

Employment - Former employee cannot use trade secrets and customer lists

By: Ed Wesoloski in Employment Law, U.S. District Court Eastern District of Michigan October 7, 2014

Plaintiff's former employee will be enjoined from using plaintiff's trade secrets and customer lists even though the parties did not execute a noncompete agreement.

Facts

MLive Media Group employed Kathryn Webber as an account executive. She was discharged for attendance and punctuality issues.

"Upon Webber's termination from employment, she returned her company issued cellular phone. A review of Webber's phone revealed text messages from Webber in which she claimed to have copied all of her MLive data on her computer to a USB device.

"Her text messages further show that she copied the material knowing that she would start working at Gannett, one of MLive's largest competitors ... and that she planned to shift her clients over to Gannett one by one. Indeed, the day before Webber's termination, she submitted a thirty-day cancellation notice for one of her larger customers. ...

"[A] forensic computer expert ... perform[ed] an analysis of Webber's work computer. The analysis revealed that Webber downloaded numerous MLive files, including customer related information. The forensic study also uncovered Webber's use of two USB devices with her work computer in July of 2014 and the use of a cloud-based drop-box to store work files."

After the inspection, MLive received another cancellation notice from a client that worked with Weber.

MLive sued Weber for misappropriating trade secrets in violation of the Michigan Uniform Trade Secrets Act. MLive has moved for injunctive relief.

Trade secrets

"Webber took information from MLive which constitutes trade secrets. The information taken by Webber includes, but is not necessarily limited to: customer, financial, and training material, including a document entitled 'key account growth plan.'

"This information derives independent economic value from not being known by the public. Furthermore, the Court rejects Webber's contention that MLive made 'no effort whatsoever to maintain the confidentiality of the customer information and advertising strategies at issue.' ...

"Rather, MLive has taken reasonable steps to protect its information. MLive uses password-protected security; keeps customer information in a restricted area on its company server, and strictly limits access to certain personnel on a need-to-know basis.

"Additionally, MLive requires its employees to abide by its policies, including but not limited to, policy directives for confidential information and distribution of sensitive material, information security, electronic communications, information and internet usage. ...

"Lastly, MLive follows specific protocols when an employee leaves the company in order to protect confidential data. Webber argues that the information she downloaded does not constitute 'trade secrets' within the meaning of the

Act because MLive made no effort to keep the information confidential. Webber relies on the fact that she never signed either a non-compete or a confidentiality agreement.”

Customer lists

“Webber relies on the case of *McKeeson Medical-Surgical, Inc. v. Micro-Bio-Medics*, 266 F. Supp. 2d 590 (E.D. Mich. 2003), wherein the court held: ‘In this Court’s opinion, customer lists developed by the employee are not protectable “trade secrets.”’

“‘To the extent that the list of customers accumulated by the employee includes “needs of customers” as learned by the employee during the course of his employment, such information is not protectable as a “trade secret.” It is, however, protectable under an agreement in which the employee agrees not to disclose such information.’ ...

“However, this holding is distinguishable from the facts present here. The customer list at issue in *McKeeson Medical* ‘was not a list [the employer] kept itself, nor was it compiled from any ... trade secret source; rather, it was compiled from personal and public sources available to [the defendant].’ ...

“While this case is similar because there is no non-compete or confidentiality agreement, the information taken by Webber was not compiled from personal and public sources. Moreover, other courts have enjoined similar conduct without an express non-compete agreement or with an unenforceable non-compete agreement.”

Injunction factors

MLive has shown a likelihood of success on the merits of its claim. Weber does not contest MLive’s argument that it will be irreparably harmed without injunctive relief.

“MLive argues that the harm it will suffer outweighs the harm to Webber if preliminary injunctive relief is not granted. Webber likewise offers no argument on this factor. ... [T]he Court concludes that without preliminary injunctive relief, Webber will continue to raid MLive’s customers by using its confidential, proprietary, and trade secret information. ...

“Lastly, MLive argues that the public interest supports the issuance of a preliminary injunction because of the public’s interest in protecting businesses’ confidential and trade-secret information. Webber fails to address this factor in her Response.”

MLive’s motion for a preliminary injunction is granted.

MLive Media Group v. Webber; MiLW No. 02-86600, 10 pages; Eastern District of Michigan; Drain, J.

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U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

U.S. DISTRICT JUDGE GERSHWIN A. DRAIN

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