



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LKQ CORPORATION,

*Plaintiff,*

v.

OVERALL PARTS SOLUTIONS,

*Defendant.*

C.A. No. 2022-\_\_\_\_\_-\_\_\_\_

**VERIFIED COMPLAINT**

Plaintiff LKQ Corporation (“LKQ” or “Plaintiff”), by and through its undersigned attorneys, brings this action for breach of contract against the above-named Defendant, and alleges the following:

**NATURE OF THE ACTION**

1. LKQ is a supplier of “Vehicle Replacement Products,” including replacement parts, components, and systems used in the repair and maintenance of vehicles. Buyers of Vehicle Replacement Products have the option to purchase new products produced by original equipment manufacturers, or “OEMs” (“OEM Products”); new products produced by companies other than the OEMs, which are referred to as aftermarket products; recycled products obtained from salvage and total loss vehicles; recycled products that have been refurbished; and recycled products that have been remanufactured (collectively, “Non-OEM Products”). LKQ

supplies a variety of Non-OEM Products to collision and mechanical repair shops (“Body Shops”), including aftermarket collision and mechanical products; recycled collision and mechanical products; refurbished collision products such as wheels, bumper covers and lights; and remanufactured engines and transmissions. LKQ owns and operates a proprietary electronic software platform (“InTouch”) that provides data for real-time availability and pricing of LKQ’s Non-OEM Products.

2. Defendant Overall Parts Solutions (“Defendant” or “OPS”) owns and operates a parts management and delivery system (“OPSTrax”) that allows Body Shops to place orders for Vehicle Replacement Products. Vehicle Replacement Products may be sourced from OEMs such as GM and Honda, as well as from several suppliers of competing Non-OEM Products such as LKQ. OPSTrax is the “centerpiece” of the OPS technology suite.

3. OPSTrax is an essential business-to-business eCommerce platform that links Body Shops and Vehicle Replacement Product suppliers. Caliber Collision, the largest chain of Body Shops, uses OPSTrax as their exclusive eCommerce solution to source Vehicle Replacement Products. Other leading Body Shop chains are poised to do the same in the coming year. OPSTrax is therefore likely to have a substantial share of Vehicle Replacement Product distribution in many regions within the United States, which will further entrench its position as an essential distribution platform for Vehicle Replacement Products.

4. Because of Defendant's position with LKQ's largest customer, Caliber Collision, OPSTrax became an essential platform for the distribution of LKQ's Vehicle Replacement Products. Accordingly, to facilitate the distribution of LKQ products on OPSTrax to Caliber Collision, LKQ agreed to provide Defendant with its highly confidential and commercially sensitive InTouch data, pursuant to the January 23, 2019 Data Usage Agreement ("the Data Agreement").

5. Given the highly confidential nature and competitive sensitivity of LKQ's InTouch data, which includes real-time pricing of, and availability information for, LKQ's Vehicle Replacement Products, the Data Agreement expressly prohibits Defendant from distributing InTouch data to any third parties, other than with certain Authorized Users specifically identified by name. A true and accurate copy of the Data Agreement is attached as Exhibit 1 hereto.

6. LKQ may, on its own initiative or at Defendant's request, identify additional Authorized Users. At the time of contracting, Caliber Collision was the only Authorized User specified in the Data Agreement. One additional customer, ABRA Auto Body & Glass LP, was added on May 23, 2019. *See* Amended Exhibit A to Exhibit 1.

7. Defendant breached the Data Agreement by disclosing LKQ's data, specifically LKQ's confidential pricing information, to non-Authorized Users, including LKQ's OEM competitors.

8. Defendant's breach, which has given LKQ's competitors real-time access to LKQ's proprietary and confidential pricing data, has distorted competition between LKQ and its OEM competitors, inflicting irreparable harm on LKQ.

9. LKQ has repeatedly objected to OPS's breach of its contractual obligations to LKQ and has been rebuffed by OPS. In fact, Defendant has not only refused to stop breaching its contractual obligations to LKQ but is now threatening to broaden the dissemination of LKQ's confidential pricing data to additional unauthorized recipients in further violation of its contractual duties to LKQ.

