

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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SAATCHI & SAATCHI NORTH AMERICA, INC.,

Plaintiff,

--against --

MICHAEL P. BURNS,

Defendant.

Index No. 05600897  
Date Purchased: March 11, 2005

Plaintiff designates  
New York County  
As Place of Trial

Basis of Venue:  
Plaintiff's residence

-----X  
TO THE ABOVE NAMED DEFENDANT:

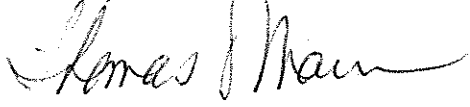
**SUMMONS**

375 Hudson Street  
New York, New York  
County of New York

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
March 11, 2005

DUNNINGTON, BARTHOLOW & MILLER LLP

By:   
Thomas V. Marino, Esq.  
666 Third Avenue - 27<sup>th</sup> Floor  
New York, New York 10017  
(212) 682-8811

Address of Defendant:

Michael P. Burns  
571 Hudson Street, Apt. 4B  
New York, NY 10014

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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SAATCHI & SAATCHI NORTH AMERICA, INC.,

Plaintiff,

Index No. 05600897

--against--

MICHAEL P. BURNS,

**COMPLAINT**

Defendant

-----X

Plaintiff, SAATCHI & SAATCHI NORTH AMERICA, INC. ("Saatchi & Saatchi" or the "Company"), by its attorneys, Dunnington, Bartholow & Miller LLP, for its complaint against defendant MICHAEL P. BURNS ("Burns"), alleges as follows:

**NATURE OF ACTION**

1. This action arises out of defendant Burns' violation of his fiduciary duty, duty of loyalty, breaches of restrictive covenants as well as tortious interferences with contractual relations while an employee and senior executive of Saatchi & Saatchi.

**THE PARTIES**

2. Plaintiff Saatchi & Saatchi is a foreign corporation duly organized and existing under the laws of the State of Delaware with its principal place of business located at 375 Hudson Street in the City, County and State of New York. Saatchi & Saatchi is qualified to do business in the State of New York.

3. Saatchi & Saatchi is and at all relevant times herein has been engaged in business as a full service advertising, marketing and communications company.

4. Non-party General Mills, Inc. ("GMI") is a processor and packager of numerous food products including such iconic brands as Cheerios, Wheaties, Trix, Yoplait Yogurt, Gold Medal Flour, as well as many other equally well known brands and products.

5. Betty Crocker and Pillsbury, which are also clients of Saatchi & Saatchi, are subsidiaries of GMI.

6. Saatchi & Saatchi is, as its predecessors were, the principal advertising agency for GMI in North America for nearly 80 years.

7. GMI is an important account of Saatchi & Saatchi and an entire group of the Company is dedicated to servicing that client.

#### VENUE

8. Venue properly lies with this Court pursuant to section 503 of the New York Civil Practice Law and Rules in that plaintiff resides in this county.

#### FACTS

9. On or about January 1, 1996, in consideration for his employment with the Company as Vice Chairman of the New York office of Saatchi & Saatchi and as Worldwide Account Director for the GMI account, defendant Burns executed a written employment agreement ("Employment Agreement") whereby he agreed that:

8. [H]e will not divulge to anyone (other than the Corporation [Saatchi] and its affiliates or any persons employed or designated by the Corporation [Saatchi] or in connection with the Executive's duties hereunder) any knowledge or information of any type whatsoever of a confidential nature relating to the business of the Corporation [Saatchi] of any of its affiliates, including, without limitation, all types of trade secrets (unless readily ascertainable from public or published information or trade sources). The Executive further agrees not to disclose, publish or make use of any such knowledge or information of a confidential nature without the prior written consent of the Corporation [Saatchi]. The

provisions of this paragraph 8 shall apply both during the time the Executive is employed by the Corporation [Saatchi] and thereafter.

