

MARSHALL OLSON & HULL
R. Stephen Marshall (2097)
Erik A. Olson (8479)
Ten Exchange Place, Suite 350
Salt Lake City, Utah 84111
Telephone: (801) 456-7655
Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SYNTEK GLOBAL INC., a Utah
corporation,

Plaintiff,

v.

JOHN W. WINTERHOLLER, an individual;
and JOHN DOES 1-20,

Defendants.

COMPLAINT

Civil No: 150902706

(Tier 3)

Plaintiff Syntek Global Inc., a Utah corporation, hereby complains against defendants John W. Winterholler and John Does 1-20 and alleges as follows.

GENERAL ALLEGATIONS

1. Plaintiff Syntek Global Inc. (“Syntek”) is corporation organized and existing under the laws of the State of Utah.
2. Defendant John W. Winterholler (“Winterholler”) is an individual residing in Salt Lake County, State of Utah.
3. Defendants John Does 1-20 are individuals or entities whose identity is unknown. As such time as their identity is determined by Syntek, it will amend this Complaint to join them as named defendants in this action.

4. Syntek is engaged in the business of marketing and distributing a number of products, including a fuel additive known as “XFT.” XFT is intended for use as an additive to both gasoline and diesel fuel that will save fuel costs, prolong engine life, reduce emissions, and increase horsepower.

5. Syntek markets XFT in the African country of Ghana, among other countries. Like other African nations, Ghana experiences frequent power outages. As a result, companies and citizens in Ghana have resorted to other means of generating electricity for their needs. Those means include gas or diesel powered generators and solar energy.

6. Syntek began marketing and selling its fuel additive product in Ghana in July 2011 and, through mid-2013, experienced substantial success in that country.

7. At all relevant times, Winterholler was the president of Syntek and the Chairman of the Board of Directors.

8. On or about January 2013, Syntek was approached regarding an opportunity to become involved in marketing the products of Goal Zero in Africa. Goal Zero manufactures products that generate electricity using solar power.

9. Syntek’s principals, including Winterholler, considered whether to become involved in marketing Goal Zero’s products in Africa. Syntek determined that it should not become involved since Goal Zero’s products were in competition with Syntek’s products, both of which targeted consumers interested in alternative methods of generating electricity. It was the unanimous view of all those who participated in the deliberations that it would be a conflict of interest for Syntek to be involved in marketing products that were in competition with Syntek’s own products. Further, Syntek was concerned that involving its distribution network in the sale and marketing of Goal Zero products would dilute the focus of distributors selling XFT.

10. Winterholler participated in these deliberations at Syntek and agreed with the others that Syntek should not become involved in marketing Goal Zero's products since those products would be in competition with Syntek's products and would be disruptive to its distribution network.

11. Following Syntek's decision to turn down the Goal Zero opportunity, without Syntek's knowledge or consent Winterholler personally entered into his own agreement with Goal Zero to market and sell Goal Zero's solar energy products in Ghana.

12. Winterholler solicited Syntek distributors in Ghana to become involved in selling Goal Zero products in Ghana. The distributors he solicited included founding and high level African distributors David Achaw and Ransford Nyarko. David Achaw was Syntek's country manager in Ghana and was the Western Africa Regional Manager. Ransford Nyarko was one of Syntek's top leaders in the entire region. He was a Blue Diamond MVP, one of the highest ranks available to Syntek distributors.

13. At Winterholler's solicitation, both Mr. Achaw and Mr. Nyarko agreed to promote and sell Goal Zero products. They also agreed to become part owners of AESL. Mr. Achaw and Mr. Nyarko each own 25% of AESL. Winterholler owns the remaining 50%. On March 22, 2013, Winterholler emailed David Achaw, "I am preparing to purchase the first inventory of products. Before I do this, you and I (and I hear Ransford might be involved also) need an agreement. The contract with Goal Zero will be with me.....something they are requiring. So you and me should have a contract for a 'partnership' we can form to bring Goal Zero to Ghana and other parts of Africa. I have gotten them to commit that we can have as many countries as we would like, as long as we perform."

