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July 10, 2008

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Cathy Gatson, Clerk  
Circuit Court of Kanawha County  
Kanawha County Judicial Annex  
111 Court Street  
Charleston, West Virginia 25301

**VIA HAND DELIVERY**

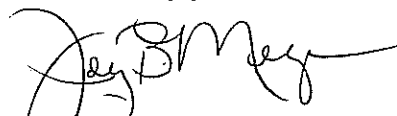
Re: Job Squad v. Champion Industries and Rhonda Copen  
Civil Action No. 08-C-1123

Dear Ms. Gatson:

Enclosed for filing in the above-styled matter are the following: (i) "Answer, Affirmative Defenses and Counter-Claim on Behalf of Defendants," and (ii) a Civil Case Information Statement. Copies of each have been served upon opposing counsel this date.

Thank you for your attention to this matter.

Sincerely yours,



Joy B. Mega

JBM/ljsj

Enclosures

cc: Michael J. Folio, Esq. (w/enc)  
Lisa M. Kerr, Esq. (w/enc)

2186939





IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JOB SQUAD, INC., a West Virginia  
non-profit corporation,

Plaintiff.

v.

CIVIL ACTION NO. 08-C-1123  
JUDGE WALKER

CHAMPION INDUSTRIES, INC., a West Virginia  
corporation, and RHONDA COPEN, an individual,

Defendants.

**ANSWER, AFFIRMATIVE DEFENSES AND  
COUNTER-CLAIM ON BEHALF OF DEFENDANTS**

**FIRST DEFENSE**

Plaintiff's Complaint fails to state a claim against Defendants Champion Industries, Inc. ("Champion") and Rhonda Copen ("Ms. Copen") (collectively "Defendants") upon which relief can be granted and therefore should be dismissed pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.

**SECOND DEFENSE**

In response to the specific allegations set forth in Plaintiff's Complaint, Defendants state as follows:

1. To the extent that Paragraph 1 of Plaintiff's Complaint avers any fact and/or requires a response, Defendants deny each and every allegation set forth therein.
2. Defendants deny each and every allegation set forth in Paragraph 2 of Plaintiff's Complaint.

3. Defendants deny each and every allegation set forth in Paragraph 3 of Plaintiff's Complaint.

4. Defendants deny each and every allegation set forth in Paragraph 4 of Plaintiff's Complaint.

5. Defendants are without knowledge or information sufficient to form a belief as to if Job Squad's commercial presort mail business has decreased by more than 75% in just a few weeks. Defendants deny each and every remaining allegation set forth in Paragraph 5 of Plaintiff's Complaint.

6. Defendants deny each and every allegation set forth in Paragraph 6 of Plaintiff's Complaint.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of Plaintiff's Complaint.

8. Defendants admit that Champion is a corporation organized under the laws of the State of West Virginia, that Champion's headquarters is located in Huntington, West Virginia, that Champion's stock is publicly traded on the NASDQ stock exchange, and that Champion has places of business in West Virginia, Kentucky, and other states. Defendants deny each and every remaining allegation set forth in Plaintiff's Complaint.

9. Defendants admit the allegations contained in Paragraph 9 of Plaintiff's Complaint.

10. In response to the allegations set forth in Paragraph 10 of Plaintiff's Complaint, Defendants state the statutory provision speaks for itself and therefore requires no legal interpretation, analysis or response by Defendants. To the extent that Paragraph 10 of Plaintiff's Complaint avers any fact and/or requires any response, Defendants deny each and every allegation set forth therein.

11. In response to the allegations set forth in Paragraph 11 of Plaintiff's Complaint, Defendants state the statutory provision speaks for itself and therefore requires no legal interpretation, analysis or response by Defendants. To the extent that Paragraph 11 of Plaintiff's Complaint avers any fact and/or requires any response, Defendants deny each and every allegation set forth therein.

12. Defendants admit that Ms. Copen was employed at Job Squad, that Ms. Copen resigned her position as Project Manager of Job Squad's Kanawha County location where presort commercial mail is handled, and that Ms. Copen is now employed by Champion. Defendants deny each and every remaining allegation set forth in Paragraph 12 of Plaintiff's Complaint.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13, sub-parts (a), (b), and (c) of Plaintiff's Complaint.

