UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:	)	**JOINTLY ADMINISTERED**
	)	
FRIEDE GOLDMAN HALTER, INC.	)	**CASE NO. 01-52173**
ET AL, JOINTLY ADMINISTERED	)	
	)	

	)	
	)	
FRIEDE & GOLDMAN, LTD.	)	
Plaintiff	)	
v.	)	**ADVERSARY NO. 03-05405**
	)	
WILLIAM BENNETT, JR. AND	)	
BENNETT & ASSOCIATES, L.L.C	)	
Defendant	)	

OPINION

The matter before the court is the Motion of William T. Bennett, Jr. and Bennett & Associates, L.L.C. for Partial Summary Judgment and the opposition thereto filed on behalf of the Plaintiff, Friede & Goldman, Ltd. ("Friede & Goldman") Having considered the pleadings, briefs and supporting documentation, the court concludes that the motion should be granted in part and denied in part, as follows.

I. FACTUAL BACKGROUND[1]

Friede & Goldman, a structural and vessel design and engineering company and a

[1] The factual background set forth herein is taken from matters submitted by the parties and is not disputed.

subsidiary corporation of Friede Goldman Halter, Inc., filed a petition for relief under Chapter 11 of Title 11 of the United States Code on April 19, 2001. Approximately 29 related debtor entities are jointly administered pursuant to court orders.

Defendant William Bennett, Jr. was the former president of Friede & Goldman and is also president and owner of defendant Bennett & Associates, L.L.C.[2] Bennett left Friede & Goldman in June of 1997.

On September 19, 2001, Friede & Goldman filed its Petition and Application for Injunctive Relief, Temporary Restraining Order, Preliminary and Permanent Injunction and Petition for Damages against William T. Bennett, Jr. and Bennett & Associates, L.L.C. in the 24th Judicial District Court for Jefferson Parish, Louisiana. The matter was removed to federal court and transferred to the Bankruptcy Court for the Southern District of Mississippi.

Friede & Goldman seeks injunctive relief to require the defendants to identify and return all of Friede & Goldman's trade secrets and confidential information in their possession. Damages are also sought for unlawful misappropriation of trade secrets and confidential information. Friede & Goldman alleges that the defendants' actions were in violation of the Louisiana Uniform Trade Secrets Act, La.Rev.Stat. § 51:1432, the Louisiana Unfair Trade Practices Act and Consumer Protection Law, La.Rev.Stat. § 51:1401 et. seq., and Art. 2315 of the Louisiana Civil Code alleging defendants' actions were negligent, intentionally tortious and a breach of fiduciary duty.

[2] The complaint alleges that Bennett & Associates is a company that provides design services for builders of vessels and structures for exploration and production of subsurface oil and gas and is a competitor of Friede & Goldman.

The plaintiff claims that at the time of Bennett's departure from Friede & Goldman, he was not authorized to remove any confidential business information but that he did secretly remove materials, including drawings, computer hard drives or disks, and documents containing Friede & Goldman trade secrets and proprietary and confidential business information. Friede & Goldman claims that it did not have any information about the misappropriation of its trade secrets until July of 1999 when it learned, through a written communication received from Noble Denton,[3] that employees of Bennett & Associates were in possession of Friede & Goldman documents containing detailed design information regarding Friede & Goldman proprietary systems. The plaintiff further claims that subsequent to that time and particularly in the summer of 2001, Friede & Goldman had information leading it to believe that Bennett & Associates had additional reports and data from physical tests in its design work and was disclosing such confidential information to Friede & Goldman's customers, competitors and others in the marine and oil and gas industry. Friede & Goldman claims that the continued utilization and dissemination of such confidential information is causing and will continue to cause irreparable injury and damage.

In May of 2002, Friede & Goldman, Ltd's business and business assets were sold to United Heavy BV ("United Heavy"), including the name and trade secrets. This lawsuit was specifically excluded from the assets purchased by United Heavy.

Defendants William T. Bennett and Bennett & Associates filed their motion for partial summary judgment requesting dismissal of claims asserted under the Louisiana Uniform Trade

[3] Noble Denton is a marine and engineering consultant and surveying company.

