

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

WJ ROADSHOW, LLC, a Tennessee
Limited Liability Company,

Plaintiff/Counter-Defendant,

v.

JAM FACTORY, LLC, a Tennessee
Limited Liability Company, and RYAN
O'NAN, individually,

Defendants/Cross-Defendant,

and

WHISKEY JAM, LLC a Tennessee
Limited Liability Company, and WARD
GUENTHER,

Defendants/Counter-Plaintiff,

v.

ROAR, LLC, a Tennessee Limited
Liability Company,

Third-Party Defendant.

Case No. 23-0582-BC

JURY DEMAND

ORDER ON WJ ROADSHOW, LLC'S MOTION FOR SANCTIONS
BASED ON SPOILIATION OF EVIDENCE

This matter came to be heard on August 19, 2026, upon Plaintiff/Counter-Defendant WJ Roadshow, LLC's ("WJR") Motion for Sanctions Based on Spoliation of Evidence against Defendant/Counter-Plaintiff Ryan O'Nan and Defendant Jam Factory, LLC (individually "O'Nan" and "Jam Factory" and collectively "Defendants") pursuant to Tenn. R. Civ. P. 37 and 34A.02. Having reviewed the entire record, argument of counsel, and the applicable law, the Court is ready to rule.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

WJR initially filed this action on January 12, 2023 against Whiskey Jam, LLC and Ward Guenther. On January 26, 2024, WJR filed an Amended Complaint that included Jam Factory and O’Nan as defendants, alleging that O’Nan is the owner of Jam Factory and bringing a claim for violation of the Uniform Trade Secrets Act against them. The Amended Complaint alleges that WJR maintained confidential and proprietary information, including the When I Work Account (“WIW Account”), which included client lists and contact information, customer pricing, and scheduling information relevant to WJR servicing its client accounts. (Am. Compl. ¶ 130). WJR alleges that around November 2022, Ryan Walega terminated his employment with WJR but kept access to the WIW Account, which resulted in WJR losing access to customer lists, booking information, and messages. (*Id.* at ¶ 23). WJR further alleges that Jam Factory and O’Nan used this information to secure WJR’s former customers and provide booking of artists who had provided services to these former customers on behalf of WJR. (*Id.* at ¶ 133).

WJR contends that Defendants have been aware of the importance of the WIW Account since early 2023 when WJR issued subpoenas to O’Nan and Walega seeking information related to the WIW Account.¹ As party litigants, WJR contends that the Defendants have been aware of the WIW Account’s relevance to this litigation since being served with the Amended Complaint that was filed on January 26, 2024.

¹ The subpoena to O’Nan was issued on February 16, 2023 and the subpoena to Walega was issued on April 3, 2023. While the subpoenas request “documents that reflect communications that are or relate to the business and/or proprietary information of [WRJ],” the only specific reference to the WIW Account is for “documents reflecting your communications with Ryan Walega that relate to Ryan Walega’s alleged ownership of [WJR’s] wheniwork.com account.”

When I Work Account

The WIW Account was used by WJR's employees for booking artists. (2.17.26 Walega Depo., 104:14-105:2; 108:11-109:24). Ryan Walega, a former employee of WJR, was an authorized user of the WIW Account. (*Id.* at 104:14-16). Walega resigned from WJR in December 2022 and took the WIW Account to his new employer, Jam Factory. (2.27.26 O'Nan Depo., 277:11-25). WJR contends that the information in the WIW Account allowed Jam Factory to transition WJR's customers to be served by Jam Factory.

Walega testified as follows about what data was on the WIW Account:

Q: Tell me about the When I Work account. What—what data is included on the When I Work account?

A: It was a tool used—the start time/end time for shows, and then the locations and format of the shows, being solo, duo, trio, band, or DJ.

Q: What about—what about artist contact information, was that stored on the When I Work account?

A: Yes. And I recently shared a full archive of the entire contact book that included all emails and phone numbers for everyone here.

...

Q: What about—what about WJ Roadshow customer contact information, was that stored on the When I Work account?

A: No.

...

Q: So the historical information that could be stored on the When I Work account would be start and end time for performances—

A: Uh-huh.

Q: --is that right?

A: Yes.

