IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

INTERNATIONAL MARKETING GROUP, INC.,	)	
Plaintiff/Appellee,	)	Appeal No. M1999-00468-COA-R3-CV
v.	)	
LEE SPEEGLE, JAMES AKIN, CLIFF WAITS, MUSIC PLUS, MIKE ADKINS, and VERN ADKINS,	)	Davidson County Chancery Court No. 95-1421-II
Defendants/Appellants.	)	

APPEAL FROM THE DAVIDSON COUNTY CHANCERY COURT
AT NASHVILLE, TENNESSEE

HONORABLE CAROL L. McCOY, CHANCELLOR

Bob Lynch, Jr and Todd E. Panther, Nashville, Tennessee, Attorneys for Defendants/Appellants.
Timothy Lee Warnock, Nashville, Tennessee, Attorney for Plaintiff/Appellee.

AFFIRMED

INMAN, Sr. J.

Concur:
CRAWFORD, P.J., W.S.
LILLARD, J.

This is an action for injunctive relief and damages, arising out of agreements not to compete.

Judgment was entered against the defendants for $13,500,000.00, two of whom, Mike Adkins and Music Plus, appeal. We affirm.

The Complaint as Twice Amended

The plaintiff [IMG] alleged that:

(1) It was incorporated in 1987 and thereafter engaged in the business of manufacturing, marketing, distributing and selling audio and video cassettes, compact discs, books on tape, paperback books and atlases, principally to truck stops, convenience stores and independent grocery stores and markets throughout many of the United States.

(2) It employed Lee Speegle and James Akin who entered into employment agreements in early 1994. These agreements contained the following provisions:

> Certain Covenants. (a) [Speegle/Akin] will not at any time or in any manner, directly or indirectly, utilize or disclose to any person, including a partnership, corporation, association, trust or other entity, except IMG and its duly authorized officers or employees, any information, including without limitation, customer lists and records, or other methods of operation, including without limitation, promotions, advertising, marketing techniques and business systems of IMG in the course of his [respective] employment with IMG.
>
> > For the period of six (6) months after termination of his employment, as provided in this agreement, [Speegle/Akin] will not hire or cause to be hired by any person employed by IMG as of such termination date.
> >
> > During his employment and for a period of twenty-four (24) months after termination of his employment, [Speegle/Akin] will not, as an individual on his own account, as a partner of joint venturer, as an employee or agent for any person or entity, or an officer, director or shareholder of any corporation . . . directly, or indirectly, engage in the distribution, marketing or

> sale of audiotapes or any other products sold by {Speegle/Akin] during his employment with IMG to any individual or entity which is located in those market areas in which [Speegle/Akin] worked while employed by IMG. [Speegle/Akin] expressly agrees that for such twenty-four (24) month period he will not, whether by mail, telephone, in person or any other market, sell or provide to any person or entity that is a past or current customer of IMG and a customer which [Speegle/Akin] contacted and/or sold audiotapes or any other product on behalf of or as a representative of IMG during [Speegle's/Akin's] employment hereunder.

(3) Speegle began working for IMG in 1990 as sales manager of its Rack Division which was responsible for supplying fixtures for truck stops, and convenience stores and markets. As sales manager, it was Speegle's duty to respond to customer requests, to manage sales personnel and to develop new business. His territory encompassed 33 states.

(4) During his employment with IMG, Speegle had full access to confidential and proprietary information pertaining to IMG, including customer lists, marketing strategies, pricing information, the identity of supplies, inventory levels, development of sales routes, product mix, promotion schemes, and the use of fixtures for storage of goods.

(5) Speegle spent a substantial portion of his time with the company's customers and potential customers, because personal relationships with customers are crucial to the Rack sales industry; that customers are gained or lost on the basis of the relationship between IMG and the store manager for each account, and that Speegle and his subordinates expended a significant amount of the plaintiff's money developing and strengthening plaintiff's relationship with the "decision makers" for each of its accounts.

