IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

Civil Action No. 09-CV-367

LENDINGTREE, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
MORTECH, INC.,	)	
	)	**COMPLAINT FOR INJUNCTIVE**
Defendant.	)	**RELIEF AND JURY DEMAND**
	)	
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Nature of the Action

1.   This is an action seeking injunctive relief that would enjoin Defendant Mortech, Inc. ("Mortech") from violating the terms of a valid and existing contract between Mortech and Plaintiff LendingTree, LLC ("LendingTree").

2.   The dispute in this matter arises out of a contract in which Mortech agreed, with limited exceptions, not to make certain of its services available for use with LendingTree's competitors. Mortech has entered into a relationship with Google Inc. ("Google") that contravenes the express language of Mortech's agreement with LendingTree.

Jurisdiction and Venue

3.   This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. There is complete diversity of citizenship. LendingTree is a Delaware LLC whose sole member, LendingTree Holdings Corp., resides in Delaware. LendingTree's principal place of business is in North Carolina. Mortech is a Nebraska corporation with its principal place of business in Nebraska. The amount in controversy requirement is satisfied as the pecuniary result of an injunction, though difficult to determine, would be worth substantially more than $75,000 to LendingTree.

4.   Venue is proper in this district under 28 U.S.C. § 1391(a) because a substantial portion of the events giving rise to this action occurred in this district. Moreover, the contracts at issue in this litigation state that LendingTree and Mortech have agreed that any dispute arising under those contracts are to be governed exclusively by the laws of the State of North Carolina and would be heard in state or federal courts located in Charlotte, North Carolina.

Factual Allegations

5.   LendingTree is a leading online mortgage loan aggregator, operating a website that provides customers with conditional mortgage loan offers from lenders in LendingTree's network. LendingTree provides these offers by forwarding various information provided by customers to lenders who evaluate that information and return conditional loan terms. Generally, this process takes as few as five minutes.

6.   LendingTree works with Mortech, a company that provides a technology solution known as a "pricing engine" that assists LendingTree's lenders in generating conditional loan offers.

7.   LendingTree considers Mortech to be its "preferred provider" for pricing engine services. Although it is LendingTree's lenders, rather than LendingTree itself, that contract directly with Mortech for its services, LendingTree prefers that lenders work with Mortech. Consequently, Mortech provides pricing engine services to more LendingTree lenders than any other pricing engine vendor.

8.   LendingTree routinely provides Mortech with confidential information regarding LendingTree's customers and lenders. To protect the confidentiality of this information, LendingTree and Mortech executed a confidentiality agreement in April 2008. The confidentiality agreement prohibits both parties from disclosing to a third party information treated as "confidential, proprietary, or a trade secret."

9.   In November 2008, LendingTree requested that Mortech sign an amendment to their confidentiality agreement that would limit Mortech's ability to make its pricing engine services available for use with other online loan aggregators. Mortech signed what the parties called an "Addendum Agreement" incorporating this change.

10.   The Addendum Agreement provides that, subject to a limited exception, Mortech would "not post or otherwise provide data associated with an offer for a loan product directly to any online loan aggregator."

11.   In consideration of Mortech's promise, LendingTree agreed to forgo various payments due to it under the confidentiality agreement. LendingTree also agreed to "offer its customers the product, pricing, lead management and eligibility solutions of [Mortech] when offering such services to its clients and customers." LendingTree has at all times adhered to its responsibilities under the Addendum Agreement.

12. Following the establishment of this agreement, LendingTree sought Mortech's input on the development of new LendingTree products and services that, without the Addendum Agreement, it would not have discussed with Mortech. LendingTree tasked its executive responsible for product innovation to discuss with Mortech a variety of ideas for new LendingTree services. As recently as June 23, 2009, representatives from LendingTree and Mortech met to evaluate a number of ideas that LendingTree is currently developing and intends to bring to market in the future.

13. LendingTree recently learned that Google imminently plans to launch a loan aggregation service in late August or early September of this year that would compete directly with LendingTree. LendingTree has also learned that Mortech intends to make its pricing engine services available for use with Google's new service and will send information related to mortgage loan offers to be displayed to consumers on Google's website.

14. LendingTree obtained "screen shots" of the trial version of Google's service that further indicate that, like LendingTree's service, Google will provide customers with conditional loan offers in addition to lenders' contact information.

15. Mortech has already breached the Addendum Agreement by providing data related to mortgage loan offers to Google in connection with Google's beta test of its new product.

16. Upon learning that Mortech intended to violate the Addendum Agreement, LendingTree executive Robert Harris immediately contacted Donald Kracl, the President of Mortech. On August 13, 2009, Kracl told Harris that Mortech had agreed to work with Google's loan aggregation service and to provide that service with data regarding lenders' *wholesale* loan rates. On August 18, 2009, Kracl and Harris spoke again, and Kracl said that Mortech intended

to provide Google's service with *retail* loan rates. Later that same day, Kracl returned to his

original story and told Harris that Mortech would be providing Google with wholesale loan rates.

In none of these conversations did Kracl deny that Mortech had agreed to make its pricing engine

services available, whether with respect to wholesale or retail prices, for use with Google's

service.

19. In the course of its collaboration with Google, Mortech will inevitably disclose

the confidential, proprietary, and secret information that it has about LendingTree. In reliance

upon the Addendum Agreement, LendingTree provided Mortech with substantial information

regarding LendingTree's ideas for future products. LendingTree has sought, including through

the Addendum Agreement itself, to keep this information confidential. Mortech will

undoubtedly use this information during the course of its relationship with Google and such

disclosure will irreparably damage LendingTree's future business.

FIRST CLAIM FOR RELIEF

Breach of Contract

18. LendingTree restates and realleges the allegations in paragraphs 1-17 of this

Complaint as though fully set forth herein.

19. By providing Google with pricing data associated with an offer for a loan product,

Mortech has directly violated the express terms of the Addendum Agreement. LendingTree has

complied with the Addendum Agreement and the Confidentiality Agreement in all respects.

20. Unless Mortech is temporarily restrained and preliminarily and permanently

enjoined from breaching the Addendum Agreement, LendingTree will suffer immediate,

substantial, and irreparable harm, including:

A. the disclosure of confidential, proprietary, and secret information

regarding LendingTree's future products; and

B. the loss of future LendingTree customers.

21. Because of this immediate, substantial, and irreparable harm, and because LendingTree cannot determine a specific amount in damages, LendingTree seeks temporary, preliminary and permanent injunctive relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, plaintiff LendingTree, LLC respectfully prays for judgment as follows:

1. That the Court find Mortech to be in breach of contract, in contravention of the common laws of the State of North Carolina;

2. That the Court enter an order enjoining, on a temporary, preliminary, and permanent basis, Mortech from violating the terms of the Addendum Agreement, including any and all actions Mortech may undertake to make its pricing engine services available for use with Google's online loan aggregation service, and any and all disclosures of LendingTree's confidential information;

3. That the Court award LendingTree attorneys' fees; and

4. That the Court grant LendingTree such additional relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff LendingTree, LLC respectfully requests that its claim against Mortech, Inc. be tried before a jury.

Respectfully submitted, this 25th day of August, 2009.

LENDINGTREE, LLC

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