

**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

CULTURAL EXCHANGE SOCIETY, INC., <i>et al.</i>,)	Case No. A2500277
	}	
Plaintiffs,	}	JUDGE: HON. JENNIFER L. BRANCH
	}	
v.	}	
	}	
SEKAI GUILD, <i>et al.</i>,	}	
	}	
Defendants.	}	

**MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

COME NOW, Plaintiffs Cultural Exchange Society, Inc., (“CES”) Melissa Ann Phelps, and Emily DeJesus, by and through counsel, and respectfully move the Court to enter a Temporary Restraining Order (“TRO”) and Preliminary Injunction against Defendants Sekai Guild, Daniel Duffee, Matt Geisen, Jared Hightower, Cody Markum, Benjamin Ng, Erin Reinhard, Kristen E. Reinhard, Liam Rigsby, Michelle Stines, and Griffin Voyls (collectively “Defendants” unless otherwise indicated), under Civil Rule 65(A), the Ohio Uniform Trade Secrets Act, Ohio Revised Code §1333.62.

By their Motion, Plaintiffs respectfully ask the Court to temporarily and preliminarily enjoin Defendants from using confidential business information and “trade secrets,” electronic and physical, within the meaning of Section 1333.61(D) that Defendants stole from Plaintiffs in violation of Ohio Revised Code §2913.01, *et seq.* Plaintiffs also respectfully request that upon entering the requested TRO, the Court schedule a hearing with fourteen days of the same on the application for preliminary injunction under Civil Rule 65(B). This Motion is supported by the January 13, 2025, Verification of Melissa Ann Phelps, and the following Memorandum. A proposed Order detailing the relief requested is attached for the Court’s convenience.

DATED: January 30, 2025.

Respectfully submitted,

/s/ Justin Whittaker

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Plaintiffs Cultural Exchange
Society, Inc., Melissa Ann Phelps,
and Emily DeJesus**

NOTICE OF HEARING

Please take notice that a hearing on the foregoing Motion will come before HON.
JENNIFER L. BRANCH at 9:30 a.m. on January 31, 2025, in Room 320 of the Hamilton
County Courthouse, 1000 Main Street, Cincinnati, Ohio 45202.

/s/ Justin Whittaker

Justin Whittaker, Esq. (0093212)

MEMORANDUM

I. FACTS

The facts relevant to the instant Motion are identified, without limitation, in the “FACTS” section of the Verified Complaint and Jury Demand filed on January 16, 2025, as verified by Plaintiff Melissa Ann Phelps, and realleged and incorporated into the same as if fully rewritten. In sum, this civil action arises under the Ohio Uniform Trade Secrets Act, Ohio Revised Code §1333.61, *et seq.*, and Ohio Revised Code §2913.04, for Defendants’ joint and several, deliberate and knowing, hacking, theft, misappropriation, and unauthorized use of Plaintiffs’ valuable digital and physical assets, confidential business information, and “trade secrets,” related to the annual three-day anime “Ohayocon” anime and gaming Convention taking place in 2025 in Dayton, Ohio between January 31, 2025, and February 2, 2025 (“the Convention”).

Plaintiffs allege that in 2023, Defendants jointly and severally, knowingly, deliberately, and maliciously attempted to extort Ms. Phelps into surrendering ownership and control of the Convention by publicly defaming her to the niche market of persons who have supported the Convention’s success since 2001 with their hard-earned dollars.

Plaintiffs also allege that upon Defendants’ failure to do so, they jointly and severally (a) stole Plaintiffs’ valuable digital assets by “hacking” them from CES’s closed computer networks; (b) stole and/or destroyed CES’s corporate books and records, marketing materials, customer and vendor lists; (c) stole and/or destroyed Plaintiffs’ valuable physical assets which cannot be replaced due to their uniqueness and rarity; (d) locked Plaintiffs out from being able to access their computer networks, (e) stole Plaintiffs’ Facebook, Instagram, and Discord accounts; (f) misappropriated copyrighted materials, trade names and marks, and Plaintiffs’ digital likenesses to sow confusion in the

marketplace; (g) interfere with Plaintiffs existing and prospective business relationships; and (h) further defamed and doxed Ms. Phelps and Ms. DeJesus by using digital means.