14. Defendants admit that during Ms. Copen's employment with Job Squad, she created billing spreadsheets that became the property of Job Squad and had access to information that was created by others. Defendants are without knowledge or information

sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 14 of Plaintiff's Complaint.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 of Plaintiff's Complaint.

16. Defendants admit that Ms. Copen had access to customer lists and files, employee salary and performance information, financial and cost structure data, and other materials during her employment with Job Squad. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 16 of Plaintiff's Complaint.

17. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17.

18. Defendants admit that Ms. Copen is a high school graduate with no college education and that Ms. Copen began work for and is a paid employee of Champion. Defendants deny each and every remaining allegation set forth in Paragraph 18 of Plaintiff's Complaint.

19. Defendants deny each and every allegation set forth in Paragraph 19 of Plaintiff's Complaint.

20. Defendants deny each and every allegation set forth in Paragraph 20 of Plaintiff's Complaint.

21. Defendants deny each and every allegation set forth in Paragraph 21 of Plaintiff's Complaint.

22. Defendant deny each and every allegation set forth in Paragraph 22 of Plaintiff's Complaint.

23. Defendants state the documents attached as Exhibits A and B to Plaintiff's Complaint speak for themselves. To the extent that Paragraph 23 of Plaintiff's Complaint avers any fact and/or requires any response, Defendants deny each and every allegation set forth therein.

24. Defendants deny that its actions resulted in Plaintiff losing a revenue stream. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 24 of Plaintiff's Complaint.

25. Defendants are without knowledge or information sufficient to form a belief as to the present valuation of Plaintiff's presort mail arm operation. Defendants deny each and every remaining allegation set forth in Paragraph 25 of Plaintiff's Complaint.

26. To the extent that Paragraph 26 of Plaintiff's Complaint avers any fact and/or requires a response, Defendants deny each and every allegation set forth therein.

27. To the extent that Paragraph 27 of Plaintiff's Complaint avers any fact and/or requires a response, Defendants deny each and every allegation set forth therein.

28. To the extent Paragraph 28 of Plaintiff's Complaint avers any fact and/or requires a response, Defendants deny each and every allegation set forth therein.

29. Defendants admit that Ms. Copen acquired access to Job Squad's financial information through her status as an employee of Job Squad. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 29 of Plaintiff's Complaint.

30. Defendants deny the allegations set forth in Paragraph 30 of Plaintiff's Complaint.

31. Defendants deny the allegations set forth in Paragraph 31 of Plaintiff's Complaint.

32. Defendants deny the allegations set forth in Paragraph 32 of Plaintiff's Complaint.

33. To the extent Paragraph 33 of Plaintiff's Complaint avers any fact and/or requires a response, Defendants deny each and every allegation set forth therein.

34. Defendants deny the allegations set forth in Paragraph 34 of Plaintiff's Complaint.

35. Defendants deny the allegations set forth in Paragraph 35 of Plaintiff's Complaint.

36. Defendants deny the allegations set forth in Paragraph 36 of Plaintiff's Complaint.

37. Defendants deny the allegations set forth in Paragraph 37 of Plaintiff's Complaint.

38. Defendants deny the allegations set forth in Paragraph 38 of Plaintiff's Complaint.

39. To the extent Paragraph 39 of Plaintiff's Complaint avers any fact and/or requires a response, Defendants deny each and every allegation set forth therein.

40. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 40, including sub-parts (a) and (b), of Plaintiff's Complaint.

41. Defendants deny the allegations set forth in Paragraph 41 of Plaintiff's Complaint.

42. Defendants deny the allegations set forth in Paragraph 42 of Plaintiff's Complaint.

43. Defendants deny the allegations set forth in Paragraph 43 of Plaintiff's Complaint.

44. Defendants deny the allegations set forth in Paragraph 44 of Plaintiff's Complaint.

45. Defendants deny the allegations set forth in Paragraph 45 of Plaintiff's Complaint.

46. To the extent Paragraph 46 of Plaintiff's Complaint avers any fact and/or requires a response, Defendants deny each and every allegation set forth therein.