10. In further consideration for his employment as the Vice Chairman of the New York office of Saatchi & Saatchi and as the Worldwide Account Director for the GMI account, defendant Burns agreed in his Employment Agreement that:

9.2 For as long as the Executive is employed by the Corporation [Saatchi] (whether pursuant to this Agreement or otherwise), the Executive will not, within any jurisdiction within the United States in which the Corporation [Saatchi] or any affiliate is duly qualified to do business, or within any marketing area in which the Corporation [Saatchi] or any affiliate is doing a substantial amount of business, directly or indirectly own, manage, operate, control, be employed by or participate in the ownership, management, operation or control of, or be connected in any manner with, any business of the type and character engaged in and competitive with that conducted by the Corporation [Saatchi]. . . .

11. Defendant Burns also agreed that for a "Restricted Period" (defined as a "one (1) year period immediately following the termination of the Executive's employment with the Corporation [Saatchi] (regardless of whether such termination occurs at the end of the Term of Employment under this Employment Agreement or at any earlier or later time)," that he:

9.3 [S]hall not, directly or indirectly, either on his own behalf or on behalf of any other person, firm, partnership, corporation or other entity, without the prior written consent of the Corporation [Saatchi], do any of the following:

9.3.1 Attempt in any manner to persuade any Client to cease to do business with, or to reduce the amount of business which the Client has customarily done or contemplates doing with, the Corporation [Saatchi] or any affiliate of the Corporation [Saatchi].

9.3.2 Employ or attempt to employ any person who is in the Corporation's [Saatchi's] employ at the time of the Executive's termination of employment with the Corporation [Saatchi] or was in the Corporation's [Saatchi's] employ within one (1) year prior to the date of Executive's termination.

9.3.3 Solicit or attempt to solicit business of any Client (unless such solicitations are rendered on behalf of the Corporation [Saatchi]) or render services (other than on behalf of the Corporation [Saatchi]) for any Client.

12. At all times relevant hereto, defendant Burns was responsible for the overall management of the GMI account.

13. Defendant is a highly paid executive. During the period January 1, 2001 through the present, the Company paid Burns in excess of \$4,000,000 in various forms of compensation which do not include his company car, entertainment expenses and various other perquisites which are worth tens of thousands of dollars a year to this executive.

14. Defendant has devoted much of his professional life to the GMI account and has been the specialist who has served this account.

15. Saatchi & Saatchi entrusted defendant with all the good will and experience gained by Saatchi & Saatchi during the 80 years that it and its predecessors have serviced GMI's advertising needs.

16. Saatchi & Saatchi has expended extraordinary amounts of money and effort over a period of 80 years to develop its business relationship with GMI. These expenditures and efforts included research and development of advertising ideas and training of management and support staff. This confidential and proprietary customer information developed and compiled through Saatchi & Saatchi's efforts is not readily available to its competitors.

17. At any given moment in time, Saatchi & Saatchi has in its possession numerous proprietary trade secrets related to actual or potential advertising campaigns, creative

ideas, and/or the results of innovative consumer research related to potential, new, or existing products of GMI.

18. During the course of his employment with Saatchi & Saatchi, defendant was privy to and became familiar with various confidential and proprietary information of the Company with regard to its major client, GMI, including data related to the business, products, research, processes, formulas, strategies or plans and/or promotional needs of GMI as well as Saatchi & Saatchi.

19. On Friday, February 11, 2005, the Company and the defendant announced that he was resigning from his position as the Vice Chairman of the New York office of Saatchi & Saatchi and his responsibilities as the Worldwide Account Director responsible for managing the 80 year relationship between Saatchi & Saatchi and GMI.

20. Defendant's resignation from Saatchi & Saatchi was negotiated with the Company and was to be effective March 15, 2005. Defendant agreed that in the interim between the announcement of his resignation and March 15, 2005, he would continue as an executive of Saatchi & Saatchi to assist in the transition of the persons appointed by Saatchi & Saatchi as his replacement on the GMI account.