Plaintiffs further allege that Defendants were able to illegally gain access to and steal Plaintiffs' valuable assets, in part, because former CES board member Defendant Hightower breached his fiduciary duties to CES by secretly coordinating with the other individual defendants. Plaintiffs also allege that by Defendants' joint and several actions described above and, in the Complaint, they tanked the 2024 Convention, which resulted in massive financial losses. Adding insult to injury, in 2024, Defendants jointly and severally organized Sekai Guild to hold a competing convention called "Sekaicon" in April 2025 in Newark, Ohio, in part by using the valuable digital and physical assets they stole from Plaintiffs.

II. LEGAL STANDARD

"The purpose of a TRO or preliminary injunctive relief is to preserve the *status quo*." *Brookville Equip. Corp. v. City of Cincinnati*, 2012-Ohio-3648, at ¶10 (1st App. Dist.). "The grant or denial of an injunction is solely within the trial court's discretion and, therefore, a reviewing court should not disturb the judgment of the trial court absent a showing of a clear abuse of discretion." *Id.* (citing *Garono v. State* (1988), 37 Ohio St. 3d 171, 173, 524 N.E.2d 496). "A trial court abuses its discretion when its decision is unreasonable, arbitrary, or unconscionable." *Id.* (citing *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217, 219, 450 N.E.2d 1140).

III. ARGUMENT

To prevail, Plaintiffs must demonstrate by “clear and convincing evidence”: **(a)** a substantial likelihood that they will prevail on the merits; **(b)** that they will suffer irreparable injury or harm if the requested injunctive relief is denied; **(c)** no unjustifiable harm to third parties will occur if the injunctive relief is granted; and **(d)** the injunctive relief requested will serve the public interest. *The Proctor & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267, 747 N.E.2d 268 (1st App. Dist. 2000). The Court “must balance all four factors in determining whether to grant or deny injunctive relief, and no one factor is determinative.” *Brookville Equipment*, 2012-Ohio-3648, at ¶11.

A. Plaintiffs are entitled to temporary and preliminary injunctive relief under Rule 65 and Section 1333.62 because they’re substantially likely to prevail on the merits.

The injunctive relief requested by Plaintiffs for the misappropriation of “trade secrets,” is specifically contemplated by Section 1333.62(A). As alleged in the Complaint, under Section 1333.62(A), Defendants’ joint and several unlawful conduct, actual and threatened, may be enjoined for as long as is reasonably necessary to secure Plaintiffs’ rights and to prevent Defendants from securing a commercial advantage that otherwise would be derived from their misappropriation of Plaintiffs’ commercial trade secrets. [Complaint, at ¶95]. In “appropriate circumstances,” “affirmative acts to protect a trade secret may be compelled by court order,” under Section 1333.62(B).

To prevail on a claim of misappropriation of a trade secret, Plaintiffs must **first** show by a preponderance of the evidence, the existence of a “trade secret.” *Kross Acquisition Co., LLC v. Groundworks Ohio LLC*, 2024-Ohio-592, at ¶24 (1st App. Dist.). The term “trade secret” is broadly defined under Section 1333.61(D) as:

Information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Plaintiffs allege that the materials jointly and severally stolen or “misappropriated” by Defendants are things like their (a) books and records, (b) marketing strategies and materials, (c) contracts, (d) vendor, attendee, guest, and volunteer lists, (e) public-facing website, Discord Server, and social media accounts on Instagram, Facebook, Twitter, and others, (f) email server, (g) RefFox, CES’ attendee registration and payment processing software, and (h) Hootsuite, which supplied CES with marketing and social media communication, and (i) the administrative credentials of all of the above. [Complaint, at ¶41].