(6) In early 1994, Mike Adkins, his father Vern Adkins, and Speegle started a business

known as "Music Plus" while Speegle still was employed by IMG. Music Plus engaged in the sale of wholesale music supplies and specialized in video and audio products in direct competition with plaintiff.

(7) Adkins and Speegle were partners in Music Plus at the time it commenced business, but that Music Plus, Inc. was incorporated in Georgia on February 10, 1995, with Adkins as President and Speegle as Secretary-Treasurer.

(8) Speegle, while still employed by the plaintiff, recruited the plaintiff's customers on behalf of Music Plus.

(9) Speegle resigned from his employment with the plaintiff on November 11, 1994, without notice, falsely representing that he intended to work for a company selling petroleum products.

(10) Mike Adkins, Vern Adkins, Speegle, and Music Plus deliberately and unlawfully competed with the plaintiff in violation of the non-compete agreements and that Mike Adkins and Music Plus solicited and induced two other employees of the plaintiff to work for Music Plus.

(11) After this complaint was filed, Michael Adkins and Music Plus engaged in a pattern of activity designed to mislead the Court, by altering invoices, falsifying employment applications, and other unlawful schemes.

(12) The plaintiff sustained significant damages owing to the loss of many customers, and accounts directly attributable to the unlawful actions of Michael Adkins and Music Plus, in violation of the non-compete agreements.

(13) Mike Adkins and Music Plus violated T.C.A. § 47-50-109 by their intentional interference with the employment agreements.

The Answers of Mike Adkins, Vern Adkins, and Music Plus, Inc.

The defendants denied all allegations of wrongdoing, and asserted that the plaintiff had no exclusive access to potential customers of either the plaintiff or Music Plus. They deny that the plaintiff suffered any harm as a result of any representations made by Speegle, and denied that any factual basis existed for the issuance of a restraining order.

The Judgment and Issues

A judgment by default was entered against Speegle and Adkins on the issue of liability. Following trial, the Chancellor awarded damages in the amount of $4,500,000.00, trebled to $13,500,000.00. The defendants Mike Adkins and Music Plus appeal and present for review these issues:

1. Did the trial court err in considering IMG's "damage model" as a basis for lost profits?

2. Did the trial court err in its basis and calculation of damages?

3. Did the trial court err because plaintiff failed to prove that defendants caused any loss of business?

4. Did the trial court err in finding that Mike Adkins procured the breach of the IMG employment agreements?

5. Did the trial court err in finding Mike Adkins individually liable for goods had and received?

6. Did the trial court err in enforcing the employment agreements?

Certain issues are presented by the appellee which are pretermitted in light of our resolution of the case.

Standard of Review

This is a non-jury case and appellate review is *de novo* on the record accompanied by the presumption that the judgment is correct unless the evidence otherwise preponderates. Rule 13(d), T. R. A.P.

Discussion

I

In the first issue, appellants insist that the Chancellor erred in considering IMG's "damage model" as a basis for lost profits. This exhibit projects profits and losses for the years 1994 thru 2001. It was prepared by Mike Lytle, an official of IMG, who is critiqued as unqualified because he is neither an appraiser nor a certified public accountant. Appellants argue that the model was impermissibly speculative.

The record reveals that Lytle has a degree in economics from Vanderbilt University with additional study at the London School of Economics. He is the general manager of IMG's Rack Division, and handled all of accounting for IMG. Whether he was qualified to testify as an expert was within the discretion of the Chancellor. *Blalock v. Clariborne*, 775 S.W.2d 363 (Tenn. Ct. App. 1989). We find no abuse of discretion.

According to the model produced and introduced by Lytle, his employer sustained damages for the years mentioned in the amount of $8,650,097.00 or slightly less than the one-half of the amount allowed by the Chancellor.

We have alluded briefly to the evidence presented on the issue of damages notwithstanding that the appellants waived any objection to Lytle's qualifications as an expert by failing to object. Moreover, they did not object to the "damage model," see, Rule 31(a), T.R.A.P.; *Whaley v. Rheem Manufacturing Co.*, 900 S.W.2d 296 (Tenn. Ct. App. 1995); *Wachovia Bank & Trust Company v.*

Glass, 575 S.W.2d 950 (Tenn. Ct. App. 1978), and thus the issue is beyond the reach of this court. In any event, we have examined the documents and considered the testimony in explanation and support of it and cannot find that the evidence preponderates against the finding of the Chancellor.

