as it relates to CMT." *Id.* at 11. The Court explained that "[b]ecause it is conceivable that Sfara could bring a breach of contract claim against CMT that is *disassociated* from TrueMotion's 2016 violation of the NDA, the Court dismisses Sfara's claim without prejudice." *See Op.* at 11 n.4 (emphasis added).

Sfara's amended counterclaims make clear that Delaware's three-year statute of limitations applies. While Sfara withheld the NDA from its original Answer and Counterclaims, Sfara attached it to its amended claims. The NDA provides that "[t]his Agreement shall be governed by and construed according to the laws of the *State of Delaware* USA" Dkt. No. 138, Ex. 3 at ¶ 9 (emphasis added). Because the NDA itself provides that Delaware law "shall govern," the Court should apply Delaware's three-year statute of limitations. *Chatham Asset Mgmt., LLC v. Adviser Compliance Assocs., LLC*, No. 23-cv-2677, 2023 WL 8295248, at *3 (D.N.J. Dec. 1, 2023) (upholding contractual choice of law).

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Sfara has failed to cure the deficiencies in its original counterclaim. The Court dismissed Sfara’s original counterclaim without prejudice “[i]n an abundance of caution” for a specific purpose: “to allow Sfara the opportunity to provide more information about the scope of the NDA as it relates to CMT” and to attempt to “bring a breach of contract claim against CMT that is disassociated from TrueMotion’s [alleged] 2016 violation of the NDA.” *See* Op. at 11 n.4. Sfara’s amended counterclaims, however, fail to state any claim that is disassociated from its original breach of contract counterclaim. In fact, Sfara has made no effort whatsoever to address the Court’s footnote by “providing more information about the scope of the NDA as it related to CMT.” Thus, CMT requests permission to move to dismiss Sfara’s amended claims.

First, Sfara has failed to “provide more information about the scope of the NDA as it relates to CMT” or “bring a breach of contract claim against CMT” as required by the Court’s Order. At most, Sfara’s amended claims include language such as “TrueMotion (now part of CMT)” breached the NDA. *See id.* at ¶¶ 101, 109, 118, 126. But Sfara used nearly identical language in its original deficient claims. *Compare* Dkt. No. 12 at ¶ 87 (“TrueMotion (and later CMT) breached” the NDA) *with* Op. at 11 n.4 (“it was *TrueMotion*—not *CMT*—that was party to the NDA”). Sfara’s amended claims thus fail to plead a separate cause of action against CMT.

Second, Sfara’s amended breach of contract claims are “associated” with TrueMotion’s alleged September 2016 violation of the NDA and should be dismissed for the same reasons provided in the Court’s Order dismissing Sfara’s original claim. Sfara’s original deficient Count III is essentially identical to Sfara’s amended Counts III, IV, and VI—they allege improper dissemination and use of Sfara’s confidential information as shown below:

Sfara’s Original Counterclaim Count III	Sfara’s Amended Counterclaims
“TrueMotion (and later CMT) breached the provisions of the NDA by using and disseminating Sfara’s confidential information without authorization and for the improper use of commercializing products using Sfara’s confidential information and planning and conducting a competitive business with that information.” Dkt. No. 12 at ¶ 87.	Count III: “TrueMotion (now part of CMT) breached Section 3 of the NDA by allowing Sfara’s confidential information to be disseminated to, and used by, CMT when CMT acquired TrueMotion in 2021.” Dkt. No 138 at ¶ 101.
	Count IV: “TrueMotion (now part of CMT) breached Section 4 of the NDA by disclosing Sfara’s confidential information to CMT when CMT acquired TrueMotion in 2021.” Dkt. No 138 at ¶ 109.
	Count VI: “TrueMotion (and later CMT) breached Section[] 4 of the NDA by using Sfara’s confidential information without authorization.” Dkt. No 138 at ¶ 126.