Not to put too fine a point on it, but the Defendants stole everything they could get their hands on, which undeniably constitutes “trade secrets” under the statute. For example, it’s well-established that customer lists can constitute a “**trade secret.**” *Ret. Corp. of Am. v. Henning*, 2019-Ohio-4589, at ¶27 (1st App. Dist.) (citing *Al Minor & Assocs., Inc., v. Martin*, (2008), 117 Ohio St. 3d 58, 881 N.E.2d 850). Likewise, marketing material and strategies may also constitute trade secrets when compiled and used in a way unique to the Plaintiffs, and such that it could have been duplicated only by the expenditure of vast amounts of time, money, and other resources. *P&G v. Stoneham*, 140 Ohio App. 3d 260, 273, 747 N.E.2d 268 (1st App. Dist. 2000). Given the digital nature

of modern business and marketing practices, passwords, login credentials, and other information allowing Plaintiffs to access their books, records, data, and social media accounts must also be considered “trade secrets” under the circumstances. *MNM & MAK Enters., LLC v. HIIT Fit Club, LLC*, 2019-Ohio-4017 (10th App. Dist.); *Riverhills Healthcare, Inc. v. Guo*, 2011-Ohio-4359 (1st App. Dist.).

Second, Plaintiffs must demonstrate that Defendants acquired trade secrets as the result of a “confidential relationship.” *Kross Acquisition*, 2024-Ohio-592, at ¶24. Though helpful, “[t]he presence of an explicit, binding confidentiality or employment agreement is not required to find misappropriation of a trade secret.” *Fit Club*, 2019-Ohio-4017, at ¶30 (citing *Martin*, 117 Ohio St. 3d 58). To this end, the Plaintiffs allege that Hightower facilitated the misappropriation of their trade secrets while serving on the CES board. [Complaint, at ¶¶31, 34-48]. Thus, Hightower had unique access to the Plaintiffs’ books, records, and intellectual assets since July 2022, [*Id.*, at ¶96], in his capacity as a fiduciary of CES. [*Id.*, at ¶¶117-22].

Moreover, “Ohio courts treat an employee’s duty to protect trade secrets and confidential or proprietary information as a cause of action grounded in tort law.” *Kendall Holdings, Ltd. v. Eden Cryogenics, LLC*, No. 2:08-cv-390, 2010 U.S. Dist. LEXIS 103021, at *17 (S.D. Ohio Sep. 29, 2010) (citations omitted). By enacting Chapter 1333, “Ohio has statutorily prohibited employees, in broadest terms, from disseminating or disclosing confidential matters of the employer without the knowledge and consent of the latter.” *Valeo Cincinnati, Inc. v. N & D Machining Service, Inc.* (1986), 24 Ohio St. 3d 41, 44-45, 492 N.E.2d 814. “The underlying principles of trade secret law, ... are ... the equitable principles of good faith applicable to confidential relationships.” *Wiebold*

Studio, Inc. v. Old World Restorations, Inc., 19 Ohio App. 3d 246, 248, 484 N.E.2d 280 (1st App. Dist. 1985)). Thus, “[t]he employer who has discovered or developed trade secrets is protected against unauthorized disclosure or use, not because he has a property interest in the trade secrets, but because the trade secrets were made known to the employee in a confidential relationship.” *Id.*

Third, Plaintiffs must demonstrate that Defendants’ theft and misappropriation of trade secrets was unauthorized. *Kross Acquisition*, 2024-Ohio-592, at ¶24. That Defendants weren’t authorized to steal Plaintiffs’ valuable commercial information goes without saying. “Express consent to access trade secret information in the course of employment does not also confer express or implied consent to use the information for non-work, personal purposes.” *Fit Club*, 2019-Ohio-4017, at ¶29.

Finally, in analyzing the Plaintiffs’ claims, the Court must consider: (a) the extent to which the information is known outside the business; (b) the extent to which it is known to those inside the business, i.e., by the employees; (c) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (d) the savings effected and the value to the holder in having the information as against competitors; (e) the amount of effort or money expended in obtaining and developing the information; and (f) the amount of time and expense it would take for others to acquire and duplicate the information. *Kross Acquisition*, 2024-Ohio-592, at ¶24 (citing *Salemi v. Cleveland Metroparks* (2016), 145 Ohio St. 3d 408, 49 N.E.3d 1296).

B. Plaintiffs will suffer irreparable injury or harm if the Court denies the requested injunctive relief.

“Irreparable injury” means a harm for which no plain, adequate, or complete remedy at law exists. *Brookville Equipment*, 2012-Ohio-3648, at ¶23. To demonstrate irreparable injury, Plaintiffs don’t have to demonstrate actual harm - threatened harm is sufficient. *Id.* (citing *Convergys Corp. v. Tackman* (2006), 169 Ohio App. 3d 665, 864 N.E.2d 145 (1st App. Dist. 2006)). Nevertheless, Plaintiffs allege that they’ve already suffered substantial harm in the Complaint. Moreover, because of the ongoing and cumulative nature of the harm caused by Defendants' unlawful conduct, there is no plain, adequate, or complete remedy at law available to Plaintiffs. Without the issuance of a TRO and preliminary injunction, that harm will only further compound and no amount of monetary compensation down the road would remedy that.

