UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Nasdaq, Inc.,	
Plaintiff,	Case No.: 1:24-cv-7296
v.	Judge Manish S. Shah
Twelve Data Pte. Ltd.,	
Defendant.	

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff Nasdaq, Inc. ("Nasdaq") submits this Memorandum in support of its Motion for

a Preliminary Injunction.

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MEMORANDUM OF LAW

I.   INTRODUCTION

Plaintiff Nasdaq, Inc. ("Nasdaq") brings this action to prevent ongoing theft by Defendant Twelve Data Pte. Ltd. ("Twelve Data")[1] of Nasdaq's proprietary data feeds in violation of the Defend Trade Secrets Act ("DTSA") (18 U.S.C. § 1831 *et seq*), the Computer Fraud and Abuse Act ("CFAA") (18 U.S.C. § 1030 *et seq*), as well as violations of the Digital Millennium Copyright Act ("DMCA") (17 U.S.C. § 1202), the Illinois Uniform Deceptive Trade Practices Act (815 ILCS 510/1 *et seq*), and tortious interference with prospective business advantage under Illinois law. Dkt. No. 1.

Now that the Sealed TRO (Dkt. No. 31) has been enforced and Twelve Data's domain has been rendered untransferable, Nasdaq seeks entry of a preliminary injunction extending the TRO through judgment, including both continuing to require that Twelve Data's domain name remain untransferable and prohibiting Twelve Data from publishing Nasdaq Data without authorization (or if authorized, without an accompanying notice that the data belongs to Nasdaq).

II.   STATEMENT OF FACTS

On September 11, 2024, this Court granted Nasdaq's *Ex Parte* Motion for Entry of a Temporary Restraining Order (Dkt. No. 29), and entered a Sealed Temporary Restraining Order ("the TRO") on September 12, 2024. The TRO authorized Nasdaq to provide notice of these proceedings, including notice of the preliminary injunction hearing, service of process pursuant to Fed. R. Civ. P. 4(f)(3), and any future motions, by electronically publishing a link to the

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[1] Because the TRO's restraint on domain name transfer has now been executed and Twelve Data has been served, there is no longer a need to keep Twelve Data's name redacted on public filings. Nasdaq also requests that the Court unseal all previously sealed documents except for Exhibits 9 and 10 to the Declaration of Nicholas Carso (Dkt. Nos. 13-3 and 13-4), which contain names of third-party individuals and Nasdaq employees whose identity should remain redacted for their confidentiality.

Complaint, the TRO, and other relevant documents on a website, and by sending an email with a link to said website to the email address identified in Exhibit 9 to the Declaration of Nicholas Carso and any email addresses provided for Twelve Data by third parties. Dkt. No. 31 at ¶ 5. On September 23, 2024, the Court granted Nasdaq's *Ex Parte* Motion to Extend the Temporary Restraining Order until October 10, 2024. Dkt. No. 33. Since and pursuant to entry of the TRO, Nasdaq has obtained confirmation from GoDaddy that the twelvedata.com domain name has been locked and made untransferable. Declaration of Brian J. Beck in Support of Plaintiff's Motion for Entry of a Preliminary Injunction ("Beck Decl.") at ¶ 2. Nasdaq has also served expedited requests for production and interrogatories on Twelve Data seeking information regarding the identities of its personnel, the nature of its operation, and identification of its financial accounts. Beck Decl. at ¶ 3.

Nasdaq respectfully requests that this Court convert the TRO to a preliminary injunction against Twelve Data, so that it remains enjoined during the pendency of this litigation from using and/or republishing in any manner Nasdaq data without authorization by Nasdaq, and from publishing Nasdaq data, if authorized, without an accompanying notice that the data is the property of Nasdaq.

III.   ARGUMENT

A.   A preliminary injunction extending relief already granted in the TRO is appropriate.

Nasdaq respectfully requests that this Court convert the TRO to a preliminary injunction to prevent further unlawful conduct by Twelve Data.

1.   This Court has already found that the requirements for a preliminary injunction have been satisfied.

Since the standard for granting a TRO and the standard for granting a preliminary injunction are identical in this Circuit, the requirements for entry of a preliminary injunction

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extending the TRO have been satisfied. *E.g.*, *Dexia Credit Local v. Rogan*, 602 F.3d 879, 884-885 (7th Cir. 2010) (district court's finding that the justifications for the TRO would substantiate a subsequent preliminary injunction upheld on appeal). A temporary restraining order or preliminary injunction may be issued upon a showing: "(1) that there is reasonable likelihood that Plaintiff[] will succeed on the merits; (2) that Plaintiffs will suffer irreparable injury if the order is not granted because there is no adequate remedy at law; (3) that the balance of hardships tips in Plaintiff['s] favor; and (4) that the public interest will not be disserved by the injunction." *Columbia Pictures Indus., Inc. v. Jasso*, 927 F. Supp. 1075, 1076 (N.D. Ill. 1996). Nasdaq's Renewed Motion for Entry of a Temporary Restraining Order (Dkt. No. 19), its supporting memorandum (Dkt. No. 20), and supporting declarations and exhibits (Dkt. Nos. 11, 11-1, 12, 12-1, 13-1 – 13-6, 16, 21, 22, 22-1 and 22-2), all of which are expressly incorporated by reference, provides the detailed evidence and legal argument demonstrating how Nasdaq has demonstrated its likelihood of succeeding on the merits on its Defend Trade Secrets Act ("DTSA") and Digital Millennium Copyright Act ("DMCA") claims, the irreparable injury that Nasdaq has suffered and will continue to suffer absent an injunction, that the balance of hardships tips in Nasdaq's favor, and that the public interest will not be disserved by a preliminary injunction.

