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Dun & Bradstreet, Inc. and Lattice Engines, Inc.

DUN & BRADSTREET, INC. and LATTICE
 ENGINES, INC.,

Plaintiffs / Counterclaim Defendants,

- against –

TROPARE, INC. F/K/A BOOPSIE, INC.,

Defendant / Counterclaim Plaintiff.

SUPERIOR COURT OF NEW JERSEY
 ESSEX COUNTY
 LAW DIVISION

DOCKET NO.: ESX-L-7424-20

CIVIL ACTION

ORDER

THIS MATTER having been brought before the Court by Saul Ewing LLP, attorneys for Plaintiffs/Counterclaim Defendants Dun & Bradstreet, Inc. and Lattice Engines, Inc. (“Plaintiffs”), for an Order barring Greg Carpenter from serving as an expert witness for Defendant/Counterclaim Plaintiff Tropare, Inc. (“Tropare”); and the Court having considered the submissions of the parties, and arguments of counsel, if any, and for other good cause shown:

IT IS on this 8th day of Dec. 2025,

ORDERED that Plaintiffs’ Motion for an Order barring Greg Carpenter from serving as an expert witness for Tropare is hereby **DENIED** in its entirety; and it is further

ORDERED that electronic filing of this Order via eCourts shall constitute good and sufficient service on all counsel of record.

HON. KEITH E. LYNOTT, J.S.C.

[X] Opposed

Statement of Reasons

On this motion, the Plaintiffs/Counterclaim Defendants Dun & Bradstreet, Inc. and Lattice Engines, Inc. (collectively, “D&B”) seek a determination by the Court that Greg Carpenter (“Carpenter”), the principal of the Defendant/Counterclaimant Tropare, Inc. (“Tropare”) is barred from serving as an expert witness for Tropare as to any claim or issue in this case. For the reasons set forth herein, the Court denies the motion.

D&B contends there are multiple reasons why the Court should grant the precatory relief. It posits that the parties agreed - via a Discovery Confidentiality Order entered years ago at the outset of this case - that an individual affiliated with a party would not and could not serve as an expert witness. According to D&B, as Carpenter is plainly affiliated with Tropare, he is barred by the terms of such agreement from serving as an expert witness.

D&B contends the parties voluntarily entered this agreement and knew and understood the import of its terms and conditions. It posits that there is no reason or basis effectively to disregard such agreement now that the case has reached an advanced stage and, specifically, the time for designation of experts.

D&B argues that, as the individual who claims to have previously developed the DST – the product or tool on which the parties’ claims and defenses hinge – he is perforce a fact witness as to the facts pertaining to the development, functionality and claimed proprietary features of the DST. D&B contends that to allow Carpenter also to serve as an expert witness - imbued (supposing he qualifies) with the Court’s imprimatur upon accepting him in such capacity - would inexorably lead to jury confusion and improperly confer such judicial approval on Carpenter’s testimony as to the underlying facts.

D&B contends that, if Carpenter were accepted as an expert witness, he would then secure access to previously designated “Attorneys’ Eyes Only” or “AEO” materials. Such materials bear such designation because their dissemination to a receiving party, or an individual affiliated with a party, could have a deleterious impact on the producing party. Put differently, D&B contends that an essential purpose for the Discovery Confidentiality Order that explicitly permitted such a designation as to certain materials was to preclude individuals such as Carpenter from examining such materials.

D&B asserts that there would be no undue prejudice to Tropare from barring Carpenter from serving as an expert on its behalf. It contends that not only would Carpenter still be able to testify as a fact witness at trial, but there are, as the Court has (so D&B claims) previously determined, multiple other individuals who can ably fill the role of expert witness. D&B contends it has interposed this motion at this time - prior to the expert phase of discovery - in order to ensure that Tropare does not suffer any undue prejudice from a determination that Carpenter may not serve as Tropare’s expert.

Having considered the application and examined the submissions and heard the arguments of counsel, the Court finds as follows:

The designation of Carpenter as an expert witness is not at odds with the terms of the Discovery Confidentiality Order. That instrument does not establish the rights of either party to name or refrain from naming an expert witness for purposes of testifying in such capacity at the trial of this case. Instead, it provides that a party cannot circumvent the restrictions on party access to properly designated AEO material by naming an individual employed or otherwise affiliated with a party as an expert.

The agreement remains in effect and the Court will continue to require both sides to abide by its terms. Should Tropare determine to name Carpenter as an expert witness, he will not as a result of such status be permitted access to materials designated as AEO materials. Tropare should be cognizant of such restrictions in deciding to name Carpenter as an expert.¹

There is no materially greater risk of jury confusion in relation to Carpenter's putative role as an expert than with any other expert witness. Indeed, one could readily anticipate that, if Carpenter does serve as an expert as well as a fact witness, the Plaintiffs will, during and based on their cross-examination, argue to the jury that his testimony as to pertinent facts is influenced by his need to rely on such facts to support his opinion(s).

In all events, the Court's acceptance of an individual as an expert with the necessary credentials to provide expert testimony on a particular subject or in connection with a particular discipline is not an endorsement of the witness or his or her testimony. The jury will be instructed that the reliability and weight of an expert witness's opinion(s) hinges on the facts on which the expert bases the opinion(s) and the fact finder must determine independently if such facts actually exist.

The Court will also instruct the jury that it can accept or reject all or part of an expert's opinion(s). The Court will, of course, also provide any other limiting instructions as to any expert testimony offered by Carpenter – assuming he qualifies as an expert – if and as necessary to

¹ In this regard, the Court observes that the issue of how the trial will be conducted and, under what strictures AEO material can and will be used or presented to the jury and in whose presence, is not before the Court at this time. But should Tropare designate Carpenter as an expert, his preparation of any expert report – the document that will identify and cabin the scope of any expert opinion(s) he offers – will take place under the aegis of the Discovery Confidentiality Order and with all requirements as to AEO material in full force and effect.

ameliorate any concerns about jury confusion that it determines may arise from his appearance/acceptance as an expert witness.

There is no controlling decision or principle of law that prevents Tropare from naming Carpenter as an expert witness. As noted, should Carpenter serve in that capacity and should the Court admit him as an expert, Tropare will nonetheless be bound by the Discovery Confidentiality Order and the Court will provide appropriate instructions to the jury.