“[A] substantial threat of harm exists when a defendant employee possesses knowledge of the employer’s trade secrets and begins working in a position that causes [them] to compete directly with the former employer or the product line that the employee formerly supported.” *Mech. Constr. Managers, LLC v. Paschka*, No. 3:21-cv-302, 2022 U.S. Dist. LEXIS 90045, at **32-33 (S.D. Ohio May 19, 2022) (citing *Prosonic Corp. v. Stafford*, 539 F. Supp. 2d 999, 1007 (S.D. Ohio 2008); and *Stoneham*, 140 Ohio App. 3d, at 747). “Because money damages would prove difficult to calculate based on potential loss of customers and prospective customers, Plaintiffs have shown the potential of irreparable harm.” *Id.* (citing *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992) (“an injury is not fully compensable by money damages if the nature of the plaintiff’s loss would make damages difficult to calculate.”)).

C. No unjustifiable harm to third parties will occur if the Court grants the requested injunctive relief.

There are no third parties at issue here. That Defendants may have engaged third parties like hotels and other vendors is immaterial because the event they plan to hold off the back of Plaintiffs' valuable trade secrets isn't until April. Such third parties presumably don't base their success on one three-day event. Rather, they have the entire year to book rooms. People cancel hotel rooms all the time, and often at the last minute. That's the business of running a hotel. Hotels are free to attract guests to fill any gaps left by the absence of Sekaicon.

D. The injunctive relief requested will serve the public interest.

It is difficult to imagine a more important commercial public interest than being secure in one's business property. If employees are allowed to steal confidential information from their employers without swift consequences, employers will flee the state.

CONCLUSION

Due to the foregoing, the Court should grant the injunctive relief requested by Plaintiffs under Civil Rule 65 and Ohio Revised Code §1333.62. Such is necessary and limited to preserving the status quo, securing Plaintiffs' trade secret data, and will not unduly burden the Defendants or any third parties. The Court has the inherent authority to tailor an order accordingly, and only for such time as is necessary to secure the Plaintiffs' legitimate business interests.

DATED: January 30, 2025.

Respectfully submitted,

/s/ Justin Whittaker

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**Counsel for
Plaintiffs Cultural Exchange
Society, Inc., Melissa Ann Phelps,
and Emily DeJesus**

CERTIFICATE OF COUNSEL UNDER CIVIL RULE 65(A)(2)

I certify that I was able to locate the email contact information for eight of the eleven Defendants named in the Complaint in the business records maintained by Plaintiffs in the regular course. Upon information and belief, many of the Defendants use pseudonyms for their electronic presences, which, without discovery, Plaintiffs and the undersigned aren't able to adequately determine at this point. Upon information and belief, the Clerk has issued summonses to all Defendants, though none have yet been returned. The undersigned was unable to locate reliable email addresses for Defendants Geisen, Ng, and Voyls. Nevertheless, the undersigned certifies that the following were served via email on January 30, 2025:

Cody Marcum

[REDACTED]

Jared Hightower

[REDACTED]

Michelle Stines

[REDACTED]

Kirby Reinhart

[REDACTED]

Erin Reinhard



Daniel Duffee



Liam Ri sb



LAW OFFICE OF MARITZA S. NELSON, LLC,
Agent for service of process for Sekai Guild
info@msnlawoffice.com

/s/Justin Whittaker
Justin Whittaker, Esq. (0093212)

**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

CULTURAL EXCHANGE SOCIETY, INC., <i>et al.</i>,)	Case No. A2500277
)	
Plaintiffs,)	JUDGE: HON. JENNIFER L. BRANCH
)	
v.)	
)	
SEKAI GUILD, <i>et al.</i>,)	
)	
Defendants.)	