II

In the second issue, the appellants argue that the Chancellor erred in the calculation of damages. She reasoned:

> "The actions of Michael Adkins and Lee Speegle stripped IMG of more than one half of its former sales force and almost half of its customers. IMG had been in operation in its rack division for approximately three to four years at the time that Mr. Speegle resigned his employment without notice on or about November 11th, 1994. The proof reflects that Mr. Speegle misrepresented the reason why he was leaving . . . While he had been employed, Mr. Speegle, had been working on behalf of Music Plus in conjunction with Mr. Adkins. Mr. Speegle had violated the non-compete agreement, and the Court finds that Mr. Michael Adkins, one, knew of the existence of that contract at the time of the restraining order and for the reasons that I've previously stated at the time of the restraining order evidenced a concerted effort to target IMG, its customers, and the profits which it had been making."

Appellants propose that the Chancellor should have calculated damages based on the invoices of customers lost prior to and after the injunction, arguing that this method measures the damages by "adding the value of the invoices and taking a reasonable net profit margin to arrive at the damages." The appellee counters this argument by pointing out that the appellants did not introduce any evidence in support of the method of calculation they advance on appeal. In this connection, the record reveals that the appellants employed an accountant to rebut the "damage model," but this witness did not testify about the method of calculating damages the appellants now propose.

The Chancellor observed:

> "The cover sheet or the first page of the damage model talks about factors which resulted in a loss substantive to IMG. It is not, however, upon that which the damage model is based for the reasons that Mr. Lytle explained and for which injunctive

> relief is generally required because it is difficult to calculate how a company would be damaged in this instance."

The Chancellor took into consideration the projected revenue of Music Plus in addition to the profits lost by IMG. Since Music Plus procured the breach of the non-compete contract, some reliance on the effect of this conduct on Music Plus is entirely appropriate.

The "damage model" demonstrated that from 1994 to 2002 IMG would suffer damages attributed to the actions of the defendants in the amount of $8,650,097.00. The damage model reflected lost profits for 1995 through 1998 in the amount of $4,611,000.00; superimposed is the admission by appellant Music Plus that it expected annual revenues of $1,500,000.00[1]

We are unable to find that the Chancellor miscalculated the damages or that they were not properly quantified. The evidence does not preponderate against this finding.

III

The appellants next argue that the Chancellor erred because the plaintiff failed to prove the defendants caused any loss of business.

In this connection, the Chancellor found:

> "Adkins, Speegle and Music Plus' actions in contacting prior IMG customers and undercutting IMG's prices were a proximate cause of the breach . . . Music Plus took almost 50% of the top accounts that IMG had . . . those were among the most profitable. The actions of Speegle and Adkins stripped IMG of more than one-half of its former sales force, almost 50% or its customers, and caused a loss of one-half of its revenue during the next year."

Speegle was employed by the plaintiff in 1990, and the allegations of the complaint that he spent a substantial portion of his time with the plaintiff's customers and potential customers, because

[1]Relevant on the issue of Music Plus' success as a result of its raids on IMG, but only marginally relevant on the issue of damages.

person relationships with customers are crucial to the Rack sales industry are not contested. It is not controverted that customers are gained or lost on the basis of the relationship between IMG and the store manager for each account, and that Speegle and his subordinates expended a significant amount of IMG's time and money developing and strengthening IMG's relationship with the "decision makers" for each of IMG's accounts, which was accomplished through employee time, phone calls, travel and entertainment, all at IMG's expense. It is further not seriously disputed that through his employment with IMG, Speegle was able to develop relationships with IMG's customers, and that the goodwill of IMG inured to his benefit.