Since the TRO was issued, Twelve Data has been served with the complaint, has been served with expedited discovery, and will be timely served with this motion for entry of a preliminary injunction. If Twelve Data has evidence to offer showing that its publication of real-time Nasdaq data neither misappropriates Nasdaq trade secrets nor violates 17 U.S.C. § 1202(a), it has the opportunity to offer that evidence. If Twelve Data offers that evidence, Nasdaq will address it in a reply; if not, the Court may reasonably conclude that Nasdaq has satisfied its

burden of showing a reasonable likelihood of success on the merits, irreparable injury, that the balance of hardships tips in Nasdaq's favor, and that the public interest will not be disserved by the injunction. *See, e.g., Banister v. Firestone*, No. 17-cv-8940, 2018 U.S. Dist. LEXIS 151180, at *21 (N.D. Ill. Sept. 5, 2018).

        2.   The equitable relief sought remains appropriate.

Both the DTSA and DMCA authorize preliminary and permanent injunctive relief. 18 U.S.C. § 1836(b)(3)(A) (authorizing injunctive relief to prevent actual or threatened misappropriation of trade secrets); 17 U.S.C. § 1203(b)(1) (authorizing "temporary and permanent injunctions" to prevent DMCA violations).

Nasdaq seeks a conversion of the TRO issued by this Court on September 12, 2024, requiring that Twelve Data's domain name continued to be rendered untransferable until the completion of these proceedings, and that Twelve Data continued to be enjoined from publishing Nasdaq Data without authorization or, if authorized, without accompanying notice that the data is property of Nasdaq. Since entry of the TRO, GoDaddy has locked the twelvedata.com domain name, rendering it untransferable. Beck Decl. at ¶ 2. In the absence of a preliminary injunction, Twelve Data may attempt to transfer its domain name to a foreign registrar, preventing the Court from enforcing any injunction ordered after a final judgment on the merits. Therefore, Twelve Data's domain name should remain untransferable for the remainder of the proceedings.

        B.   **There is good cause to extend the TRO until there is a ruling on this motion.**

In the event that the Court does not rule on this Motion before the current TRO expiration date (October 10, 2024), Nasdaq also seeks to extend the TRO to maintain the status quo until there is a ruling on Nasdaq's Motion for Entry of a Preliminary Injunction. Nasdaq continues to hope, as expressed at the TRO hearing on September 11, 2024, that Twelve Data will appear and explain its conduct. If Twelve Data appears and opposes the preliminary injunction, Nasdaq

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anticipates that additional discovery and briefing will be necessary to fully address the issues in this case. Where the maximum 28-day limit set by Fed. R. Civ. P. 65(b)(2) does not give the parties sufficient time to prepare for a preliminary injunction hearing, the Seventh Circuit has held that it is proper to allow a TRO to remain in effect until the motion for a preliminary injunction is decided. *H-D Mich., LLC v. Hellenic Duty Free Shops S.A.*, 694 F.3d 827, 843-45 (7th Cir. 2012). If the extension exceeds the maximum duration for a TRO under Rule 65(b), the extension "becomes in effect a preliminary injunction that is appealable, but the order remains effective." *Id.* at 844.

Twelve Data has notice of this case and will be immediately given notice of this pending Motion after it is filed. The TRO's prohibition on transferring Twelve Data's domain name does not affect Twelve Data's business, and therefore causes no hardship. TRO's unauthorized and unlawful publication of misappropriated trade secrets (the Nasdaq Data) is not a hardship, as "the public's interest in the … protection of trade secrets and confidential information," outweighs the risk of harm to a willfully misappropriating defendant." *Life Spine Inc. v. Aegis Spine, Inc.*, 8 F. 4th 531, 546 (7th Cir. 2021). In addition, Nasdaq respectfully submits that there is good cause to extend the TRO, since there remains a high probability that Twelve Data will continue to harm Nasdaq without the TRO in place, especially now that Twelve Data has notice of this case. Specifically, as the Court has already found, absent the restraint on transfer of Twelve Data's domain name, Twelve Data will likely attempt to move its domain name to a foreign registrar to evade the enforcement power of this Court while this Motion is pending.[2]

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[2] Nasdaq anticipates a strong possibility that Twelve Data will not appear and respond to this motion, and will not comply with the preliminary injunction, and in that case the only effective method of enforcing the preliminary injunction to stop the misappropriation will be to expand the preliminary injunction to temporarily transfer the Twelve Data domain name to Nasdaq for the pendency of this litigation.

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IV.   CONCLUSION

In view of the foregoing, Nasdaq respectfully requests that this Court enter the requested preliminary injunction to keep Twelve Data's domain name untransferable, and to continue prohibiting Twelve Data from publishing Nasdaq Data without authorization (or if authorized, without an accompanying notice that it is owned by Nasdaq) during the pendency of this litigation.

Date: September 27, 2024   Respectfully submitted,

By: */s/ Brian J. Beck*
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