10. Through this action, LKQ seeks to enjoin Defendant's wrongful conduct in breach of the parties' contract and receive damages.

### **THE PARTIES**

11. Plaintiff LKQ Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 500 W. Madison Street, Suite 2800, Chicago, Illinois 60661. LKQ Corporation by and through its subsidiaries imports and sells, among other items, commercially successful automotive replacement parts through the United States and in this District.

12. Defendant Overall Parts Solutions ("OPS") is a limited liability company organized in January 2021 under the laws of the State of Delaware. Its

principal place of business located at 1450 Post and Paddock Road, Grand Prairie, Texas 75050.

13. On December 22, 2021, OPS announced via a letter emailed to Body Shops that it was merging with OEConnection, the North American auto industry's largest technology provider for OEM Products distribution networks. Neither this letter nor the terms of the transaction have been made public. As of January 6, 2022, OPS's website continues to represent that it is an independent company.

### **JURISDICTION AND VENUE**

14. This Court has subject-matter jurisdiction over this dispute pursuant to 10 *Del. C.* § 341 because the Complaint seeks equitable relief.

15. In addition, the Data Agreement is governed by Delaware law and the parties agreed to the jurisdiction of this Court under the terms of the Data Agreement. *See* Exhibit 1, ¶ 8.

16. This Court also has personal jurisdiction over the Defendant pursuant to 10 *Del. C.* § 18-105 because it is a Delaware limited liability company.

### **FACTUAL BACKGROUND**

#### **A. LKQ's Contract with Defendant**

17. Automobiles damaged in a collision or other accident, or otherwise in need of repair, often require the installation of Vehicle Replacement Products to restore the vehicle to its original condition.

18. For repairs following a vehicular collision, nearly all consumers hire a Body Shop to repair the vehicle. Accordingly, the primary purchasers of Vehicle Replacement Products are Body Shops. Body Shops do not maintain an inventory of Vehicle Replacement Products. They instead purchase Vehicle Replacement Products as needed upon receiving a vehicle in need of repair.

19. The largest Body Shop chains in the United States primarily rely on eCommerce platforms to electronically order Vehicle Replacement Products. The three largest chains, Gerber, Caliber, and Service King, source at least 75 to 80 percent of their Vehicle Replacement Product needs via eCommerce platforms.

20. “Aftermarket Parts” are new Vehicle Replacement Products produced by companies other than the OEM of the given vehicle. The laws of most U.S. states require Aftermarket Parts to be of the same “like, kind, and quality” of the corresponding Vehicle Replacement Products manufactured by an OEM. In practice, these laws require Aftermarket Parts suppliers to manufacture their products to be the substantial equivalent (in terms of appearance, material composition, and function) of the OEM Products they are designed to replace. Yet, despite the functional equivalence of OEM Products and Aftermarket Parts, the latter are typically sold at a discount to OEM Products. Accordingly, the development of the aftermarket industry over the last 35 years has provided much needed competition in the markets for Vehicle Replacement Products, which has reduced

the price of OEM Products that face aftermarket competition, as well as the overall cost of repairs. Consumers benefit from these reduced costs through lower repair bills and lower insurance premiums.

21. LKQ is a leading supplier of Non-OEM Products and Aftermarket Parts in particular. LKQ therefore competes with, and is often the primary competitor to, OEMs, OEM franchise dealers, and other Non-OEM Products suppliers by offering cost-effective, high-quality Aftermarket Parts, and by providing diversified product offerings and superior fulfillment and delivery through its expansive distribution network.

22. Due to its longstanding presence in the Vehicle Replacement Products industry and its reputation for quality, LKQ has become the leading supplier of Non-OEM Products and Aftermarket Parts in particular.

23. LKQ owns and operates its proprietary InTouch electronic software platform that includes data detailing real-time availability and pricing of all LKQ's Non-OEM Products.

24. Defendant's proprietary OPSTrax parts management system enables Body Shops to compare prices for Vehicle Replacement Products and place orders for products from LKQ and other suppliers of Vehicle Replacement Products, including OEM dealers and other Non-OEM Product suppliers.