14. Winterholler actively promoted the sale of Goal Zero's products in Ghana. For example, on April 1, 2013, he stated to David Achaw in an email, "Goal Zero has GREAT potential. I am meeting with Robert, the founder, on Wednesday again. He is a classmate of mine from Wyoming. Our families were very good friends. So you and I have a wonderful opportunity to 'own' all of Africa if we can organize it and make it happen. Very exciting."

15. Winterholler organized a corporation in Ghana known as Alternative Energy Solutions Limited ("AESL") on or about May 17, 2013.

16. Through AESL and with the help of the Syntek distributors that he had solicited, Winterholler began marketing and selling Goal Zero products in Ghana. In a letter addressed to "To Whom It May Concern" dated September 16, 2013, Ryan Shepherd, Goal Zero's Director of African Distribution, confirmed Goal Zero's relationship with Winterholler. Mr. Shepherd wrote:

Goal Zero, an American based business, is recognized as the gold standard in renewable solar and battery technology around the world.

This letter is to verify that Alternative Energy Solutions Limited is the official distributor and authorized representation of Goal Zero in the Republic of Ghana. Alternative Energy Solutions Limited is also authorized to carry out all necessary marketing, advertising, and business development activities in order to promote and build the name, brand, and good will of Goal Zero in Ghana.

17. On information and belief Syntek alleges that Winterholler financed and arranged for at least three shipments of Goal Zero products to Ghana for resale through AESL.

18. Under Winterholler's direction, AESL advertised and promoted Goal Zero products in Ghana. Syntek's distributors were significantly involved in the marketing of Goal Zero products.

19. The Goal Zero products that Winterholler caused to be shipped to Ghana were stored in Syntek's warehouse in Accra, Ghana. In addition, Winterholler used Syntek's office in Ghana to hold Goal Zero meetings.

20. At no time did Winterholler disclose to Syntek his secret involvement with Goal Zero in Africa nor did he disclose his recruitment of Syntek's distributors and his and Goal Zero's use of Syntek's warehouse and offices.

21. At the same time that Winterholler was engaged in running his Goal Zero business in Africa, he was also acting as the CEO, President and Chairman of the Board of Directors of Syntek. He continued to hold those positions even though he was secretly engaged in a competitive business operation.

22. Syntek did not discover Winterholler's undisclosed Goal Zero business until November 2015.

23. Syntek held its annual shareholders' meeting on December 29, 2015. At that meeting, Winterholler was not elected to the Board of Directors. At a meeting of the newly-elected Board of Directors held the same day, Winterholler was removed as CEO and President of Syntek.

24. As a direct and proximate result of Winterholler's activities in Ghana on behalf of Goal Zero and as a result of his recruitment of Syntek's top distributors, Syntek's profitability in that country has dropped drastically.

FIRST CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

25. Paragraphs 1 through 24 are realleged and by this reference are incorporated into this claim for relief.

26. As an officer and director of Syntek, Winterholler owed a fiduciary duty of loyalty to the corporation and the other shareholders. He was obliged to preserve and enhance the property and earning power of Syntek, even if the interests of the corporation and shareholders were in conflict with his own personal interests.

27. Winterholler breached his fiduciary duty to Syntek by:

(a) Setting up a competitive business to promote and sell the products of Goal Zero in Africa;

(b) Marketing, promoting, and selling Goal Zero products in Africa;

(c) Soliciting and recruiting Syntek's distributors to join in the incorporation of AESL and to assist in the marketing and sale of Goal Zero products;

(d) Using Syntek's office and warehouse in Ghana for Goal Zero meetings and for the storage of Goal Zero products;

(e) Spending a substantial portion of his time and effort on behalf of his Goal Zero business at the expense of his duties and responsibilities as an officer and director of Syntek; and

(f) Failing and refusing to notify or advise Syntek of his activities in Africa, which were in direct competition with Syntek.

28. As a direct or proximate result of Winterholler's breach of fiduciary duty, Syntek has suffered lost profits and other losses. Syntek is entitled to a judgment against Winterholler in an amount to be proved at trial, but which shall not be less than \$1,000,000, together with interest thereon as provided by law.

29. Syntek is also entitled to an award of attorneys' fees that it has incurred as a result of Winterholler's breach of fiduciary duty.