In early 1994, Mike Adkins, Vern Adkins[2] and Speegle started a business known as "Music Plus" while Speegle still was employed by IMG.[3] Music Plus engaged in the sale of wholesale music supplies and specialized in video and audio products in direct competition with IMG. The evidence strongly indicated that Mike Adkins, Vern Adkins and Speegle were defacto partners in Music Plus before its incorporation, and Speegle, *while still on IMG's payroll*, recruited and called on customers on behalf of "Music Plus."

Speegle resigned from his employment with IMG without notice on or about November 11, 1994, stating falsely that he was going to work for a company selling petroleum products. Instead, he began working full-time for Music Plus in violation of his non-compete agreement and began

---

[2]Who provided financial support and contributed property to the Music Plus venture. More about him later.

[3]Evidence established that Mike Adkins, Vern Adkins and Speegle formed Music Plus *before* Speegle resigned from his employment with IMG on November 11, 1994.

servicing accounts he had called on while employed by IMG.[4]

The record clearly reveals that after Speegle was employed by Music Plus in a managerial capacity, Music Plus, Vern Adkins and Mile Adkins knew that he had entered into a non-compete agreement with IMG. Notwithstanding their knowledge of this agreement, Mike Adkins, Vern Adkins, Music Plus and Speegle, in apparent disdain of Speegle's obligations under the agreement, engaged in competition with IMG in the areas specifically prohibited by the non-compete agreement. It is not seriously disputed that upon the formation of Music Plus, the defendants actively solicited former customers of IMG, and that they solicited and hired two former employees of IMG, Akin and Lewis Clough, in violation Speegle's non-compete agreement, which provided that he would not hire or cause to be hired former employees of IMG for a period of six months. Thus it was that Mike Adkins and Music Plus recruited a substantial portion of IMG's sales force.

It is significant that after this lawsuit was filed the appellants began a pattern of unethical activity. Discovery revealed that Mike Adkins and Speegle had (1) altered invoices to disguise sales to accounts expressly prohibited by order of the Chancellor, (2) falsified employment applications, which purported to show beginning dates of employment consistent with Appellants' testimony, but which did not exist until the lawsuit was filed and (3) persuaded Deborah Harper, a Music Plus employee, to violate the terms of the injunction by arranging direct contact between Speegle and certain customers.

When evidence of this conduct developed, Mike Adkins, through counsel, focused the blame on Speegle. He allegedly terminated Speegle's employment after learning that a default judgment

---

[4]Even after he was enjoined from doing so, Speegle continued to call on IMG customers and servicing their accounts. He was Secretary-Treasurer of Music Plus, Inc.

had been entered against him.[5] Speegle continued, however, to work for Music Plus and remained on its payroll for at least an additional seven months.[6]

IV

The appellants complain that the Chancellor erred in finding that they procured the breach of the employment agreements.

To recover for procurement of breach of contract under the statute, it must be proved that (1) a contract existed, (2) Mike Adkins and Music Plus had knowledge of the existence of the contract, (3) Mike Adkins and Music Plus intended to bring about or cause its breach, (4) Mike Adkins and Music Plus acted maliciously, (5) the contract was in fact breached, (6) Mike Adkins and Music Plus's actions were the proximate cause of the breach and (7) IMG suffered damages as a result of the breach. *TSC Indus. Inc. v. Tomlin*, 743 S.W.2d 169, 173 (Tenn. Ct. App. 1987); *Campbell v. Matlock*, 749 S.W.2d 748 (Tenn. Ct. App. 1987). The Chancellor found that IMG was entitled to treble the amount of damages resulting from the breach, pursuant to T.C.A.§ 47-50-109, which provides:

> **47-50-109. Procurement of breach of contracts unlawful–Damages**.
> It is unlawful for any person, by inducement, persuasion, misrepresentation, or other means, to induce or procure the breach or violation, refusal or failure to perform any lawful contract by any party thereto; and, in every case where a breach or violation of such contract is so procured, the person so procuring or inducing the same shall be liable in treble the amount of damages resulting from or incident to the breach of the contract. The party injured by such breach may bring suit for the breach and for

---

[5]But probative evidence indicated that a measure of dissembling was involved. Revelations at discovery generated the filing of two amended complaints.