21. Although defendant attempted to negotiate a resignation date of February 15, 2005, the Company insisted that the effective date be March 15, 2005.

22. Pursuant to the negotiated Separation Agreement, defendant reaffirmed his agreement not to solicit, directly or indirectly, the business of GMI for a period of one year. Defendant was to be paid at least \$500,000 in separation pay, plus \$1,000,000 in deferred

compensation pursuant to an Amended and Restated Deferred Compensation Agreement, \$500,000 of which was wired to defendant's account immediately prior to February 14, 2005.

23. Upon information and belief, on Sunday, February 13, 2005, defendant left for an alleged "vacation" on the island of St. Bart's in the Caribbean.

#### **DEFENDANT'S SCHEME TO DIVERT GMI'S BUSINESS**

24. Upon information and belief, upon learning that he would not be appointed to be the CEO of Saatchi & Saatchi's New York office, defendant began a campaign of disparagement of the Company to both the Company's employees and GMI.

25. Upon information and belief, defendant conducted his illegal activities by making improper use of Saatchi & Saatchi's confidential and proprietary information, its trade secrets, its time, and its facilities, including but not limited to the use of Company's computers and e-mail service.

26. Upon information and belief, commencing in the Fall of 2004, defendant told various Company employees over whom he had supervisory responsibility, that they should consider leaving the Company.

27. Upon information and belief, defendant told various employees under his supervision that it would be better for all if the GMI staff moved to a different agency or set up an agency of their own to service the GMI account.

28. Upon information and belief, in or about the Fall of 2004, defendant began to explore the feasibility of moving the GMI account from Saatchi & Saatchi.

29. Upon information and belief, in or about October 2004, defendant approached one or more senior members of GMI and suggested that GMI consider moving its business from Saatchi & Saatchi to another agency upon his resignation from the Company.

30. Defendant did not tell his superiors at Saatchi & Saatchi, the worldwide management of the Company, that he had tried to alienate GMI from Saatchi & Saatchi.

31. Only in the days immediately preceding the commencement of this action, did the worldwide management of Saatchi & Saatchi learn that in the Fall of 2004 Burns had solicited GMI to leave Saatchi & Saatchi.

32. Upon information and belief, defendant was informed by GMI that they were satisfied with the services provided by Saatchi & Saatchi and had no intention of moving to another agency.

33. Upon information and belief, after GMI refused to go along with defendant's plan, defendant decided to pressure GMI to leave Saatchi & Saatchi by causing and/or encouraging other Saatchi & Saatchi employees servicing the GMI account, to follow his lead and to resign from the Company.

34. In addition, upon information and belief, defendant solicited one former member of his GMI staff to leave Saatchi & Saatchi.

35. Although defendant was forced to abandon his campaign to persuade the aforesaid employee to join him in his efforts to take away the GMI account, upon information and belief, defendant continued to solicit other employees of Saatchi & Saatchi to leave Saatchi & Saatchi.



36. Upon information and belief, during the months of November 2004 through February 2005, defendant continued to disparage the Company to the staff which worked under his supervision on the GMI account in an effort to convince them to leave the Company.

37. Upon information and belief, defendant and others under his direction and/or with his knowledge and consent copied documents containing confidential information and trade secrets and removed them from the Company's premises.

38. Although defendant was to remain an employee of Saatchi & Saatchi until March 15, 2005, he vacated his office at Saatchi & Saatchi at or about the time he left for his purported "vacation" on February 13, 2005.

39. On February 14, 2005, 17 former employees of Saatchi & Saatchi which constituted the senior management servicing the GMI account resigned *en masse* and upon information and belief immediately joined a competitor of Saatchi & Saatchi.

40. Despite the fact that defendant, at all relevant times, was still an employee and an executive of Saatchi & Saatchi, he made himself unavailable to the Company to deal with the *en masse* departure of the Company's senior management servicing the GMI account.