47. Defendants deny the allegations set forth in Paragraph 47 of Plaintiff's Complaint.

48. Defendants deny the allegations set forth in Paragraph 48 of Plaintiff's Complaint.

49. Defendants deny the allegations set forth in Paragraph 49 of Plaintiff's Complaint.

50. Defendants deny the allegations set forth in Paragraph 50 of Plaintiff's Complaint.

51. To the extent that the *ad damnum* Paragraph following Paragraph 50 of Plaintiff's Complaint, avers any fact and/or requires any response, Defendants deny each and every allegation set forth therein.

#### THIRD DEFENSE

Defendants deny each and every allegation set forth in Plaintiff's Complaint that is not specifically admitted herein.

#### FOURTH DEFENSE

Plaintiff, by its own actions and conduct, has waived and/or is estopped from maintaining this action.

#### FIFTH DEFENSE

In the event that the evidence indicates, Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations and/or doctrine of laches.

#### SIXTH DEFENSE

In the event the evidence indicates, Defendants assert all defenses in equity, including but not limited to waiver, estoppel, laches, unjust enrichment, and the doctrine of unclean hands.

#### SEVENTH DEFENSE

Defendants assert all applicable doctrines of preemption.

#### EIGHTH DEFENSE

Plaintiff is not entitled to recover any punitive damages as alleged in its complaint. Moreover, Plaintiff's claims that seek exemplary or punitive damages violate Defendants' rights to procedural and substantive due process as provided by the Fifth and Fourteenth Amendments to the United States Constitution Article 3, Section 10, and all other applicable provisions of the Constitution of the State of West Virginia.

#### NINTH DEFENSE

Defendants assert all applicable federal and state law, constitutional, statutory and decisional law of immunities.

#### TENTH DEFENSE

Defendants incorporate by reference each and every affirmative defense available to them which is required or permitted to be pled affirmatively by Rule 8 of the West Virginia Rules of Civil Procedure, or otherwise, that discovery or investigation may reveal as applicable and pertinent to its defense in this action.

#### ELEVENTH DEFENSE

The cause of any injuries or damages to Plaintiff, the existence of which are denied, were not caused by Defendants' actions.

#### TWELFTH DEFENSE

Ms. Copen never accepted an offer of employment from Plaintiff that contained non-compete and/or non-solicitation clauses.

#### THIRTEENTH DEFENSE

Ms. Copen was not under or subject to an employment agreement and/or employment contract, in any form, during her employment at Job Squad.

#### FOURTEENTH DEFENSE

Some or all of Plaintiff's claims are barred because Defendants possesses no information protected by the Uniform Trade Secrets Act, W. Va. Code §§47-2-1, et seq.

#### FIFTEENTH DEFENSE

Some or all of Plaintiff's claims are barred because Defendants did not misappropriate any information protected by the Uniform Trade Secrets Act, W. Va. Code §§47-2-1, et seq.

#### SIXTEENTH DEFENSE

Some or all of Plaintiff's claims are barred because Defendants may lawfully compete with Plaintiff.

#### SEVENTEENTH DEFENSE

Some or all of Plaintiff's claims are barred in that by the Uniform Trade Secrets Act, W. Va. Code §§47-2-1, et seq., seeks to protect legitimate trade secrets from unlawful use and disclosure but this Act does not protect businesses from lawful competition or former customers from solicitation by competing businesses.

#### EIGHTEENTH DEFENSE

Some or all of Plaintiff's claims are barred in that Defendants are entitled to engage in fair competition with Plaintiff.

#### NINETEENTH DEFENSE

Some or all of Plaintiff's claims are barred in that Defendants' knowledge about Plaintiff's customers is not a trade secret.

TWENTIETH DEFENSE

Some or all of Plaintiff's claims are barred in that legitimate competition is a defense to a claim of tortious interference.

TWENTY-FIRST DEFENSE

Some or all of Plaintiff's claims are barred in that legitimate business purposes is defense to a claim of establishment, maintenance or use of monopoly.

TWENTY-SECOND DEFENSE

Defendants reserve the right to supplement its defenses after additional discovery. Defendants reserve and assert herein any other affirmative defense that additional discovery and/or investigation may reveal as applicable and pertinent to its defense, including but not limited to the doctrine of after-acquired evidence. Defendants further intend to rely on all defenses available from the evidence at the time of trial and expressly reserves the right to assert such defenses as the facts become known.