Q: What about how much was paid related to the performance, is that included on—is that stored on the When I Work account?

A: Only if we input it into the notes. There isn't, like, a specific field where you input that information. It would only be if we would put it in the notes.

Q: Okay. So in other words, you might put that, you know, the certain band was going to make X dollars an hour, that might—that might be reflected in the notes if you input it into the notes?

A: Never hourly, just like a flat per-gig arrangement...

Q: And it would include, obviously, the artist—the artist information, including their contact information, right?

A: Yes. Their—say their name. It wouldn't, like, not say their phone number and email. You would have to go to the user list like I showed you if you want to, like, pull their info.

(2.17.26 Walega Depo., 38:15-39:12; 108:21-109:24). He further testified that the information in the WIW Account was copied over to Google Sheets. (*Id.* at 132:16-25). He also testified that fees for the various customers were memorized, but also included in the Google Sheets that listed the time and the cost. (*Id.* at 42:6-16).

Discovery Efforts

WJR has actively sought information within the WIW Account. Specifically, WJR issued discovery requests to Defendants seeking all documents that relate to any WIW Account owned, maintained, or used by or on behalf of WJR on January 15, 2025. After granting several extensions, Defendants responded in May 2025 advising that they had no such documents in their possession, custody, or control. After conferring on this issue, it appears that Defendants' counsel was working to obtain the data from the WIW Account. On January 7, 2026, however, Defendants' counsel apparently represented that Defendants no longer had access to the WIW Account and that it had been deactivated.

Spoliation

WJR deposed Walega in April 2026, and he testified that he archived users from the WIW Account in March 2025 at the direction of O’Nan. (Walega Depo., 135:23-136:6). He was aware that each time he archived a user, the underlying data associated with that user would be permanently deleted, because the program disclosed that information. (*Id.* at 136:19-137:13). This instruction from O’Nan came two months after being served with discovery seeking the WIW Account information. In fact, O’Nan, as the 30.02(6) corporate representative of Jam Factory, testified as follows:

Q: Did you ever instruct Mr. Walega to archive—to archive users on the When I Work account?

A: Well, we haven’t used the When I Work account for some time and it was a pretty significant monthly expense, over \$1,000. So I believe the conversation was just making it—putting it to wherever—whatever setting would cause us to not incur, you know, over a \$1,000 monthly fee; without deleting the account, of course.

(2.27.26 O’Nan Depo., 278:1-8). He further testified that the WIW Account was paid for by Jam Factory.

Upon learning that the data in the WIW Account was no longer available, WJR served a subpoena *duces tecum* on WIW on January 16, 2026. In response, WIW produced responsive records beginning in January 2023, including account user/owner records, booking history, payment history, vendor names, notes relevant to individual services, and vendor booking information.

According to the corporate representative of WIW, Timothy O’Connor, a technical support specialist, WIW retains data, including shift and time data, for three years from the time of creation, and then they are automatically purged. (4.13.26 O’Connor Depo., 25:19-24; 26:11-23). “Shift and time data” refers to scheduled shift and time entries, so customers, managers, supervisors, and

admin can create shifts in the software to show scheduled work hours and actual time worked. (*Id.* at 25:25-26:7). If a customer wanted to maintain shift data for longer than three years, WIW offers data exports at no cost where customers can export their shifts and time data and “a few other categories,” if they are an admin, manager, or supervisor. (*Id.* at 27:11-28:4). The customer can go online to the portal, request a data export, and receive it in minutes. (*Id.* at 29:3-10). The representative was unsure whether all information in the WIW Account could be exported. (*Id.* at 29:12-20).

WJR contends that no records exist from before January 2023 when WJR operated the WIW Account and when it was taken from WJR for use by Jam Factory because Defendants failed to preserve them while they had the ability to do so.

LEGAL STANDARD

The standards to demonstrate spoliation, whether or not spoliation is sanctionable, and how to determine an appropriate sanction, were most recently set by the Tennessee Supreme Court in *Tatham v. Bridgestone Americas Holding, Inc.*, 473 S.W.3d 734 (Tenn. 2015). In defining spoliation, the Court analyzed Tennessee Rule of Civil Procedure 34A.02, which provides that “Rule 37 sanctions may be imposed upon a party or an agent of a party who discards, destroys, mutilates, alters, or conceals evidence.” *Id.* at 744-745.

