

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

CASE NO.: 6:10-cv-1045-ORL-22-GJK

REAL ESTATE INDUSTRY  
SOLUTIONS, LLC,

Plaintiff,

v.

CONCEPTS IN DATA MANAGEMENT  
U.S. INC.,

Defendant.

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**COMPLAINT**  
**FOR COPYRIGHT INFRINGEMENT, MISAPPROPRIATION OF TRADE SECRETS,**  
**AND BREACH OF CONTRACT**  
**DEMAND FOR JURY TRIAL**

Plaintiff, Real Estate Industry Solutions, LLC (“REIS”), by and through undersigned counsel, hereby brings the following Complaint against Concepts In Data Management U.S. Inc. (“CDM”), and in support thereof states as follows:

1. Plaintiff is a Florida limited liability company with its principal place of business in Orange County, Florida.
2. Defendant, Concepts In Data Management U.S. Inc. is a Canadian corporation with its principal place of business at 205 Oxford Street East, Suite 204, London, Ontario, Canada.
3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1367 and 1338.
4. Venue is proper pursuant 28 U.S.C. §§ 1391 and 1400(a).
5. CDM is subject to personal jurisdiction in the state of Florida.

**FACTS**

6. REIS is a wholly owned subsidiary of Florida Realtors, Inc., a Florida not for profit corporation (“FR”).

7. FR is a professional association whose main purpose is to support its real estate agent, broker and appraiser members and advance the Florida real estate industry and private real property ownership in Florida. FR was formerly known as Florida Association of Realtors or “FAR.” The abbreviations “FR” and “FAR” will be used interchangeably herein.

8. REIS provides comprehensive technology solutions and services to FR, its members, and other real estate professionals and businesses across the United States.

**REIS is Exclusive Licensee of FR Copyrighted Real Estate Forms**

9. FR is the owner or joint owner of the copyrights to many real estate forms (the “FR Forms”) used by FR members in connection with real estate transactions for the sale and purchase of real estate in the state of Florida. The FR Forms are not mere blank forms but contain large amounts of text created by FR.

10. FR has registered its copyrights in its forms with the Register of Copyrights. Attached hereto as Exhibit “A” is a list of the FR Forms by title and registration number. The forms set forth in Exhibit “A” are the subject of the infringement claims alleged in this Complaint. The FR forms listed on Exhibit “A” will be referred to herein as the “Registered FR Forms.”

11. REIS is the exclusive licensee of the FR Forms.

**TransactionDesk Services and Support Agreement between REIS and CDM**

12. On November 1, 2008, REIS and CDM entered into an agreement entitled the “TransactionDesk Services and Support Agreement” (the “Agreement”).

13. Pursuant to the Agreement, CDM agreed to furnish to REIS certain services for FR members.

14. The Agreement defines the "Services" to be performed by CDM for REIS as "access to and use of the web-based transaction and document management solution suite of services offered by CDM, known as TransactionDesk, including the development of the application (being the creation, auto-population, monitoring and editing of contracts and forms through internet access utilizing CDM's Instanet Forms service, scheduling, monitoring and editing appointments, events, and tasks, a contacts database, enabling third party viewing), application creation and hosting, support, maintenance, ongoing free unlimited web-based training, and any other services to be provided by CDM pursuant to this Agreement."

15. The TransactionDesk Services consist of a "Software as a Service" (SaaS) application for use by FR members to fill out, save, store, print, and manage real estate forms for real estate transactions.

16. In order to permit CDM to offer TransactionDesk to the FR members, REIS granted to CDM a non-exclusive limited sublicense for the FR Forms "for the sole purpose of electronically compiling and encrypting the blank [FR Forms] for use by [FR members] in connection with the Services."

17. The sublicense was further limited as follows: "CDM does not have the right to make blank [FR Forms] individually accessible by the public from the Internet in any manner. REIS retains all other rights to the specified forms."

18. No other rights with respect to the FR Forms were granted to CDM and REIS retained all other rights to the FR Forms.

19. Pursuant to the Agreement, the TransactionDesk Services are provided securely to

FR members over the Internet via the FR website at [www.FloridaRealtors.org](http://www.FloridaRealtors.org). The Agreement provides that FR members be given a “seamless real time login pass-through enabling Members who have logged in to REIS or FAR websites to gain immediate access to their Service account.”

20. FR members log into the TransactionDesk Services using a username and password. In order to permit FR users access, Section 9(a) of the Agreement provides for CDM to obtain the database of FR members solely for use in connection with the provision of the TransactionDesk Services:

REIS will provide CDM with a list of all persons who are authorized by FAR to access and use the Services as Members, along with their FAR identification, NRDS number or other identifier to tie each individual Member to an account (the "Member Database"). REIS represents that it has obtained the right to provide the Member Database and updates to CDM for use in connection with the Services. REIS grants to CDM during the Term of the Agreement a nonexclusive, limited license to use the Member Database and updates *solely to verify membership, grant Members access to and use of the Services, to generate client reports and to conduct internal research and quality control efforts; provided any information that CDM desires to provide to a third party regarding use of the Services by Members must first be approved by REIS in writing*. REIS retains all other rights, title and interest to the Member Database, and expressly prohibits sale, rental, licensing, sublicensing, repackaging or other commercial use of the Member Database by CDM. REIS will provide the Member Database in a mutually agreed upon format, and may continually update the Member Database. The update received will overwrite and replace the previously supplied Member Database in its entirety. Since REIS must obtain the Member Database from third party sources, REIS does not represent, warrant or guarantee that the Member Database will always be accurate, complete or up to date.