[6]We agree that the record contains substantial evidence that the purported termination of Speegle was a pretext in keeping with Mike Adkins's litigation strategy of blaming all misconduct on Speegle.

such damages. [Acts 1907, ch. 154, § 1; Shan., § 3193a8; mod. Code 1932, § 7811; T.C.A. (orig. ed.), §§ 47-1706, 47-15-113.]

The Chancellor found:

> "IMG established each element necessary to demonstrate unfair competition and procurement of breach of contract by Adkins and Music Plus: (1) the employment contract between Speegle and IMG was reasonable in duration, scope and activity, (2) Adkins solicited Plaintiff's employee while the employees were bound by a non-compete agreement with the Plaintiff; (3) Adkins had Speegle working as his partner in Music Plus on or before October 4, 1994, while Speegle was still employed by IMG and in violation of Speegle's non-compete agreement with IMG; Adkins unfairly targeted and raided IMG's business, employees and customers; (5) Adkins and Speegle were partners in Music Plus in the fall of 1994 and both of them are charged with the knowledge of Speegle's non-compete agreement with IMG; (6) Adkins used Speegle and other means to deceive IMG and this Court about Music Plus' business activities; (7) Adkins engaged in pervasive and material perjury during discovery which was calculated to evade or stymy discovery on issues central to this case; and (8) IMG sustained substantial damage as a result of Adkins', Speegle's and Music Plus' wrongful conduct."

These conclusions are amply supported by the great weight of the evidence.

Mike Adkins denied any knowledge of the non-compete contracts until he was served with the injunction. The Chancellor disbelieved him ["engaged in pervasive and material perjury . . ."] and the evidence tends to show that he, in fact, was aware of the contracts. Moreover, the evidence is clear *that after the restraining order was served* Adkins allowed Speegle to continue his breaches of the contract.

As noted by the appellee, most of the business of Music Plus was conducted *after* the Temporary Restraining Order was entered, and it was *after* the date of the Temporary Restraining Order that the appellants altered invoices and fabricated employment applications.

This record is replete with evidence that Mike Adkins and Music Plus knew about the contract and that they intended to breach it and acted maliciously in doing so. The finding of the Chancellor to this effect is supported by the preponderance of the evidence.

The penalty of the statute is harsh and should not be enforced except upon a clear showing of a deliberate and malicious intent to procure and induce a breach of contract. *Emmco Insurance Co. v. Beacon Mutual Indemnity Co.* 322 S.W.2d 226 (Tenn. 1959). It is a statutory declaration of the common law tort action, expressly substituting treble damages for punitive damages. *Polk & Sullivan Inc. vs. United Cities Gas Co.* 783 S.W.2d 538 (Tenn. 1989). The conduct of the appellants, from any perspective, was egregious and the enforcement of the statute was justified.

V

The appellant Adkins argues that the Chancellor erred in finding him liable for goods had and received in the amount of $9,248.27. We may dispose of this issue by observing that Adkins admitted upon the trial that he was personally liable for this item of damages, and it need not be further noticed.[7]

VI

The appellants next insist that the employment agreement should not be enforced.

Tennessee courts enforce non-compete agreements if they are reasonable. *Central Adjustment Bureau, Inc. v. Ingram*, 678 S.W.2d 28, 32 (Tenn. 1984). Three factors are considered in determining whether non-compete covenants are reasonable: (1) whether sufficient consideration exists for the covenant, (2) whether the covenant is reasonable both in terms of the time period involved and geographic limitation and (3) the hardship on the parties. The Chancellor found that

[7]At argument, there was an allusion that liability could not be fostered upon Music Plus, Inc. for the wrongful acts of its officers. This assertion is not presented as an issue for review and the question is not briefed. Consequently, we do not further notice it. Neither is the propriety of the restraining order an issue for review.

the restrictive covenants in this case meet all three requirements.