TEMPORARY RESTRAINING ORDER

This matter is before the Court on the Motion of Plaintiffs Cultural Exchange Society, Inc., Melissa Ann Phelps, and Emily DeJesus for a temporary restraining order (“TRO”) and for preliminary injunction against Defendants Sekai Guild, Daniel Duffee, Matt Geisen, Jared Hightower, Cody Markum, Benjamin Ng, Erin Reinhard, Kristen E. Reinhard, Liam Rigsby, Michelle Stines, and Griffin Voyls (collectively “Defendants” unless otherwise indicated), under Civil Rule 65(A), the Ohio Uniform Trade Secrets Act, Ohio Revised Code §1333.62.

The Court held a hearing on the Motion on January 31, 2025, at 9:30 a.m. at *ex parte* request of Plaintiffs’ counsel. Present were Ms. Phelps and Ms. DeJesus, and their attorney Justin Whittaker. Mr. Whittaker represented to the Court that all but Defendants Geisen, Ng, and Voyls were served via email on January 30, 2025, at the email addresses on file in Plaintiffs’ regularly kept business records.

Having considered the Motion, the arguments of counsel, the facts alleged in the Verified Complaint, and the testimony of Ms. Phelps and Ms. DeJesus, the Court finds as follows:

1. That, Plaintiffs are reasonably likely to prevail on the merits of their claims arising under Ohio Revised Code §1333.61, et seq., for misappropriation of trade secrets;
2. That, Plaintiffs will suffer irreparable harm if injunctive relief isn't granted, such that money damages will be inadequate at trial;
3. That, no innocent third parties will suffer any unjustifiable harm outweighing the irreparable harm Plaintiffs will suffer if injunctive relief isn't granted;
4. That, injunctive relief is in the public interest in that property owners, businesses, and employers must be secure in the knowledge that the courts will promptly enjoin the theft of trade secrets and other property, at least temporarily, to preserve the status quo until a hearing on the merits can be scheduled;
5. That counsel adequately served eight of the eleven Defendants via email in advance of the hearing;
6. That **DEFENDANTS SHALL IMMEDIATELY** cease all activity on the Facebook, Instagram, and Discord accounts in the names of Cultural Exchange Society, Inc. ("CES"), Ms. Phelps, Ms. DeJesus, and any and all iterations of "Ohayocon;"

7. That **DEFENDANTS SHALL** return the exclusive use, ownership, and control of all information necessary and sufficient for Plaintiffs to login to, secure, and access the social media accounts identified in this Order by _____, 2025;
8. That **DEFENDANTS SHALL IMMEDIATELY** cease using directly or indirectly, any information, material, data, records, books, trade secrets, business information, confidential information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (“Trade Secrets”);
9. That at least temporarily, the term “Trade Secrets” **SHALL** be given the broadest interpretation to include any and all information derived by Defendants through their associations with the Plaintiffs, and it is no defense to plead ignorance of the nature of any such information;
10. That in particular, Defendant Hightower owes fiduciary duties to the Plaintiffs resulting from his former position as an officer of CES, and

therefore **SHALL IMMEDIATELY** take all active steps reasonably necessary to secure the Trade Secrets and social media account information identified in this Order;

11. That Defendants **SHALL IMMEDIATELY** cease using and appropriation of trade names, trademarks, and other identifying information associated with “Ohayocon” in any capacity whatsoever;
12. That Defendants **SHALL PRESERVE** all electronically stored information in their possession, custody, and control, touching on the dispute alleged in the Complaint, no matter how remote;
13. That the destruction, deletion, and/or loss of any electronically stored information in the possession, custody, and control of any Defendant **SHALL BE CONSIDERED CONTEMPT** of this Order, without prejudice to Plaintiffs’ rights under the Civil Rules, the Rules of Evidence, and otherwise under Ohio law;
14. That **DEFENDANTS SHALL IMMEDIATELY** cease holding themselves out to any person or entity as being a representative of any of the Plaintiffs in any capacity;
15. That Defendants **SHALL** otherwise take all affirmative steps necessary to ensure their compliance with this Order until such time as a hearing is scheduled on the merits of Plaintiffs’ Motion for Preliminary Injunction;
AND

16. That the Court will hold an evidentiary hearing on Plaintiffs' Motion for Preliminary Injunction on _____.

DATED: _____

**HON. JENNIFER L. BRANCH,
Hamilton County Court of Common Pleas**