

Are LinkedIn Contacts Trade Secrets?

A judge “across the pond” ruled that an employee’s LinkedIn contacts were, in essence, trade secrets of his former employer where those contacts were created during the term of employment and mimicked the employer’s confidential and proprietary business contacts. This raises quite a few legal issues for employers and employees.

I wrote a post a few months ago that “beat around the bush” on this issue but did not directly address this situation: [LinkedIn: think before you sync!](#) Go check it out and then read on ...



This fact scenario comes from a story in The Telegraph entitled [Court orders ex-employee to hand over LinkedIn contacts](#) and is very interesting to me. Mark Ions was an employee of Hays Specialist Recruitment and had his own personal LinkedIn profile that he was encouraged to use by Hays. While employed by Hays, Ions made many “new” LinkedIn contacts with people who, presumably, he learned of through Hays’ confidential and proprietary list of business contacts. Ions then set up his own competing business, Exclusive Human Resources, which he set up before resigning from Hays Specialist Recruitment and began using the LinkedIn contacts (derived from Hays’ business contacts list) to compete with Hays. Hays sued and asked the court to force Ions to hand over those LinkedIn contacts.

The court did exactly that and ordered Ions to disclose his LinkedIn contacts and all messages sent or received through LinkedIn.

This situation is very interesting and raises far more legal issues than I can address in this infolert. And, first and foremost, I must disclose that I know very little about the laws of England beyond what I learned in reading Blackstone’s Commentaries! However, looking at this fact scenario through the

lens of generally accepted principles of law in the United States, there are a few important points that I think need to be considered:

1. The LinkedIn profile was not a company profile, but a private profile;
2. Generally, once someone becomes a “connection” on LinkedIn, that contact becomes publically accessible and should not be considered confidential and proprietary or a “trade secret” (for an explanation of why see [LinkedIn: think before you sync!](#)); and
3. In the area of trade secret law it is generally accepted that when something that is a trade secret is misappropriated, the fact that it would have eventually become publically known, or does become publically known, is not a defense to the misappropriation;

So, how would I explain this decision?

The most rational explanation that comes to my mind is that the court viewed Mr. Ions as having taken Hays’ confidential and proprietary information, which information was not publically known, and then systematically made it public by adding those business list contacts to his public LinkedIn profile. Then, Ions tried to defend his misappropriation by saying

“but judge, this is public information so it can’t be a trade secret!”

The judge, however, apparently saw through this ruse and said

“I do not care, your unclean hands in making this information publicly known cannot now serve as your defense!”

This is my best guess. And, as I said earlier, this raises a boatload of legal issues that could be the subject of a thoroughly analyzed law review article – but that will have to wait — at least for now.

-Shawn E. Tuma

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