(emphasis added).

21. In order to track FR member use of the TransactionDesk Services, Section 10 of the Agreement provides:

CDM will create and provide REIS with direct access to the Data and log files via API or web service to generate reports detailing the nature of Data uploaded to the System or gathered through use of the Services relating to Members and their transactions, and to online use or access of the Services by End-Users. The results of all reports will be considered Confidential Information of REIS and may not be released by CDM without REIS' prior consent.

22. The Agreement defines "Confidential Information" as "proprietary information of either party, which information is not within the provisions of section 16(c) and which the Disclosing Party (as defined in section 16) delivers or communicates in writing to the Receiving Party (as defined in section 16) as being "confidential information."

23. The Member Database referred to in Section 9(a) was delivered or communicated in writing to CDM as Confidential Information.

24. The data and log files referred to in Section 10 are Confidential Information of REIS.

25. In order to protect the Confidential Information of FR and REIS from disclosure, Section 16 of the Agreement contains confidentiality and non-disclosure obligations and provides:

Each party (the "Receiving Party") agrees to hold all Confidential Information of the other party (the "Disclosing Party") in confidence and not to use any Confidential Information other than as expressly permitted by this Agreement. The Receiving Party shall not disclose any Confidential Information of the Disclosing Party without the prior written consent of the Disclosing Party, other than to those employees, agents, subcontractors or representatives of the Receiving Party who have a need to know such Confidential Information for the purposes of carrying out its obligations under this Agreement.

26. Pursuant to the Agreement, the parties agreed that in the event of a violation of Section 16, money damages would not be a sufficient remedy, and the non-breaching party shall be entitled to seek injunctive relief as a remedy, in addition to all other remedies available at law or in equity.

27. Section 28 of the Agreement prohibits CDM from offering products or services to FR members that are the same as those purchased by REIS for provision to FR members.

28. Section 30 of the Agreement provides for an award of attorneys' fees and costs to

the prevailing party in connection with any dispute.

**REIS Independently Develops Form Simplicity**

29. After introduction of the TransactionDesk Services, REIS and FR began to receive complaints from FR members that TransactionDesk was difficult to use.

30. In response to the complaints of FR members, REIS hired a software developer and independently developed a simple, easy-to-use internet based software application for completing real estate forms entitled "Form Simplicity."

31. Form Simplicity features a simple user interface with large colored buttons and easy navigation. Form Simplicity was designed by REIS at great expense in order to provide novice computer users with a quick and user friendly application. Form Simplicity is intended for FR members who do not need the advanced features available in TransactionDesk, but require electronic access to the FR Forms exclusively licensed to REIS by FR. Attached hereto as Exhibit B is a screenshot of the home screen of Form Simplicity.

**CDM Releases TD Lite**

32. After Form Simplicity was made available to FR members, on or about March 23, 2010, CDM began offering FR members access to and use of a new internet based software application called "TransactionDesk Lite" ("TD Lite").

33. TD Lite was designed to mimic the "look-and-feel" of Form Simplicity. Attached hereto as Exhibit C is a screenshot of the home screen of TD Lite.

34. At the same time it released TD Lite, CDM changed the name of the TransactionDesk Services to "TransactionDesk Pro" ("TD Pro"). On the CDM website, CDM refers to TD Pro as simply TransactionDesk "rebranded." Attached hereto as Exhibit D is a screenshot of the CDM website at [www.instanetsolutions.com](http://www.instanetsolutions.com).

35. Besides the name change, TD Pro is identical to the TransactionDesk Services in all respects.

36. CDM provides access to the FR Forms in TD Lite without authorization of REIS or FR.

37. CDM has used and continues to use the FR member database to provide FR members with access to TD Lite without authorization of REIS or FR.

38. On several occasions CDM has sent promotional email blasts to FR members utilizing the FR member database provided to CDM under the Agreement for the purpose of promoting TransactionDesk without the authorization of REIS. Attached hereto as Exhibit E is an email sent by CDM to FR members on June 22, 2010 promoting TransactionDesk and advising members that it could be accessed directly from [www.transactiondesk.com](http://www.transactiondesk.com).