The restrictive covenants are supported by adequate consideration. In *Central Adjustment,* 678 S.W.2d at 32-34, the Tennessee Supreme Court held that an employer's promise of future employment to an employee constitutes adequate consideration for the employee's agreement not to compete. Moreover, a promise of future employment provides adequate consideration even if the restrictive covenant was signed after employment began.

Appellants concede that: "It is unlikely that the court in the present case would strike down the restrictive covenant on the grounds that it goes against the public interest or for want of consideration."

Speegle and Akin signed the restrictive covenants after they became employed with IMG, and IMG in turn promised and provided Speegle and Akin with future employment. IMG also expanded its operations and invested in additional assets and equipment after the non-compete agreements were executed. We agree with the Chancellor that the restrictive covenants are supported by adequate consideration.

We also agree that the restrictive covenants are reasonable as to both time and geographic limitations. Covenants more restrictive than the covenants in this case have been upheld. *See, e.g., Ramsey v. Mutual Supply Co.*, 427 S.W.2d 849 (Tenn. Ct. App. 1968) (five years). In *Thompson, Breeding, Dunn, Creswell and Sparks v. Bowlin*, 765 S.W.2d 743 (Tenn. Ct. App. 1987) (three years). The two-year limitation in the case at Bar falls well within the requirement of a reasonable time period. *See also William B. Tanner Co. v. Taylor*, 530 S.W.2d 517 (Tenn. Ct. App. 1974) (holding that a nationwide two-year restriction for sales manager of media firm was reasonable.) Appellants concede that: "It is unlikely that the court would strike down the time limit on the

restrictive covenant in this particular case."

The restrictive covenants are also reasonable in terms of geographic limitation because they merely prohibit Speegle and Akin from selling to IMG's customers or former customers and to entities that were within Speegle and Akin's sales territory while they were employed by IMG. *See, e.g., Thompson, Breeding, Dunn, Creswell & Sparks v. Bowlin*, 765 S.W.2d 743,745 (Tenn. Ct. App. 1987) (covenant by accountant not to solicit clients of his accounting firm for three years after termination of his employment upheld as reasonable); *Central Adjustment Bureau*, 678 S.W.2d at 36 (defendants could be prohibited from competing with the plaintiff "in the very area in which they had worked previously").

Appellee argues that the nature of its business necessitates the use of non-compete agreements. This counters the argument of the appellants that IMG's business does not require the use of non-compete agreements.

Mike Lytle testified that the confidential nature of the business requires that IMG impose non-compete agreements on its employees. His testimony, coupled with that of Flatt, an officer of IMG, established the confidential and proprietary nature of much of the information to which IMG's employees have access:

> IMG has trucks with specially designed bays which enable IMG's sales representatives to do their jobs more efficiently.
>
> Music Plus came to possess Speegle's Rolodex, which Mike Lytle testified contained customer-specific, confidential information, and former IMG sales representative Lewis Clough's route book, which Rick Flatt testified contained confidential and proprietary information.
>
> IMG does not call on every customer at every location at which a salesperson makes calls, and thus that information regarding the development of sales routes is confidential and proprietary. Mike

> Lytle testified that different customers carry varying levels of profitability, and that trying to sell entertainment products to every convenience store and retail location on each road would be too costly.
>
> Testimony during trial also established that every location does not possess the same product mix, and thus that the number of particular titles placed in one location as opposed to another is confidential.
>
> Information concerning the profitability of each store, pricing information and rebates was not available to anyone other than certain IMG employees, including Speegle. Mike Lytle testified that pricing information consists of more than simply the retail price on the cassette box. Information regarding the current supplier's wholesale price or rebate information is not available to anyone but the customer. Both Mike Lytle and Rick Flatt testified that they are unaware of any customer revealing competitive pricing information to Mike Adkins or Music Plus, and no contrary testimony was offered Mike Lytle testified that the manager of any particular location would have no reason to know about the pricing relationship between IMG and the owner of the truck stop.

It is abundantly clear that Speegle and Akin used the confidential information they gained at IMG in their work at Music Plus.