Secrets Act, the Louisiana Unfair Trade Practices Act and tort law. The defendants assert that (i) the claims are time barred, (ii) the plaintiff has sold the trade secrets and cannot recover under the Louisianan Uniform Trade Secrets Act, (iii) the tort claim is pre-empted by the Trade Secrets Act, and (iv) the claim cannot be asserted under the Louisiana Unfair Trade Practices Act because it is brought in a representative capacity, and because no injunctive relief can be asserted by a private litigant. The movants claim there is no genuine issue as to any material fact and that they are entitled to judgment as a matter of law.[4]

II. CONCLUSIONS OF LAW

The court has jurisdiction over the parties and subject matter in this non-core proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(c).

The defendants have filed a motion for partial summary judgment pursuant to Federal Rule of Bankruptcy Procedure 7056, which makes applicable Federal Rule of Civil Procedure 56, arguing that the plaintiff's trade secrets claim under Count One, the tort action under Count Three and the unfair trade practice claim under Count Five are untimely and must be dismissed.

> "Summary judgment is proper when the pleadings and evidence demonstrate that no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law." *DIRECTV, Inc. v. Budden*, 420 F. 3d 521, 529 (5th Cir. 2005). The initial burden to demonstrate that no genuine issue of material fact exists is on the movant. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L. Ed. 2d 265 (1986). Upon showing there is an absence of evidence to support an essential element of the non-movant's case, the burden shifts to the party opponent to establish that there is a genuine issue of material fact in dispute. *Id.* at 322, 106 S. Ct. 2548.

[4] The defendants are not currently requesting dismissal of Count Four of the petition for breach of fiduciary duty.

Condrey v. SunTrust Bank of Georgia, 431 F. 3d 191 (5th Cir. 2005).

A.

The defendants' first argument relates to the statute of limitations under The Louisiana Uniform Trade Secrets Act. Under that Act, "An action for misappropriation must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purpose of this Section, a continuing misappropriation constitutes a single claim." La. Rev. Stat. Ann. § 51:1436. The plaintiff alleges that it discovered the misappropriation in July of 1999. The lawsuit was filed in September of 2001, and therefore, was filed within 3 years of discovery of the misappropriation. However, the defendants argue that the petition states that Bennett left employment of Friede & Goldman in June of 1997 and argue that prescription ran in June of 2000. The defendants also argue that, "[w]here timeliness of a suit depends on some circumstances that suspends the time bar, grounds therefor must appear from the pleadings" relying on authority in *Campo v. Corea,* 828 So. 2d 502 (La. 2002). Defendant's Memorandum in Support of Motion for Partial Summary Judgment at 6. Defendants claim the plaintiff failed to plead any allegations that can salvage the time barred claim.

The plaintiff argues, however, that the *Campo* case was a medical malpractice case and is not applicable to the Trade Secrets Act:

> Furthermore, we find no merit in plaintiff's argument that the recent Louisiana Supreme Court case of *Campo v. Correa*, 2001-2707 (La.6/21/02), 828 So.2d 502, supports her position that her petition should not be found to be prescribed on its face because it was brought within one year of her alleged discovery of the causal connection between her symptoms and the defendants' conduct. In *Campo v. Correa, supra*, the Louisiana Supreme Court stated that it granted writs in that case "to resolve a split among the circuits on the issue of whether to consider the date of discovery in determining whether the petition **in a medical malpractice**

> **action** is prescribed on its face, and to examine the correctness *vel non* of whether the Campos were reasonable in not discovering the alleged malpractice acts sooner than alleged." *Id.* at p. 6, 828 So.2d at 507 (Emphasis ours.) The *Campo v. Correa* case addressed the interpretation of special statutory prescriptive periods applicable to medical malpractice actions. The instant case is not a medical malpractice action, and there is no indication in the *Campo v. Correa* opinion that the holding regarding prescription in that case has application in actions other than those involving medical malpractice claims.