After analyzing a number of Tennessee Court of Appeals decisions on the subject, the Tennessee Supreme Court declined to adopt an inflexible, bright-line rule “which would be contrary to the trial court’s inherent authority to sanction abuses of the discovery process and to remedy the potential prejudice caused thereby.” *Id.* at 746. The *Tatham* court held “intentional misconduct should not be a prerequisite to the imposition of some sanction under any approach. Rather, such determinations should be made on a case-by-case basis considering all relevant

circumstances. Whether the conduct involved intentional misconduct simply should be one of the factors considered by the trial court.” *Id.* Further, that “[t]he decision to impose sanctions for the spoliation of evidence is within the wide discretion of the trial court” depending upon the “unique circumstances of each case.” *Id.* Relevant factors include, but are not limited to, the following:

- (1) the culpability of the spoliating party in causing the destruction of the evidence, including evidence of intentional misconduct or fraudulent intent;
- (2) the degree of prejudice suffered by the non-spoliating party as a result of the absence of the evidence;
- (3) whether, at the time the evidence was destroyed, the spoliating party knew or should have known that the evidence was relevant to pending or reasonably foreseeable litigation; and
- (4) the least severe sanction available to remedy any prejudice caused to the non-spoliating party.

Id. at 746-747. The first and third factors relate to the spoliating party’s intent and knowledge, and the second and fourth to the non-spoliating party’s injury or the prejudicial impact on them. *Graham v. UT Regional One Physicians Inc.*, No. W2020-01736-COA-R3-CV, 2023 WL 2496413, at *9 (Tenn. Ct. App. June 28, 2022) (citing *Tatham*, 473 S.W.3d at 746).

The range of sanctions available are set out in Rule 37.02, and include dismissal of the action, entry of default against the offender, limiting certain claims or evidence, entering an order designating certain facts to be taken as established, and striking all or part of pleadings. *Tatham* further guides the Court regarding the type of sanction appropriate and when dismissal is appropriate. “[A]lthough we recognize that the dismissal of an action is a severe sanction, we hold that ‘such a sanction would be appropriate in circumstances where any less severe remedy would not be sufficient to redress the prejudice caused’ to the non-spoliating party by the loss of evidence.” *Id.* at 747 (quoting *Cincinnati Ins. Co. v. Mid-South Drillers Supply, Inc.*, No. M2007-00024-COA-R3-CV, 2008 WL 220287, at *4 (Tenn. Ct. App. Jan. 25, 2008)). In addition, courts may impose a negative or adverse inference which serves two purposes: “(1) it attempts to place

the non-spoliator in a position similar to where it would have been prior to the destruction of evidence; [and] (2) it imposes a punitive effect on the spoliating party.” *Id.* at 741 (quoting *Flottman v. Hickman Cnty.*, No. 3:09–0770, 2010 WL 4537911, at *1 (M.D. Tenn. Nov. 3, 2010)).

A series of spoliation cases that have followed rely on the *Tatham* standard and include detailed analyses regarding whether dismissal is an appropriate sanction. *Graham*, 2023 WL 2496413 (trial court’s dismissal because of spoliator’s willful and intentional actions that unduly prejudiced other party upheld on appeal); *Gardner v. R&J Express, LLC*, 559 S.W.3d 462 (Tenn. Ct. App. 2018) (trial court did not abuse its discretion in dismissing the action because of spoliation because of the significant prejudice to the non-spoliating party); *Legacy Five Leasing, LLC v. Busforsale.com.LLC*, No. M2019-01615-COA-R3-CV, 2020 WL 2763607 (Tenn. Ct. App. May 27, 2020) (upholding trial court’s dismissal of the action as sanctions for spoliation of evidence that was the basis of the claim, i.e. the bus at issue).