The Court already found Sfara’s breach of contract theories based on “dissemination”/“disclosure” and “use” of Sfara’s confidential information to be associated with TrueMotion’s alleged 2016 breach and

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therefore barred by the statute of limitations. *See* Op. at 8–11. For the same reasons the Court dismissed Sfara’s original Count III, the Court should dismiss Sfara’s Amended Counts III, IV, and VI.

Sfara’s Amended Count V (alleging publication of confidential information in the ’368 Patent) is similarly associated with TrueMotion’s alleged 2016 violation of the NDA because it is based on the same set of underlying pleaded facts. *See* Dkt. No. 138 at ¶ 38. Sfara had at least inquiry notice of potential breaches of the NDA upon TrueMotion’s announcement of a competing crash product in 2016. *See RoboticVISIONTech, Inc. v. ABB Inc.*, No. 22-cv-1257-GBW, 2024 WL 1299691, at *3, 6 (D. Del. Mar. 27, 2024) (party obtained inquiry notice upon launch of competitor’s product when the party knew that competitor potentially had possession of confidential information). Based on this inquiry notice, Count V accrued in 2016 and is barred.

To any extent that Sfara may argue that Count V did not accrue in 2016, it certainly accrued by the time of the publication of the application leading to the “’368 Patent and its family patents” (Dkt. No. 138 at ¶ 40), which occurred no later than February 7, 2019. *See* U.S. Patent No. 11,587,368 (a “[c]ontinuation of application No. 16/054,320,” which published on February 7, 2019). While Sfara omits the 2019 publication date from its pleadings, public USPTO records disclose the date, rendering it appropriate for consideration on a motion to dismiss. *See Dang v. Amarin Corp. plc*, No. 21-cv-19212-RK-TJB, 2024 WL 4285900, at *10 (D.N.J. Sept. 25, 2024). Thus, the three-year statute of limitations still bars Count V even if the Court applies a separate accrual date.

Third, Sfara attempts to claim ignorance of the alleged breaches to avoid the dispositive impact of the statute of limitations. *See, e.g.*, Dkt. No. 138 at ¶ 130. But the Court has already rejected Sfara’s argument. Indeed, Sfara’s amended claims contain the same allegations as its original counterclaim that “TrueMotion was, for the first time, in the marketplace with its . . . crash detection product” by September 6, 2016. *Id.* at ¶ 34 (citing a YouTube video “Uploaded September 6, 2016.”). The Court previously ruled, “[w]hile Sfara attempts to invoke the discovery rule by contending that it does not and cannot know when CMT first used [Sfara’s] confidential information, it is apparent from the face of Sfara’s allegations that *TrueMotion*, CMT’s predecessor, used the confidential information by September 6, 2016 at the latest—well outside the statute of limitations period.” Op. at 9 (emphasis in original).

The Court should also dismiss Sfara’s amended Count V with prejudice because it fails to state a plausible claim. Sfara has pled itself out of court because it alleges both that (1) CMT allegedly published Sfara’s confidential information in its ’368 Patent and its family patents (Dkt. No. 138 at ¶¶ 38, 40, 118), and (2) the information in the ’368 Patent was previously publicly disclosed in Sfara’s ’952 Patent (*id.* at ¶¶ 149-150 (“the 952 Patent discloses all of the limitations of claims 1-4, 7, 9-13, 16-17 and 19-20 of the ’368 Patent”)). Accepting Sfara’s allegations as true for the purpose of this motion only, Sfara’s alleged confidential information was publicly known by 2015—the date of the ’952 Patent’s publication. Sfara cannot plausibly claim that CMT or TrueMotion breached by disclosing information that already was publicly known.

Thus, CMT respectfully requests permission to move to dismiss Sfara’s amended breach of contract counterclaims. Resolution of such a motion will substantially impact the parties’ expert reports due December 7, 2024.

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Respectfully submitted,

/s/ William P. Murtha

WILLIAM P. MURTHA

CC: All counsel of record via ECF