WHEREFORE, having fully answered the allegations of the Plaintiff's Complaint, Defendants Champion Industries, Inc. and Rhonda Copen demand that they be dismissed from this action with prejudice, that they have and recover its costs, including reasonable attorneys' fees and expenses expended herein, and that they have such other and further relief as justice may require.

**COUNTER-CLAIM ON BEHALF OF DEFENDANTS  
CHAMPION INDUSTRIES, INC. AND RHONDA COPEN**

NOW COMES Defendants and Counterclaimants Champion Industries, Inc. (“Champion”) and Rhonda Copen (“Ms. Copen”) (collectively “Defendants”), by counsel, and for its counterclaim against Plaintiff, Job Squad, Inc., states as follows:

1. Champion is a West Virginia corporation and operates a presort mailing service out of Charleston, West Virginia.

2. Champion has existing contractual and/or business relationships with various clients and customers in the State of West Virginia regarding its presort mailing services, and further expects to enter into contractual and business relationships with other clients and customers.

3. Champion is one of several business and/or non-profit organizations that offers presort mailing services within the State of West Virginia.

4. Ms. Copen is a resident of Kanawha County, West Virginia.

5. Ms. Copen was formerly employed at Job Squad, Inc. as a Project Manager at its Kanawha County, West Virginia location.

6. During Ms. Copen’s employment with Job Squad, she was not subject to an employment agreement or contract in any form that contained a non-compete clause.

7. During Ms. Copen’s employment with Job Squad, she was not subject to an employment agreement or contract in any form that contained a non-solicitation clause.

8. During Ms. Copen's employment with Job Squad, she was an at-will employee.

9. On or around February 4, 2008, there was a fire at Job Squad and this prevented it from operating its presort mailing business for a period of approximately eight days.

10. During the time period Job Squad was not operating because of the fire, it referred its existing customers to Champion for the handling of customers' presort mailing.

11. Champion was listed as the disaster recovery vendor for Job Squad in some of Job Squad's contracts with its customers.

12. During the time period Job Squad was not operating because of fire, Champion provided presort mailing services to several customers, including BB&T and Ticketmaster.

13. Champion had in the past provided presort mailing services to BB&T and Ticketmaster. In January 2006, BB&T and Ticketmaster began using Job Squad as their presort mailing provider.

14. When Job Squad returned to providing presort mailing services on or about February 12, 2008, all customers, including BB&T and Ticketmaster, were returned to Job Squad by Champion.

15. On or about February 20, 2008, Job Squad experienced another outing regarding its presort mailing service.

16. On or about February 20, 2008, Champion agreed to and assisted Job Squad for one day in processing mail. During this one day period, Champion provided services to customers, BB&T and Ticketmaster.

17. On or about February 20, 2008, Tim Dagostine of Champion spoke with Ms. Copen about the possibility of Champion acquiring Job Squad. Management and officers of Job Squad later refused to speak with Champion regarding this possible acquisition.

18. On or around March 12, 2008, Ms. Copen gave Job Squad notice of her intent to resign her position as Project Manager. Following her notice of resignation, Ms. Copen continued, at the request of Job Squad, to work at Job Squad for approximately two and a-half weeks.

19. Ms. Copen started her employment with Champion on or around March 31, 2008 and is currently employed with Champion.

20. In February 2008, representatives from Ticketmaster independently approached Champion regarding Champion's presort mail services and asked that Champion submit proposals for its presort mailing work.

21. In March 2008, representatives from BB&T independently approached Champion regarding Champion's presort mail services and asked that Champion submit proposals for its presort mailing work.

22. Champion and/or Ms. Copen never approached BB&T and/or Ticketmaster about using Champion, instead of Job Squad, as their presort mailing provider.

23. On or about May 15, 2008, Job Squad, by counsel, sent Ms. Copen a cease and desist letter threatening legal action against Ms. Copen and/or Champion. This letter was attached to Plaintiff's Complaint and marked as Exhibit A.

24. On or about May 19, 2008, Champion and Ms. Copen, by counsel, sent a letter in response to Job Squad's May 15, 2008 cease and desist letter. This letter was attached to Plaintiff's Complaint and marked as Exhibit B. Job Squad did not respond to Champion and Ms. Copen's May 19, 2008 letter.