25. OPSTrax is the second largest eCommerce solution for ordering Vehicle Replacement Products in the United States.

26. Caliber Collision, the largest chain of Body Shops in the United States, orders Vehicle Replacement Products exclusively on OPSTrax.

27. Defendant has recently engaged in an aggressive marketing campaign that is likely to imminently result in the #2 and #3 chains, Gerber and Service King, also agreeing to source Vehicle Replacement Products exclusively on OPSTrax.

28. To develop the new services that form the basis of this marketing campaign, Defendant needed to secure pricing, availability, and other data from Vehicle Replacement Product suppliers such as LKQ.

29. Defendant secured access to LKQ's data through the contract at issue in this case. On January 23, 2019, LKQ executed the Data Agreement with Defendant, which provides that LKQ will make its highly confidential and commercially sensitive InTouch data available to Defendant for inclusion in OPSTrax. *See generally* Exhibit 1.

30. LKQ's pricing and real-time availability data are highly confidential and competitively sensitive.

31. Defendant knew or should have known that LKQ's pricing and real-time availability data are highly confidential and competitively sensitive.



32. The Data Agreement provides OPS with a non-exclusive license to data shared by LKQ pursuant to its terms. This non-exclusive license provides OPS with certain, limited rights:

### **3. Usage and Ownership Rights.**

During the Agreement Term, regarding any and all Data delivered by LKQ to OPS, LKQ hereby grants to OPS a non-exclusive license (a) to copy, reformat, and distribute the information contained in the Data, or portions thereof, to the Authorized Users and (b) to use all Data obtained by OPS in aggregate form (“Aggregated Data”) provided that in no event shall OPS disclose to any third party any Aggregated Data that reveals, or is likely to reveal, Confidential Information of LKQ and/or the identity of LKQ.

*See id.* ¶ 3.

33. The term “Data” is defined in the Data Agreement as “real-time availability and other product information relating to LKQ automotive replacement parts that is maintained by LKQ as part of its InTouch software platform.” *Id.* ¶ 2(c).

34. The term “Authorized User” is defined as “any person or entity . . . using any version of OPSTrax that incorporates LKQ Data or any derivatives thereof, **and** whom LKQ has authorized, in writing, OPS to grant access to LKQ Data and its derivatives through OPSTrax.” *Id.* ¶ 2(b) (emphasis added).

35. The Data Agreement further provides, for the avoidance of doubt, that “OPS may only distribute [LKQ’s] Data to Authorized Users listed on Exhibit A, as amended from time to time by LKQ.” *Id.* ¶ 3.

36. To date, LKQ has, pursuant to the terms of the Data Agreement, only authorized OPS to disseminate its Data to Caliber Collision and ABRA Auto Body & Glass.

37. The Data Agreement provides that “OPS will not . . . use the Data, or any portion thereof, for the benefit of any third party.” *Id.* ¶ 3.

38. The Data Agreement provides that “OPS will indemnify LKQ for any damages caused by any unauthorized use or disclosure of LKQ’s Data, Aggregated Data, or Confidential Information by OPS.” *See id.* ¶ 7.

39. The terms set forth above are intended to protect the wrongful dissemination of LKQ’s highly confidential and competitively sensitive Data to third-parties, and in particular, to avoid the sharing of such data with LKQ’s competitors, principally the OEMs.

40. Each of the terms set forth above are material and essential terms of the Data Agreement.

41. But for Defendant’s agreement to each of the terms set forth above, LKQ would not have entered into the Data Agreement.

42. As of today, the Data Agreement remains in force and is effective, unless properly terminated as expressly provided by its terms.

43. LKQ has performed all of its obligations under the Data Agreement.

#### **B. Defendant Breaches the Contract and the Effect of those Breaches on LKQ**

44. In or around December 2020, LKQ learned that Defendant had provided LKQ's InTouch Data to numerous OPSTrax users who were not identified as Authorized Users in Exhibit A to the Data Agreement.

45. Each instance that Defendant provided LKQ's Data to an OPSTrax user who was not identified as an Authorized User in Exhibit A to the Data Agreement constitutes a material breach of Defendant's obligation to protect LKQ's highly confidential and competitively sensitive Data, as detailed in Paragraph 3 of the Data Agreement.

