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Connecticut State Court Rejects Trade Secrets Theft Complaint

After a bench trial, a Connecticut state court rejected a violation of trade secret complaint by an employer against a former employee in *BTS USA v. Executive Perspectives*, Superior Court, Waterbury, Docket No. X10-CV-116010685 (Oct. 16, 2014). The plaintiff, BTU USA, provides training and consulting services to corporate clients using learning maps, computer simulations and board games. The defendant, Executive Perspectives ("EP"), offers essentially the same services and products.

Marshall Bergmann, a former BTS Senior Director who had access to much of BTS' proprietary information, had signed a non-compete clause stating, among other things, that when he left, he would not solicit current BTS customers, or any client BTS had, during the last two years of his employment. BTS claimed that after Bergmann left his employment, he violated the non-compete provision by contacting and soliciting BTS clients through LinkedIn, and he stole some of the technology and products, such as packaging, the name of the packaging vendor and client lists, in violation of the Connecticut Uniform Trade Secrets Act. Other claims included Connecticut Unfair Trade Practices Act Violation, tortious interference with business relationships and breach of contract.

The Court found that there was little evidence that BTS made an effort to conceal the claimed product trade secrets, because the products were widely distributed to clients and prospective clients. Also, a third party – a former BTS Australia employee who was not bound by any restrictive covenant agreement that banned sharing of information – had already shown EP photographs of the products at issue. EP had the products in place before Bergmann was hired by EP. Therefore, the product and vendor names were not misappropriated through improper means. Moreover, BTS failed to prove that it lost business to EP, and actual loss or harm is a prerequisite to monetary recovery. Therefore, BTS failed to carry its burden of proof.

In addition, BTS claimed Bergmann breached his employment contract by the way he used the LinkedIn page he had while he was employed at BTS. He did not change his BTS-related LinkedIn connections when he joined EP, and he announced his new job on LinkedIn. In response, Bergmann claimed that BTS had no policy barring what he did.

The Court ruled that absent an explicit provision in an employment contract, which governs, restricts or addresses an employee's use of social media, the Court would not read such restrictions into an employment agreement since social media "has become embedded in our social fabric."

BTS USA v. Executive Perspectives is another example that an employer must actively maintain the confidentiality of trade secrets in order to seek trade secret protection. In addition, the case demonstrates that employment contracts, company policies and procedures should include explicit provisions regarding an employee's use of social media during and after employment with the employer, and the employer

should require ex-employees to delete clients or customers from LinkedIn accounts on termination of employment, if that is what the employer expects.

Tags: BTS USA, Connecticut, Executive Perspectives, trade secrets

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