25. On or about June 10, 2008, Job Squad filed a Complaint against Champion and Ms. Copen in the Circuit Court of Kanawha County, West Virginia.

26. In Plaintiff's Complaint, it alleges that Defendants (1) misappropriated trade secrets, (2) monopolized or attempted to monopolize the commercial mailing business, and (3) tortiously interfered with Plaintiff's business relationship.

27. Job Squad's allegations of misappropriation of trade secrets; establishment, maintenance or use of a monopoly; and tortious interference with business relationships can not be supported by law and/or facts.

28. In its Complaint, Job Squad seeks injunctive relief against Defendants.

29. The injunctive relief sought by Job Squad is being sought in bad faith in that no law or facts support its issuance.

## COUNT I – TORTIOUS INTERFERENCE

30. Defendants reallege and incorporate by reference each and every allegation contained in Paragraphs 1 through 29 of this Counterclaim as if fully set forth herein.

31. Champion has existing contractual and/or business relationships with various clients and customers in the State of West Virginia, and further expects to enter into contractual and business relationships with other clients and customers.

32. Upon information and belief, Plaintiff may have intentionally interfered with Champion's existing or expected contractual or business relationships with its clients and customers.

33. Plaintiff's intentional interference with Champion's existing and/or expected contractual and business relations with clients and customers has already caused Champion harm in that Champion has suffered damage to its customer goodwill and is facing the possibility that Champion's business relationships with its customers and clients has been permanently damaged.

34. Upon information and belief, Plaintiff has attempted to interfere with and/or intentionally interfered with Ms. Copen's employment with Champion by filing its Complaint and seeking injunctive relief.

35. Plaintiff either knew or should have known that during Ms. Copen's employment with Job Squad, she was not subject to a non-compete and/or non-solicitation provision.

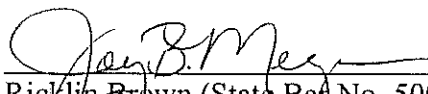
WHEREFORE, Defendants and Counterclaimants Champion Industries, Inc. and Rhonda Copen demand judgment against Plaintiff as follows:

- a. An award of compensatory damages against Plaintiff on all causes of action in an amount to be determined at trial, plus pre-judgment and post-judgment interest and taxable costs thereon as allowed by law;
- b. An award to Defendants for its reasonable costs, disbursements and reasonable attorneys' fees;
- c. Punitive damages;
- d. Judgment in favor of Defendants and against Plaintiff dismissing Plaintiff's Complaint against Defendants with prejudice; and
- e. For such other and further relief which this Court deems just and proper.

**DEFENDANTS DEMAND A TRIAL BY JURY.**

CHAMPION INDUSTRIES, INC.  
and RHONDA COPEN,

By Counsel

  
Ricklin Brown (State Bar No. 500)  
Joy B. Mega (State Bar No. 9960)  
Bowles Rice McDavid Graff & Love LLP  
600 Quarrier Street  
Post Office Box 1386  
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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JOB SQUAD, INC., a West Virginia  
non-profit corporation,

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v.

CIVIL ACTION NO. 08-C-1123  
JUDGE WALKER

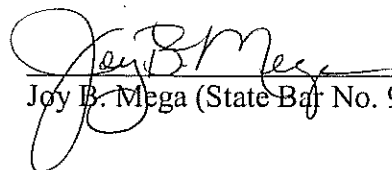
CHAMPION INDUSTRIES, INC., a  
West Virginia corporation, and RHONDA  
COPEN, an individual,

Defendants.

**CERTIFICATE OF SERVICE**

I, Joy B. Mega, counsel for Champion Industries, Inc. and Rhonda Copen, do hereby certify that I have served the foregoing *Answer, Affirmative Defenses and Counter-Claim on Behalf of Defendants* by sending a true and exact copy this 10th day of July, 2008, by United States mail, postage prepaid, to the following persons:

Michael J. Folio (State Bar No. 6314)  
Lisa M. Kerr (State Bar No. 10031)  
Lewis, Glasser, Casey & Rollins, PLLC  
Post Office Box 1746  
Charleston, West Virginia 25326

  
Joy B. Mega (State Bar No. 9960)