30. Because Winterholler's actions constituted willful and malicious or intentionally fraudulent conduct, or conduct that manifested a knowing and reckless indifference toward, and a disregard of, Syntek's rights, pursuant to Utah Code § 78B-8-201(1)(a) Syntek is entitled to an award of punitive damages against Winterholler, which shall not be less than three times the amount of actual damages awarded against him.

SECOND CLAIM FOR RELIEF

(Breach of Statutory Duty)

31. Paragraphs 1 through 30 are realleged and by this reference are incorporated into this claim for relief.

32. As an officer and director of Syntek, under Utah Code § 16-10a-840(1), Winterholler had a duty to discharge his duties (a) in good faith; (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (c) in a manner the director or officer reasonably believes to be in the best interests of the corporation.

33. As alleged above, Winterholler breached or failed to perform the duties of his office in compliance with Utah Code § 16-10a-840(1). His breach and failure to perform constitutes gross negligence, willful misconduct, and intentional infliction of harm on Syntek.

34. Winterholler is liable to Syntek is entitled to a judgment against Winterholler in an amount to be proved at trial, but which shall not be less than \$1,000,000, together with interest thereon as provided by law.

THIRD CLAIM FOR RELIEF

(Trade Secrets)

35. Paragraphs 1 through 34 are realleged and by this reference are incorporated into this claim for relief.

36. As CEO, President, and a Director of Syntek, Winterholler had access to confidential and proprietary information owned by Syntek. That information included the (a) identity of distributors and customers in Ghana and elsewhere; (b) financial information, projections, profit margins, and the like; and (c) Syntek's marketing strategy for Ghana and other African countries.

37. Syntek's confidential and proprietary information constitutes a "trade secret" within the meaning of the Utah Uniform Trade Secrets Act (the "UTSA"), Utah Code § 13-24-2(4).

38. Winterholler misappropriated Syntek's trade secrets within the meaning of the UTSA, Utah Code § 13-24-2(2).

39. On information and belief, Winterholler disclosed Syntek's trade secrets to defendants John Does 1-20.

40. Pursuant to the UTSA, Utah Code § 13-24-3 and Rule 65A, Utah Rules of Civil Procedure, Syntek is entitled to an injunction against Winterholler and the John Doe defendants, and their agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice, in person or through counsel, or otherwise, of the order enjoining them from using or disclosing any trade secret belonging to Syntek.

41. Pursuant to the UTSA, Utah Code § 13-24-4, Syntek is entitled to a judgment against Winterholler, including exemplary damages, in an amount to be determined at trial.

42. Because Winterholler's misappropriation of Syntek's trade secrets was willful and malicious, pursuant to the UTSA, Utah Code § 13-24-5, Syntek is entitled to an award of its reasonable attorneys' fees.

TIER DESIGNATION

43. Pursuant to Rules 8(a) and 26(c), Utah R. Civ. P., this action qualifies for Tier 3 discovery.

WHEREFORE, Syntek demands that judgment be entered against Winterholler as follows:

1. On the FIRST CLAIM FOR RELIEF, for:
 - (a) Damages in an amount to be proved at trial together with interest thereon as provided by law;
 - (b) Punitive damages in an amount to be proved at trial;
 - (c) Syntek's reasonable attorneys' fees.
2. On the SECOND CLAIM FOR RELIEF for an award of damages in an amount to be proved at trial, together with interest thereon as provided by law.
3. On the THIRD CLAIM FOR RELIEF for:
 - (a) An injunction against Winterholler, and his agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice, in person or through counsel, or otherwise, of the order enjoining them from using or disclosing any trade secret belonging to Syntek;
 - (b) Damages in an amount to be proved at trial;
 - (c) Exemplary damages in an amount to be proved at trial;

(d) Syntek's reasonable attorneys' fees.

4. For Syntek's costs and such additional relief as the Court deems fair and just.

DATED this 31st day of December, 2015.

MARSHALL OLSON & HULL

By: /s/ R. Stephen Marshall
R. Stephen Marshall
Attorneys for plaintiff
Ten Exchange Place, Suite 350
Salt Lake City, Utah 84111
Telephone: (801) 456-7655