46. At the time, LKQ believed that OPS's wrongful dissemination of LKQ's Data had been limited to actual and potential customers of LKQ.

47. In response to Defendant's numerous and repeated breaches of its obligation to protect LKQ's highly confidential and competitively sensitive Data as set forth in the Data Agreement, LKQ sent a letter to Defendant's Chief Operating Officer Sib Bahjat dated January 11, 2021, demanding that Defendant immediately cease and desist from providing LKQ's Data to unauthorized OPSTrax users. LKQ further demanded that Defendant compensate LKQ for all lost sales attributable to

these unauthorized disclosures, pursuant to the indemnification provision of the Data Agreement.

48. In response to LKQ's letter, Defendant argued that, notwithstanding the clear and unambiguous language of the Data Agreement, which prevents Defendant from disseminating LKQ's Data to any additional third parties unless specifically agreed to by LKQ in writing by amendment of Exhibit A to the Data Agreement, that LKQ had impliedly consented to the further dissemination of its Data.

49. There is no factual or contractual basis for Defendant's position.

50. On February 8, 2021, and in response to Defendant's position, LKQ sent a further letter to OPS, reiterating LKQ's position that LKQ had not authorized any disclosure of its Data to entities not included in Exhibit A to the Data Agreement. Notwithstanding this position, and for the avoidance of all doubt, LKQ made clear in its February 8 Letter that it "revokes any alleged authorization that [Defendant] contends provided for the distribution of LKQ data" to recipients not listed in Exhibit A.

51. To avoid disrupting its customers by cutting off access to its inventory on OPSTrax, LKQ sought to negotiate a resolution of this issue with OPS. These negotiations failed: Defendant ultimately refused to honor LKQ's demand to stop sharing LKQ's Data with entities that are not Authorized Users under the terms of the Data Agreement.

52. Recently, however, LKQ learned that Defendant's cavalier treatment of LKQ's highly confidential and commercially sensitive Data extended beyond sharing such Data with unauthorized customers. In or around August 2021, LKQ learned for the first time that Defendant was also recklessly sharing LKQ's highly confidential and commercially sensitive pricing and availability Data with LKQ's OEM competitors through the introduction of additional services within OPSTrax called ValuTrax and TraxMatch.

53. By subscribing to ValuTrax, an OEM can automate its pricing based on the pricing of competing Non-OEM Products sold by LKQ and other competitors. Specifically, ValuTrax enables an OEM to either match LKQ's price or to set its price within a certain fixed percentage of LKQ's price.

54. Through its ValuTrax service, Defendant is in breach of Paragraph 3 of the Data Agreement, including by using LKQ's Data "for the benefit of any third party" and by "incorporat[ing] the Data, or any portion thereof, into a product or service other than OPSTrax."

55. OPS is in further breach of its obligations to LKQ with its TraxMatch service.

56. In the event that a Body Shop were to choose to purchase a Non-OEM Product sold by LKQ or another Non-OEM Product supplier, a TraxMatch button displayed on the OPSTrax screen allows the Body Shop to request a final quote from

the OEM. In practice, when a Body Shop pushes the TraxMatch button, OPS sends LKQ's confidential price for that specific Non-OEM Product to the relevant OEM dealer in that region, giving the OEM dealer a final opportunity to win the sale.

57. Defendant's dissemination of LKQ's highly confidential and competitively sensitive Data—including LKQ's pricing data—to LKQ's competitors is a clear breach of Defendant's contractual obligations as set forth in Paragraph 3 of the Data Agreement.

58. OPS's ValuTrax and TraxMatch services are specifically designed to allow LKQ's competitively sensitive pricing information to be deployed for the benefit of LKQ's competitors. The "last look" ValuTrax and TraxMatch services provide OEMs with a regular stream of data on LKQ's real-time pricing for specific Non-OEM Products, which enables the OEM to win the sale and also adjust its future pricing to reflect its access to and understanding of LKQ's pricing information in real-time. This insight into LKQ's pricing on OPS's systems influences OEM pricing strategies against LKQ on other eCommerce platforms, enabling the OEMs to engage in strategic pricing to distort competition with LKQ across the entirety of the relevant markets for sale of Vehicle Replacement Products. This damages LKQ, inflicting irreparable harm on it.