41. Upon information and belief, the purpose of the defendant's alleged "vacation" was to insure he would be unavailable to the Company at the time of the *en masse* departure of his senior staff.

42. On February 24, 2005, defendant was put on an administrative leave as a result of defendant's refusal to meet with Saatchi & Saatchi to discuss the *en masse* departure of his staff.

43. Upon information and belief, defendant continues to solicit Saatchi & Saatchi's employees by accepting their resumes and offers to assist him and he has failed to disclose this fact to management of plaintiff.

44. Defendant agreed in his Employment Agreement that in the event of a breach or threatened breach of any of the terms of the restrictive covenants, Saatchi & Saatchi would be entitled to an injunction. Specifically, defendant Burns agreed that:

Since the Corporation [Saatchi] may be irreparably damaged if the provisions of this paragraph 9 [Covenants Not to Compete] are not specifically enforced, in the event of a breach [or] threatened breach of any of the terms of this paragraph 9 [Covenants Not to Compete] by the Executive, in addition to any other remedy that may be available to it, the Corporation [Saatchi] shall be entitled to injunctive relief without showing that monetary damages will not provide an adequate remedy.

I [defendant], therefore, agree that in the event of my material breach of this Agreement [Confidentiality and Non-Disclosure Policy/Agreement], in addition to any other remedies which may be appropriate, including but not limited to an action for damages, that the Company [Saatchi] shall be entitled to injunctive relief without the need of demonstrating the inadequacy of its remedies at law and without the need of posting a bond.

**AS AND FOR A FIRST CAUSE OF ACTION**

**(Breach of contract)**

45. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 44, as if fully set forth herein.

46. Defendant in consideration for his employment with Saatchi & Saatchi and as Worldwide Account Director for the GMI account, executed a written Employment

Agreement whereby he agreed to safeguard and not to divulge or use Saatchi & Saatchi's confidential and proprietary information and trade secrets without written consent of the Company.

47. The aforesaid conduct on the part of defendant constitutes a material breach of his Employment Agreement and Separation Agreement (together "The Employment Agreements".)

48. Saatchi & Saatchi for its part performed all of its obligations under the Employment Agreements except to the extent that it may have been prevented from doing so by the acts of defendant.

49. As a direct, proximate and foreseeable result of the aforesaid breach of the Employment Agreements, Saatchi & Saatchi will suffer immediate and irreparable harm to its good will and to its relationship with its current and former employees and clients, for which there is no adequate remedy at law.

50. By reason of the foregoing, Saatchi & Saatchi respectfully requests that the Court enter a permanent injunction preventing defendant from: directly or indirectly launching any company or taking employment with any advertising, marketing or communications company which services GMI; soliciting and/or employing persons presently employed by Saatchi & Saatchi or who have been employed by Saatchi & Saatchi in the year preceding his agreed to March 15, 2005 termination date; disclosing and utilizing the trade secrets and confidential and proprietary business information of Saatchi & Saatchi in furtherance of any of his own business interests; and soliciting, communicating and/or advising Saatchi & Saatchi's client, GMI, as well as any other client or prospective client of the Company.

51. By reason of the aforesaid acts on the part of the defendant, defendant must disgorge the compensation paid to him since the day he first breached his Employment Agreements.

52. By reason of the aforesaid acts on the part of defendant, Saatchi & Saatchi is relieved of any further obligation to pay compensation to the defendant.

**AS AND FOR A SECOND CAUSE OF ACTION**

**(Breach of fiduciary duty)**

53. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 52, as if fully set forth herein.

54. At all times relevant hereto, defendant has been a senior executive of Saatchi & Saatchi and by virtue of his position defendant was responsible for Saatchi & Saatchi's business relationship with GMI.

55. At all times relevant hereto, defendant has also been in charge of Saatchi & Saatchi's team responsible for the GMI account.

56. Defendant owed Saatchi & Saatchi the highest good faith, integrity and loyalty while an executive and employee of Saatchi & Saatchi.