Grant v. Tulane University, 853 So.2d 651, 653-654 (La.App. 4 Cir.2003). This court is inclined to question applicability of that case as well. In any event, the court further concludes that the plaintiff's petition clearly sets out factual details regarding the timing of the discovery of Bennett's misappropriation referring to correspondence from Noble Denton informing Friede & Goldman of dissemination of a trade secret and confidential report and attached the document that was dated July 15, 1999. Additionally, the plaintiff points to other evidence discovered in 2001 showing new and separate acts of misappropriation that were well within the three year limitations period. The court concludes that the cause of action in Count One for trade secrets violations was not untimely.

B.

The defendants also argue that the Count Three action for tortious conduct was untimely and must be dismissed. The petition alleges that, "Defendants' conduct, individually and in concert, constitutes conversion, wrongful diversion, misappropriation, theft and intentional interference with contract of Friede & Goldman, Ltd.'s property, and constitutes negligence and intentional tortious conduct, under applicable Louisiana law, including, but not necessarily limited to, Article 2315 of the Louisiana Civil Code." The parties are in agreement that tort actions in Louisiana are subject to a one year limitations period. "Delictual actions are subject to a liberative prescription of one year. This prescription commences to run from the day injury or

damage is sustained. . .” La. Civ. Code Ann. art. 3492. The defendants argue that the plaintiff had one year from the date of the July 15, 1999, correspondence to file suit.

Friede & Goldman argues that the defendants only address the date the plaintiff first discovered that one document had been misappropriated and did not address the date Friede & Goldman suffered its damages, arguing that the misappropriation was concealed and indicating that Friede & Goldman does not yet know the extent or date of its damages. Additionallly, the plaintiff alleges that some of the damages occurred in 2001 and were well within the prescription period.

In *Terrebonne Parish School Board v. Columbia Gulf Transmission Co.,* 290 F.3d 303 (5th Cir. 2002), the court stated the following:

> “[P]rescription statutes are to be strictly construed against prescription and in favor of the claim that is said to be extinguished . . . The defendant has the initial burden of proving that a tort claim has prescribed, but if the defendant shows that one year has passed between the tortious acts and the filing of the lawsuit, then the burden shifts to the plaintiff to prove an exception to prescription . . .
>
> One such exception is found in the doctrine of *contra non valentem*, which prevents the commencement of the running of prescription “when the plaintiff does not know nor [sic] reasonably should know of the cause of action.” The doctrine applies even if the plaintiff’s ignorance is not induced by the defendant...
>
> The parties also disagree whether this case involves a continuing tort. A continuing tort presents another exception to Louisiana’s one-year prescriptive period for delicts, because “when the tortious conduct and resulting damages continue, prescription does not begin until the conduct causing the damage is abated.” As the Louisiana Supreme Court has stated, “the continuous nature of the alleged conduct has the dual effect of rendering such conduct tortious and of delaying the commencement of prescription.”

Id. at 320, 323. The court also held that summary judgment is not appropriate where there is a genuine issue of fact as to when a limitations period begins:

> The Board argues that summary judgment was improper on an issue such as prescription that turns on subjective knowledge or notice. Although federal courts often grant summary judgment because a statute of limitations has expired, they refuse to grant summary judgment for defendant if there is an issue of fact as to when the limitations period began . . .

Id. at 319. The court concludes that there are sufficient factual issues surrounding the point in time at which the limitations period began and it is more appropriate at this time that summary judgment be precluded on this issue.[5]

C.

The defendants also argue that the Count Five action under the Louisiana Unfair Trade Practices Act ("LUTPA") was not timely filed and is precluded. They argue that the continuing tort doctrine should not apply under LUTPA and that the one year limitation period cannot be interrupted or suspended. The defendants argue that the Fifth Circuit's decision in *Tubos de Acero de Mexico, S.A. v. American International Investment Corp., Inc.*, 292 F. 3d 471 (5th Cir. 2002) should have no impact and that the court should apply Louisiana law. In that case, the court stated:

> Although this Court has not previously addressed whether the continuing violation doctrine applies to the LUTPA peremptive period, we have noted the tension between the Louisiana appellate court and federal district court decisions within this circuit. . . Because we find these recent Louisiana appellate court opinions persuasive, and the federal district courts did not have the benefit of those cases, we hold that the continuing violation doctrine applies to the LUTPA peremptive period.