59. By competing on price and service through enhanced distribution and delivery speed, LKQ provides a key competitive counter to Vehicle Replacement

Products sold by OEMs. This competition ensures the availability of Vehicle Replacement Products for Body Shops and their customers. As a result of sales lost to OEMs due to Defendant's wrongful dissemination of LKQ's competitively sensitive pricing information, LKQ will likely be forced to retrench its service levels, for example by reducing delivery frequency, further damaging its overall business and harming competition for Vehicle Replacement Products.

60. Defendant's wrongful conduct has caused and will continue to cause significant harm to LKQ. Because the competitive effects of Defendant's wrongful disclosure of LKQ's highly confidential and competitively sensitive Data is felt across the entirety of the relevant markets for the sale of Vehicle Replacement Products, LKQ will be irreparably harmed should this conduct continue.

61. At present, LKQ continues to win sales at affected Body Shops primarily when it provides the Body Shop with a materially shorter delivery time. Like many manufacturers, OEMs are currently experiencing significant supply chain delays and have experienced inventory shortages across certain product lines. These temporary supply shocks are the main reason that LKQ retains any share at those affected Body Shops. Accordingly, LKQ expects to lose even more sales at such time as OEMs are able to sell their full complement of products, and the harm to LKQ's competitive position will be irreparable.

## **COUNT I**

### **PERMANENT INJUNCTIVE RELIEF**

62. LKQ incorporates by reference all of the allegations set forth above as if fully set forth below.

63. LKQ is likely to succeed on the merits of its claim against Defendant.

64. LKQ will be irreparably harmed without the issuance of an injunction due to Defendant's imminent and ongoing disclosure of LKQ's highly confidential and competitively sensitive pricing and availability Data to LKQ's competitors and the resulting distortion and diminution of LKQ's competitive position in markets for the sale of Vehicle Replacement Products.

65. LKQ has no adequate remedy at law for the loss or threatened loss of highly valuable customers. Thus, injunctive relief is appropriate.

66. The balance of hardships favors issuing an injunction for LKQ's benefit.

67. An injunction in LKQ's favor would serve the public interest.

68. LKQ is entitled to injunctive relief.

## **COUNT II**

### **BREACH OF CONTRACT**

69. LKQ incorporates by reference all of the allegations set forth above as if fully set forth below.



70. LKQ offered Defendant consideration in the form of monthly convenience fees to enter the Data Agreement with LKQ that is attached hereto as Exhibit 1.

71. Defendant accepted the consideration offered by LKQ.

72. For the reasons detailed above—particularly, by its ongoing disclosure of LKQ’s highly confidential and competitively sensitive pricing and availability Data to unauthorized recipients—Defendant breached its contractual obligations to LKQ under the Data Agreement.

73. As a direct and proximate result of Defendant’s actions as alleged above, LKQ has suffered damages due to Defendant’s breach of contract in an amount to be proved at trial, together with pre-and-post judgment interest.

**PRAYER FOR RELIEF**

WHEREFORE, LKQ respectfully demands:

A. That the Court grant injunctive relief restraining Defendant from disclosing LKQ’s Data to any entity not specifically authorized by LKQ in Exhibit A to the Data Agreement;

B. That the Court award compensatory damages sustained by LKQ because of Defendant’s breach of contract, in an amount to be proved at trial, interest (including prejudgment interest), attorneys’ fees, and costs of suit; and

C. That the Court grant such other and further relief as it may deem just and proper.

*Of Counsel:*

Jeffrey I. Shinder  
Ethan E. Litwin  
Harrison J. McAvoy  
Sarah Bayer  
335 Madison Avenue, 9th Floor  
New York, New York 10017  
Telephone: (212) 350-2700  
Facsimile: (212) 350-2701  
jshinder@constantinecannon.com

*/s/ Travis S. Hunter*  
Travis S. Hunter (#5350)  
Alexandra M. Ewing (#6407)  
Richards, Layton & Finger, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
(302) 651-7700  
hunter@rlf.com  
ewing@rlf.com

*Attorneys for Plaintiff  
LKQ Corporation*

Dated: January 12, 2022