The appellee argues that it would have suffered far more severely if the non-compete agreements were not enforced than appellants will suffer as a result of the agreements being enforced and the Chancellor by inference so found. We agree that the balance of hardships between IMG and appellants weighed heavily in favor of IMG. This court considered the hardship factor in *William B. Tanner Co. v. Taylor*, 530 S.W.2d 517, 523 (Tenn. Ct. App. 1974), and indicated that an employee does not suffer hardship merely because he must fulfill the terms of a non-compete agreement that he signed:

> To enforce the covenants in paragraphs XI and XII quoted above will not work an undue hardship on the defendant Taylor. It will require him to do only what he solemnly contracted to do. To fail to enforce them, will give plaintiff's competition, Sweet Productions, Inc., an unfair advantage over plaintiff; full information about

> plaintiff's contract, its personnel, its manner of operation, plans for expansion and possibly other; all by means of defendant's willful breach of its contract of employment with plaintiff.

The record reveals that IMG spent a considerable amount of time, effort and money developing customer relationships through Speegle and Akin, who gained valuable experience, training and relationships as a result of their employment by IMG. The agreements in litigation were designed to protect IMG's investment and training in hiring these individuals, as well as IMG's goodwill and customer relationships. As we have seen, Speegle resigned without notice from IMG and immediately went to work at the offices of Music Plus, a direct competitor of IMG. In establishing that business, Speegle used the knowledge and training he had acquired at IMG, as well as the goodwill IMG had established with its customers.

It is clear that from the time of the resignation of Speegle and Akin from IMG and their subsequent competition with IMG in violation of their non-compete agreements, IMG suffered substantial losses. It lost more than half of its Rack Division sales, as well as numerous key accounts in the Rack sales industry, and incurred substantial expense training new employees to fill Speegle and Akin's positions. It spent much time and effort to retain accounts that Speegle and former employees specifically targeted for Music Plus, and because of the significant time spent on other accounts, the opportunity was lost to aggressively pursue new accounts, which it might have done had the breach of contract not occurred.

The case at Bar is similar to *Central Adjustment Bureau v. Ingra*, 678 S.W.2d 28 (1984) in which the Supreme Court of Tennessee upheld the trial court's finding that the covenant at issue was enforceable because the employees:

> ". . .utilized valuable knowledge and personal contacts gained and developed while they were CAB employees. They know which potential customers are likely to be

profitable, and how to secure, retain, and service customers. They have been able to profit from the personal relationships they developed with CAB customers . . ."

VII

The appellee presents for review the issue of whether Vern Adkins, father of Mike Adkins, was properly dismissed from this litigation.

The Chancellor found that "the facts do not support [the claims of unfair competition and inducement of breach of contract]."

Vern Adkins, Mike Adkins, and Lee Speegle were apparently partners in Music Plus until it was incorporated in 1995.

In 1994, Music Plus transacted business in a warehouse owned by Vern Adkins, who charged the partnership no rent. Later, he invested $120,000.00 in the business, and testified that he owned numerous truck stops that were former customers of IMG but at the time of trial were doing business with Music Plus.

The appellee strenuously insists that Vern Adkins was a silent partner in Music Plus because he invested $120,000.00, allowed the use of his airplane to call on vendors and received $10,000.00 from Music Plus shortly after it began business.

Adkins testified that the $120,000.00 was a loan, and that he had no ownership interest in Music Plus. Appellee says that Vern Adkins is clearly not believable and that he should be cast in this action.

We note that the Chancellor minced no words in describing Mike Adkins as a perjurer. It seems a reasonable conclusion that if the Chancellor disbelieved Vern Adkins, she would not have hesitated to so find. We do not substitute our judgment for that of the Chancellor, and consequently

cannot find that the evidence preponderates against her finding that Vern Adkins should be dismissed.

The judgment is affirmed at the costs of the appellants and the case is remanded for all appropriate purposes.

_____
INMAN, Sr. J.

CONCUR:

_____
CRAWFORD, P.J., W.S.

_____
LILLARD, J.