In contrast, there are several spoliation cases relying on the *Tatham* standard that determined no sanction should be imposed. In *Caldwell v. Ruby Falls*, 674 S.W.3d 899 (Tenn. Ct. App. 2023), the trial court did not abuse its discretion in declining to impose spoliation sanctions against a tour operator for destruction of surveillance camera footage that may have shown the fall at issue. In particular, the trial court found the culpability of the tour operator was insufficient to merit sanctions because the deletion of the tape was part of normal procedures, occurred arguably before they had notice of the actual location of the fall, and there was no evidence they intentionally deleted footage that had information on it that demonstrated how the accident occurred. Further, that one was unable to determine which party was prejudiced by the deletion because it was unknown what the footage would have shown. *Caldwell*, 674 S.W.3d at 919. In *Zukowski ex rel. v. Hamilton Cnty. Dept. of Edu.*, 640 S.W.3d 505 (Tenn. Ct. App. 2021), regarding a school

bullying lawsuit, sanctions for spoliation of evidence were not warranted when the school counselor destroyed counseling records that may have shown numerous instances of bullying. The school counselor destroyed all her student files when she left the school based on confidentiality grounds. Plaintiffs argued this was a cover-up, but the trial court and appellate court disagreed, noting that her testimony reflected the destruction of student files upon her departure was a legitimate and regular practice grounded in concern for confidentiality. Further, the fact that bullying occurred was well-established elsewhere in the record. *Zukowski ex rel. Zukowski*, 640 S.W.3d at 521. In light of the foregoing, the Court reviews the *Tatham* factors under the circumstances of this case.

ANALYSIS

WJR seeks spoliation sanctions pursuant to Rules 34A.02 and 37 of the Tennessee Rules of Civil Procedure. WJR requests that the Court enter a default judgment against the Defendants on WJR's Uniform Trade Secrets Act claim, including any argument that damages cannot be proven with reasonable certainty to the extent that uncertainty results from the missing WIW Account records. Alternatively, WJR requests that the Court enter an order prohibiting the Defendants from opposing the Uniform Trade Secrets Act claim. Third, WJR requests that the Court order that the relevant factual allegations, in paragraphs 31, 98, 132, and 133 of the First Amended Complaint, are established as true. As a final alternative to the entry of a default judgment, WJR requests that the Court instruct the jury to draw an adverse inference against the Defendants.

Specifically, WJR contends that Defendants possessed and controlled WJR's WIW Account that contained WJR's historical business data in support of its Uniform Trade Secrets Act claim, and that they intentionally caused or allowed the destruction of the WIW Account to support

spoliation sanctions. In response, Defendants contend that the relevant information was preserved elsewhere and produced, that the *Tatham* factors weigh against sanctions, and that the requested sanctions are grossly disproportionate in light of the circumstances.

The Court discusses the relevant *Tatham* factors below and notes that the first and third *Tatham* factors pertain to the spoliating party's intent and knowledge, while the second and fourth factors focus on the non-spoliating party's injury. *Graham*, 2023 WL 2496413, at *9.

Culpability of Spoliating Party

- (1) the culpability of the spoliating party in causing the destruction of the evidence, including evidence of intentional misconduct or fraudulent intent;

Defendants contend that there is no evidence of intentional misconduct or fraudulent intent because the purging of three-year-old WIW Account data was an automatic process, and, moreover, that the archiving of user accounts was done as a cost saving measure. A WIW representative confirmed that certain data was purged after three years as a routine practice. While Walega testified that he knew he was deleting WIW Account data when he archived users at O'Nan's instruction, O'Nan testified that he wanted to reduce costs "without deleting the account." (2.27.26 O'Nan Depo., 278:1-8). Despite this, Defendants were on notice that the WIW Account was relevant to this litigation when they were served with the Amended Complaint on February 13, 2024, that specifically referenced the WIW Account as a basis for WJR's claim for violation of the Uniform Trade Secrets Act. Furthermore, Defendants were sent discovery requests in January 2025 regarding the WIW Account data, which all occurred prior to O'Nan's instruction to Walega.

While there is no evidence of intentional misconduct or fraudulent intent, the Court finds the Defendants are nonetheless culpable for the destruction of the evidence. O'Nan instructed Walega to reduce costs and archive user data, and Walega knew that he was deleting information.

O’Nan and Jam Factory failed to take steps to preserve this information despite being on notice that the WIW Account data was a basis for WJR’s claim.