57. Defendant, a senior executive of Saatchi & Saatchi, knew that each of the employees of the Company owes a fiduciary duty and duty of loyalty to the Company.

58. Despite the knowledge of the aforementioned, defendant secretly solicited, encouraged and instructed employees of Saatchi & Saatchi to breach their fiduciary duties and duties of loyalty to the Company.

59. Upon information and belief, defendant secretly conspired with other employees of Saatchi & Saatchi in breach of his fiduciary duty to Saatchi & Saatchi by unlawfully misappropriating Saatchi & Saatchi's confidential and proprietary information, wrongfully soliciting GMI's business while still employed by Saatchi & Saatchi, acting to divert from Saatchi & Saatchi personnel who had provided service to Saatchi & Saatchi's GMI account, and intending to undermine and destroy Saatchi & Saatchi's ability to provide advertising services to GMI during a critical advertising season.

60. The aforesaid conduct on the part of defendant constitutes breach of his fiduciary duty to the Company.

61. By reason of the foregoing, Saatchi & Saatchi respectfully requests that the Court enter a permanent injunction preventing defendant from: directly or indirectly launching any company or taking employment with any advertising, marketing or communications company which services GMI; soliciting and/or employing persons presently employed by Saatchi & Saatchi or who have been employed by Saatchi & Saatchi in the year preceding his agreed to March 15, 2005 termination date; disclosing and utilizing the trade secrets and confidential and proprietary business information of Saatchi & Saatchi in furtherance of any of his own business interests; and soliciting, communicating and/or advising Saatchi & Saatchi's client, GMI, as well as any other client or prospective client of the Company.

62. By reason of the aforesaid acts on the part of the defendant, defendant must disgorge the compensation paid to him since he first breached his fiduciary duties to the Company.

63. By reason of the aforesaid acts on the part of defendant, Saatchi & Saatchi is relieved of any further obligation to pay compensation to the defendant.

**AS AND FOR A THIRD CAUSE OF ACTION**

**(Breach of the duty of loyalty)**

64. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 63, as if fully set forth herein.

65. The aforesaid conduct on the part of defendant constitutes breach of his duty of loyalty to the Company.

66. By reason of the foregoing, Saatchi & Saatchi respectfully requests that the Court enter a permanent injunction preventing defendant from: directly or indirectly launching any company or taking employment with any advertising, marketing or communications company which services GMI; soliciting and/or employing persons presently employed by Saatchi & Saatchi or who have been employed by Saatchi & Saatchi in the year preceding his agreed to March 15, 2005 termination date; disclosing and utilizing the trade secrets and confidential and proprietary business information of Saatchi & Saatchi in furtherance of any of his own business interests; and soliciting, communicating and/or advising Saatchi & Saatchi's client, GMI, as well as any other client or prospective client of the Company.

67. By reason of the aforesaid acts on the part of the defendant, defendant must disgorge the compensation paid to him since he first breached his duty of loyalty to the Company.

68. By reason of the aforesaid acts on the part of defendant, Saatchi & Saatchi is relieved of any further obligation to pay compensation to the defendant.

WHEREFORE, plaintiff Saatchi & Saatchi North America, Inc., demands judgment against defendant MICHAEL P. BURNS, as follows:

1. With respect to the First Cause of Action, a judgment for permanent injunctive relief as set forth in this Complaint and damages in an amount to be determined at trial but not less than \$1,000,000;

2. With respect to the Second Cause of Action, a judgment for permanent injunctive relief as set forth in this Complaint and damages in an amount to be determined at trial but not less than \$1,000,000;

3. With respect to the Third Cause of Action, a judgment for permanent injunctive relief as set forth in this Complaint and damages in an amount to be determined at trial but not less than \$1,000,000; and,

4. For such other, further and different relief that this Court deems just and proper.

Dated: New York, New York  
March 11, 2005

DUNNINGTON, BARTHOLOW & MILLER L.L.P.

By: \_\_\_\_\_



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