[5] Moreover, because of the court's conclusions regarding preemption of the tort action, the issue of prescription on this specific matter may ultimately be moot.

Id. at 481-82. The court concludes that the Fifth Circuit case is controlling for this court and that the continuing violation doctrine is applicable to the LUTPA claim here where the petition alleges continuing conduct by the defendants. The court further concludes that the Count Five LUTPA claim was not untimely filed. Additionally, to the extent there may be factual issues surrounding when the limitation period began, summary judgment would also not be appropriate on that basis.

D.

The defendants next argue that the Count One claim for injunctive relief under the Louisiana Uniform Trade Secrets Act ("LUTSA") is no longer viable and is moot because the plaintiff is no longer the owner of the trade secrets because they were sold to United Heavy and no longer has the right to recover under LUTSA. The defendants argue that the LUTSA injunction provision only provides prospective injunctive relief.

The Asset Purchase Agreement between Friede & Goldman Ltd. and United Heavy specifically listed this lawsuit in the Exhibit E list of Excluded Assets. The agreement also provided that the, "Buyer shall cooperate with FGH and provide assistance as reasonably requested by FGO or FGH in the case ... pending ... [and that] if such suit is settled, Seller shall use reasonable efforts to preserve the value of the Intellectual Property which is the subject of the Bennett Suit; *provided, however,* that Seller shall have no obligation whatsoever to pursue or prosecute the Bennett Suit and may abandon such proceedings at any time in its sole discretion." Asset Purchase Agreement ¶ 9.3. The defendants refer to the exclusion in suggesting that United Heavy placed little value on either the assets' secrecy or the alleged infringement.

The court concludes, however, that the plaintiff does have a right to pursue the pending lawsuit because it was specifically excluded from the list of assets that were purchased by United Heavy and that by such exclusion, Friede & Goldman retained ownership in the trade secrets to the extent of the right to pursue and obtain any potential recovery in the lawsuit. Although the defendants argue that relief sought was purely prospective injunctive relief, the petition does not limit itself to such injunctive relief and also requests damages. The court would agree with the defendants' argument to the extent that Friede & Goldman may not have a right to pursue injunctive relief for prospective violations of trade secrets, at least as to those occurring after the date of the sale of the trade secrets from Friede & Goldman to United Heavy, if any.

E.

The defendants next argue that the plaintiff's tort claim for damages under Count Three conflicts with the claims under LUTSA and that the tort claim is thereby displaced and pre-empted and should be dismissed. The plaintiff argues that the damages sought under tort law does not conflict with actual damages available under LUTSA, specifically those provided in La. Rev. Stat. Ann. § 51:1433. LUTSA provides that, "This Chapter displaces conflicting tort, restitutionary, and other laws of this state pertaining to civil liability for misappropriation of a trade secret." La. Rev. Stat. Ann. § 51:1437.

Many jurisdictions considering this provision of the Uniform Trade Secrets Act have determined that common law torts based on the misappropriation of trade secrets are pre-empted. One recent decision contains a pertinent discussion:

> Appellants argue that the Trade Secrets Act preempts other relief, particularly damages in tort, when trade secrets are involved. . . The Trade Secrets Act . . . is

based on the Uniform Trade Secrets Act. . . Arkansas Code Annotated § 4-75-602 provides:

> (a) *This subchapter displaces conflicting tort, restitutionary, and other law of this state pertaining to civil liability for misappropriation of a trade secret . . .*

Id. (emphasis added).

While the statutory language appears to be plain and unambiguous, we note that we have not interpreted or applied this displacement provision of our Trade Secrets Act. However, the United States District Court for the Eastern District of Arkansas considered that issue in *Vigoro Industries, Inc. v. Cleveland Chemical Co.*, 866 F. Supp. 1150 (E.D.Ark. 1994)(affirmed in part; reversed in part on other grounds in *Vigoro Industries, Inc. v. Crisp*, 82 F. 3d 785 (8th Cir. 1996). The federal district court stated:

> The court notes that the Arkansas Trade Secrets Act ... is Vigoro's exclusive remedy for the Defendants' alleged misappropriation of Vigoro's trade secrets.... Accordingly, were the Court to determine that the information Vigoro seeks to protect as a trade secret qualified as such, and that the Defendants misappropriated those trade secrets, then Vigoro's exclusive remedy for improper use of that information would be pursuant to the Arkansas Trade Secrets Act. In that situation, Vigoro would not be able to rely on the acts constituting misappropriation of a trade secret to support its other causes of action. That situation does not arise here, however, because the Court concludes that the information that Vigoro seeks to protect as a trade secret is not entitled to protection as such under the Arkansas Trade Secrets Act.
>
> *Vigoro, supra.*

Other jurisdictions have interpreted statutory provisions similar to our own. *See also Penalty Kick Management Ltd. v. Coca Cola Co.*, 318 F.3d 1284 (11th Cir.2003) (interpreting Georgia law and holding that the Georgia Trade Secrets Act superseded claims for conversion, breach of confidential relationship and duty of good faith, unjust enrichment, and quantum meruit); *Savor, Inc. v. FMR Corp.*, 812 A.2d 894 (Dela.2002) (holding that the Delaware Trade Secrets Act precluded plaintiff's common law unfair-competition and conspiracy claims); *Tronitec v. Shealy,* 249 Ga.App. 442, 547 S.E.2d 749 (2001) (holding that Tronitec's claims for conversion and theft were superseded by the Georgia Trade Secrets Act); *Frantz v. Johnson,* 116 Nev. 455, 999 P.2d 351 (2000) (holding that the Nevada Uniform Trade Secrets Act displaced common law tort claims); *Micro Display Systems, Inc. v. Axtel,* 699 F.Supp. 202 (D.Minn.1988) (holding that the Minnesota Uniform Trade Secrets Act displaced common law causes of action for misappropriation of trade secrets).

> As a general rule, courts examine whether the claim is based upon the misappropriation of a trade secret. If so, the displaced claim must be dismissed. *Bliss Clearing Niagara, Inc. v. Midwest Brake Bond Co.*, 270 F.Supp.2d 943 (W.D.Mich.2003). The South Dakota Supreme Court has succinctly summarized the displacement analysis in *Weins v. Sporleder,* 2000 SD 10, 605 N.W.2d 488 (2000), where it stated:
>
> > South Dakota's adoption of the Uniform Trade Secrets Act, SDCL 37-29-7, prevents a plaintiff from merely restating their trade secret claims as separate tort claims. In analyzing claims for the purpose of applying the displacement provision, the issue is not what label the plaintiff puts on their [sic] claims. Rather the court is to look beyond the label to the facts being asserted in support of the claims. A plaintiff may not rely on acts that constitute trade secret misappropriation to support other causes of action.
> >
> > *Weins, supra* (citations omitted).
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> . . .
>
> Here, Arkansas Code Annotated §4-75-602 applies to the present case because appellees' tort claims of conversion and conspiracy stem from the same acts constituting a violation of the Trade Secrets Act. Therefore, based upon the plain language of Ark.Code Ann. § 4-75-602, we conclude that the statutory language of the Trade Secrets Act displaces or preempts the award of damages based upon tort claims for conversion of trade secrets, as well as other tort claims such as conspiracy, that may arise under a claim for misappropriation of trade secrets.

R.K. Enterprise, LLC v. Pro-Comp Management, Inc., 158 S.W.3d 685, 689 - 691 (Ark. 2004).

See also, Nutzz.com v. Vertrue Inc., 2005 WL 1653974 (Del. Ch. 2005)(UTSA displaces claims for common law torts stemming from the same wrongful conduct on which a claim for misappropriation of trade secrets is based); *Lucini Italia Co. v. Grappolini*, 2003 WL 1989605 (N.D.Ill. 2003)(Illinois court held that ITSA is the exclusive remedy for misappropriation of trade secrets but it does not affect common law claims based on other theories); *Accuimage Diagnostics Corp. v. Terarecon, Inc.*, 260 F. Supp. 2d 941 (N.D.Cal. 2003)(comprehensive structure and breadth of the UTSA provides strong evidence of legislative intent to supersede

claims for common law misappropriation after the enactment of the UTSA); *Corporate Express Office Products, Inc. v. Brown*, 2001 WL 34381111 (W.D.Wis. 2001)(courts have held that these provisions displace state common law claims to the extent they rely on factual allegations that would constitute trade secret misappropriation).