Whether Spoliating Party Knew or Should Have Known Evidence Relevant

- (3) whether, at the time the evidence was destroyed, the spoliating party knew or should have known that the evidence was relevant to pending or reasonably foreseeable litigation;

While Defendants contend the WIW Account data has been replicated elsewhere, WJR’s Amended Complaint and discovery requests put the Defendants on notice that the data was relevant to this lawsuit. The fact that both Jam Factory and WJR utilized the WIW Account in the operation of their businesses further suggests the data on the WIW Account would have been relevant to WJR’s claim for violation of the Uniform Trade Secrets Act. The Court finds Defendants knew or should have known that the information that was destroyed was relevant to pending litigation.

Prejudice to Non-Spoliating Party

- (2) the degree of prejudice suffered by the non-spoliating party as a result of the absence of the evidence;

Defendants contend that there was no prejudice suffered by WJR from the loss of WIW Account data because all the pertinent information contained on WIW was duplicated in other sources, such as Google Sheets, QuickBooks, email, personal records, and schedules that were shared with clients. WJR contends that Defendants deleted unique records stored on the WIW Account. Specifically, that the WIW Account “stored a valuable compilation of shift notes, per-user hourly rates, creation metadata, publishing history, and a comprehensive user and artist database with position assignments and scheduling parameters,” pointing to WIW’s subpoenaed production that included various categories of documents. (WJR’s Reply, p. 1-2). Without this data, Plaintiff contends that they are unable to prove their claim.

Upon review of the record, including Walega's deposition testimony in which he described the information included in the WIW Account and the subpoenaed production from WIW, the Court finds that the majority of information in the WIW Account is likely replicated in other sources, including the Google Sheets, QuickBooks, emails, and witness testimony. Thus, the Court does not find that WJR has been severely prejudiced such that it cannot prove its claim. However, the Court does find that this evidence was relevant, that Defendants were aware prior to its deletion, and that this impedes WJR's ability to successfully assert its claim and that sanctions are warranted.

Least Severe Sanction

(4) the least severe sanction available to remedy any prejudice caused to the non-spoliating party.

"The decision to impose sanctions for the spoliation of evidence is within the wide discretion of the trial court" depending upon the "unique circumstances of each case." *Tatham*, 473 S.W.3d at 747. The Court does not find that the circumstances of this case warrant a default judgment on WJR's Uniform Trade Secrets Act claim. Instead, the Court finds appropriate to instruct the jury with an adverse inference.

The Court cannot find that the destruction of the WIW Account was intentional, but does take issue with the fact that Defendants had to have known of the importance and relevance of the data within the WIW Account as of February 13, 2024, when they were served with the Amended Complaint which expressly referenced the WIW Account. In March 2025, after receiving discovery requests regarding the WIW Account, O'Nan instructed Walega to "archive" users which deleted that information.

The Court distinguishes this case from others in which dismissal or a default judgment was found to be appropriate because a key piece of evidence was destroyed before the defendant had

an opportunity to inspect. Here, it appears this evidence can be obtained elsewhere to fill any gaps resulting from the lost data in the WIW Account, including emails, QuickBooks, and Google sheets, and there is post-January 2023 WIW Account data to demonstrate the types of information available in the account. However, because of this limitation, the Court finds appropriate to instruct the jury as follows:

Defendants Ryan O’Nan and Jam Factory, LLC failed to produce the underlying data prior to 2023 contained in the WIW Account that Ryan Walega took from WJ Roadshow, LLC. You are instructed that O’Nan and Jam Factory had a duty to preserve this information. While you may not automatically presume the missing information was unfavorable to O’Nan and Jam Factory, you may consider its absence along with all other evidence when deciding whether WJ Roadshow, LLC has proven its claim for violation of the Uniform Trade Secrets Act.

The Court finds this instruction provides the appropriate sanction for Defendants’ failure to preserve the WIW Account data in light of the *Tatham* factors.

CONCLUSION

It is hereby ORDERED that WJR’s Motion for Sanctions is GRANTED and there shall be an adverse inference jury instruction as set forth above pursuant to Rules 34A.02 and 37 of the Tennessee Rules of Civil Procedure.

It is so ORDERED.



**ANNE C. MARTIN
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