39. CDM has publicly released FR's confidential user data for the TransactionDesk Services.

40. CDM has failed and refused to give REIS access to the log files.

#### **COUNT I – COPYRIGHT INFRINGEMENT**

41. REIS repeats and realleges paragraphs 1 through 40 as if fully set forth herein.

42. This is an action for injunctive relief and damages for Copyright Infringement in violation of 17 U.S.C. § 501.

43. REIS is the exclusive licensee of the valid copyrights in the FR Forms and the FR Registered Forms set forth in Exhibit "A" hereto.

44. CDM violated the exclusive rights of REIS under the Copyright Act by copying, distributing, performing and using the FR Forms, including the FR Registered Forms, in TD Lite without permission.

45. REIS has been damaged by CDM's actions described herein.

46. The harm caused to REIS is willful, ongoing and irreparable and will continue unless enjoined.

**COUNT II – TRADE SECRETS MISAPPROPRIATION**

47. REIS repeats and realleges paragraphs 1 through 40 as if fully set forth herein.

48. This is an action for injunctive relief and damages for violation of the Florida Uniform Trade Secrets Act, Chapter 688, Florida Statutes.

49. The FR member database and the TransactionDesk data and log files contain information, including a formula, pattern, compilation, program, device, method, technique or process 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.

50. The FR member database and the TransactionDesk data and log files have been the subject of efforts by REIS that are reasonable under the circumstances to maintain their secrecy.

51. CDM disclosed, used and withheld the information contained in the FR member database and the TransactionDesk data and log files without the authorization or consent of REIS.

52. CDM disclosed, used and withheld the information contained in the FR member database and the TransactionDesk data and log files at a time when CDM knew or had reason to know that the FR member database and the TransactionDesk data and log files were acquired under circumstances giving rise to a duty to maintain their secrecy or limit their use.

53. CDM knew or had reason to know that the information contained in the FR



member database and the TransactionDesk data and log files was a trade secret of REIS.

54. REIS has been damaged by CDM's actions described herein.

55. The harm caused to REIS is willful, ongoing and irreparable and will continue unless enjoined.

**COUNT III –BREACH OF CONFIDENTIALITY AGREEMENT**

56. REIS repeats and realleges paragraphs 1 through 40 as if fully set forth herein.

57. This is an action for breach of the confidentiality provisions of the TransactionDesk Services and Support Agreement dated November 1, 2008.

58. Pursuant to the Agreement, CDM agreed to hold all Confidential Information of REIS in confidence and not to use any Confidential Information other than as expressly permitted by the Agreement.

59. The FR member database and the TransactionDesk data and log files are Confidential Information under the Agreement.

60. CDM breached the agreement by using the FR member database and the TransactionDesk data and log files in violation of the Agreement and without the consent of REIS.

61. REIS has been damaged by CDM's actions described herein.

62. The harm caused to REIS is willful, ongoing and irreparable and will continue unless enjoined.

**COUNT IV –BREACH OF CONTRACT**

63. REIS repeats and realleges paragraphs 1 through 40 as if fully set forth herein.

64. This is an action for breach of the TransactionDesk Services and Support Agreement dated November 1, 2008.

65. Pursuant to the Agreement, CDM is prohibited from offering products or services to FR members that are the same as those purchased by REIS for provision to FR members.

66. CDM breached the Agreement by offering FR members TD Lite, which is the same or substantially the same as Form Simplicity.

67. Pursuant to the Agreement, CDM agreed to use the FR member database “solely to verify membership, grant Members access to and use of the Services, to generate client reports and to conduct internal research and quality control efforts; provided any information that CDM desires to provide to a third party regarding use of the Services by Members must first be approved by REIS in writing.”

68. CDM breached the Agreement by a) using the FR member database to provide FR members with access to TD Lite, and b) using the FR member database for unauthorized promotional and marketing efforts as demonstrated by the email attached hereto as Exhibit E.

69. Pursuant to the Agreement, CDM agreed to provide FR members a “seamless real time login pass-through enabling Members who have logged in to REIS or FAR websites to gain immediate access to their Service account.”

70. CDM breached the Agreement by advising FR members in the email attached hereto as Exhibit E that they could access the TransactionDesk Services from [www.transactiondesk.com](http://www.transactiondesk.com).

71. REIS has been damaged by CDM’s actions described herein.

WHEREFORE, REIS respectfully requests the following relief to be entered against CDM:

- a. CDM and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501, § 688.003, Florida Statutes, and breach of the confidentiality

provisions of the Agreement;

- b. CDM be required to pay REIS its actual damages or statutory damages as provided in 17 U.S.C. §§ 504;
- c. CDM be required to pay REIS its damages for misappropriation pursuant to §688.004(1), Florida Statutes;
- d. REIS be awarded its damages for breach of the Agreement;
- e. REIS be awarded exemplary damages in an amount twice that of its damages under (c) above pursuant to §688.004(2), Florida Statutes;
- f. REIS be awarded its attorneys' fees and costs of suit under the applicable statutes sued upon and the Agreement; and
- g. REIS be awarded such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands trial by jury of all issues so triable.

Dated this 12<sup>th</sup> day of July, 2010.

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