

Social Media Law Update

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[Information Sharing On The Internet May Mean Fewer Confidential Trade Secrets](#)

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As a matter of course, we automatically Google someone, something, anything, in search of more information. In courtrooms, the attorneys choosing a jury are going beyond the information provided in the courtroom. One judge tried to stop the practice, and a court of appeal held that there was nothing wrong with it.

Similarly, LinkedIn has become the social media site used by most people to promote themselves professionally. A complete profile with education, experience, employment history and recommendations is readily available in a few key strokes. It is also very easy to find groups on LinkedIn with professionals in a similar field, or possible clients for whatever business you are in.

This openness of information sharing and accessibility is being exploited in another way. And, businesses are encouraged to take note. It is now even more important to make sure you have enforceable non-compete and confidentiality agreements with your employees and consultants.

An executive search consulting firm learned the hard way that its customer list was not a confidential trade secret because LinkedIn and other web sites are easy sources of information. In [Sasqua Group, Inc. v. Courtney](#), 2010 WL 3613855 (E.D. N.Y. Aug. 2, 2010), Sasqua Group specialized in the recruitment of professionals for the financial services industry. Sasqua Group's founder, Christopher Tors, had worked for years as a precious metals and foreign currency trader for Goldman Sachs, and knew the industry well. Mr. Tors claimed that he hired and trained his niece Lori Courtney (also known as the defendant here). Sasqua Group and Mr. Tors alleged in their complaint that the business had a client database with highly confidential information. This database included client contact information, individual profiles, contact hiring preferences, employment backgrounds, descriptions of previous interactions with clients, resumes and other information.

Does any of this information sound familiar? Well, it did to the United States Magistrate Judge,

after Courtney made mincemeat of the plaintiffs' claim for misappropriation of trade secrets. Courtney showed the court how the information in plaintiffs' database could be pieced together through Internet searches of *FX Week*, Google, Bloomberg.com, and LinkedIn.

"Courtney also explained how such a search could be conducted on LinkedIn, which she described as being 'like Facebook but for business' and as being more searchable than Bloomberg 'because people put their whole profile on LinkedIn.'"

It did not matter that Courtney admitted she did not turn to the Internet to get the information contained in the Sasqua Group's database. The magistrate found that the information was not confidential information or a trade secret.

"The information in Sasqua's database concerning the needs of its clients.... may well have been a protectable trade secret in the early years of Sasqua's existence when greater time, energy and resources may have been necessary to acquire the level of detailed information to build and retain the business relationships at issue here. *However, for good or bad, the exponential proliferation of information made available through full-blown use of the Internet and the powerful tools it provides to access such information in 2010 is a very different story.*"

Sasqua Group underscores the importance of having an enforceable non-compete agreement with employees and consultants. It also highlights a new argument that defendants will be making in misappropriation of trade secrets cases. Businesses should prepare themselves by consulting an attorney who is well versed in social media and business litigation.

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