Based on decisions and rationale that have interpreted provisions similar to the LUTSA provision, this court concludes that the tort claims under Count Three of the petition for conversion, wrongful diversion, misappropriation, theft and intentional interference with contract of Friede & Goldman, are based on same alleged wrongful conduct as the trade secret misappropriation claims and are preempted by LUTSA and should be dismissed.

F.

The parties have raised several additional points in their arguments. Friede & Goldman indicates that the defendants have stated that Friede & Goldman's LUTPA claim is preempted by its LUTSA claim. The LUTPA claim is raised in Count Five of the petition. The court agrees with Friede & Goldman in that the case of *Computer Management Assistance Co. v. Robert F. DeCastro, Inc.*, 220 F. 3d 396 (5th Cir. 2000) held that the LUTPA claim is not preempted:

> In order to be pre-empted, then, a remedy must "conflict" with the provisions of the trade secret act. We find that the remedies provided by Louisiana's unfair trade secrets statute and those provided in its uniform trade practices act do not conflict, but merely provide parallel remedies for similar conduct. Therefore, Louisiana's Uniform Trade Secrets Act does not pre-empt CMAC's unfair trade practice's claim against IMC.

Id. at 405.

Additionally, the defendants claim that the plaintiffs lack standing to bring either a

damage claim or a claim for injunctive relief under LUTPA. The defendants argue that the civil action could only be brought by the debtor-in possession as the representative of the bankruptcy estate and point out that the petition purports to assert a private action for damages under § 1409 of LUTPA. The defendants argue that the LUTPA claim is brought by the plaintiff as a representative of the bankruptcy estate and that it is precluded by the language of the statute prohibiting private actions for damages brought in a representative capacity. Although a trustee or a Chapter 11 debtor in possession may be acting in a representative capacity on behalf of all the creditors, the defendants cite no authority that would indicate that suit brought by a bankruptcy estate representative is the type of prohibited "representative capacity" indicated by this section of LUTPA. Moreover, courts have indicated that this prohibition is against class action suits. *See, Iberia Credit Bureau, Inc. v. Cingular Wireless LLC,* 379 F. 3d 159 (2004)(cites La. Rev. Stat. Ann. § 51:1409(A) stating that LUTPA does not permit individuals to bring class actions); *Morris v. Sears, Roebuck and Co.*, 765 So. 2d 419 (La. App. 4 Cir. 2000)(LUTPA expressly prohibits private class action); *State ex rel. Guste v. General Motors Corp.*, 370 So. 2d 477 (La. 1978)(cites 1409 stating that the statute bans class actions or actions in a representative capacity). The court concludes that the plaintiff's action here is not prohibited by § 1409 of LUTPA.[6]

The defendants also argue that to the extent the plaintiff's LUTPA claim may encompass a request for injunctive relief the claim should be dismissed in that LUTPA only allows

[6] The private action allowed under § 1409 has been limited to consumers and business competitors, which would include the plaintiff herein. *See, Traina v. Nationsbank of Texas, N.A.*, 2001 WL 1041773 (E.D.La. 2001); *Gardes Directional Drilling v. U.S. Turnkey Exploration Co.*, 98 F.3d 860 (5th Cir. 1996).

injunctive relief to the State through the attorney general. In the case of *Family Resource Group, Inc. v. Louisiana Parent Magazine,* 818 So. 2d 28 (La.App. 1 Cir. 2001), cited by the defendants, the court discussed the following:

> The Second, Fourth and Fifth Circuit Courts of Appeal have discussed this provision, while resolving their cases on other bases, and concluded that the language of LSA-R.S. 51:1407 permits only the State through the Attorney General to seek injunctive relief with respect to unlawful trade practices. *See Lafreniere Park Foundation v. Friends of Lafreniere Park, Inc.*, (La.App. 5th Cir.7/29/97), 698 So.2d 449, 453, *writ denied*,97-2196 (La.11/21/97), 703 So.2d 1312; *Monroe Medical Clinic, Inc. v. Hospital Corporation of America*, 522 So.2d 1362, 1365 (La.App. 2nd Cir.1988); *Michaelson v. Motwani*, 372 So.2d 726, 728 (La.App. 4th Cir.1979); *but see Huey T. Littleton Claims Service, Inc. v. McGuffee*, 497 So.2d 790 (La.App. 3rd Cir.1986).
>
> We likewise find that while LSA-R.S. 51:1401 *et seq.* makes unfair trade practices unlawful, the clear wording of LSA-R.S. 51:1407 imbues the State through the Attorney General with the authority to seek injunctive relief pursuant to this statute.

Id. at 33. However, the court further noted cases holding differently:

> We note that four months after the Fourth Circuit rendered its opinion in Michaelson declaring that only the State was entitled to seek injunctive relief, another panel of that court interpreted LSA-R.S. 51:1407 differently in *Reed v. Allison & Perrone*, 376 So.2d 1067, 1069 (La.App. 4th Cir.1979). In *Reed*, the Fourth Circuit noted that LSA-R.S. 51:1407 grants the Attorney General the right to injunctive relief on showing that the defendant is using, has used, or is about to use any method, act or practice declared unlawful by LSA-R.S. 51:1405 and that it frees the Attorney General from the burden of proving irreparable injury or that he has no adequate remedy at law. *Reed*, 376 So.2d at 1069.
>
> However, the court then determined that while LSA-R.S. 51:1407 grants the Attorney General the right to seek injunctive relief, this statute had no effect on the general right of a private plaintiff to seek injunctive relief. Rather, the court noted that when a private litigant does seek injunctive relief from alleged unfair trade practices, he is not relieved of the burden of pleading and proof of which the Attorney General is relieved by LSA-R.S. 51:1407. Reed, 376 So.2d at 1069. Nonetheless, in interpreting this statute, we find the analyses of the earlier panel of the Fourth Circuit and our brethren on the Second and Fifth Circuits to be more

persuasive.

Id. at 33 n.4. Similarly, the court in *Oreck Corp. v. Bissell, Inc.*, 1999 WL 163389 (E.D.La. 1999), the court noted the following:

> Under the statutory language of LUTPA, injunctions as a remedy are not available to private litigants; therefore, most courts have interpreted La.Rev.Stat. § 51:1407 to limit the relief to only the state attorney general. *Monroe Medical Clinic v. Hospital Corp. of America*, 522 So.2d 1362 (La.App.2d Cir.1988); *Michaelson v. Montwani*, 372 So.2d 726 (La.App. 4th Cir.1979). However, in *Camp, Dresser & McKee, Inc. v. Steimle & Associates*, 652 So.2d 44 (La.App. 5th Cir.), *writ denied*, 663 So.2d 742 (La.1995), the Louisiana Fifth Circuit Court of Appeal noted that injunctive relief is available to private parties. Normally, to obtain injunctive relief, a plaintiff must show that he will suffer irreparable injury if the injunction is not granted, but when the act for which the injunction is sought is unlawful, the plaintiff does not have to show irreparable injury. Because all unfair or deceptive acts are unlawful under La.Rev.Stat. § 51:1407, the court concluded that the plaintiff could request injunctive relief.

Id. at 2. This court is persuaded that the plaintiff may pursue an action for injunctive relief based on rationale provided in these authorities, noting that the plaintiff's burden may differ from that of the Attorney General. Moreover, although injunctive relief may be requested, it is noted that it may be granted only to the extent that rights currently owned or retained by Friede & Goldman are affected.

Based on the foregoing, the court concludes that the motion for partial summary judgment should be denied on all grounds as discussed above, except as to Count III as it relates to pre-emption, and the court concludes that summary judgment should be granted as to that count and the tort claim dismissed.

An order will be entered consistent with these findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 9021 and Federal Rule of Civil Procedure 58. This

opinion shall constitute findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52.

DATED this the 8th day of February, 2006.

/s/ Edward R. Gaines
EDWARD R. GAINES
UNITED STATES BANKRUPTCY JUDGE

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