

Noncompete News: Minnesota Court Refuses to Create Non-compete Agreement Where None Exists, Denies Temporary Restraining Order

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A Minnesota court recently issued a decision that provides several good practice pointers for employers who wish to protect their proprietary relationships and information, or who wish to retain individuals who may have had access to such information while employed elsewhere.

The case involved two companies that manufacture and sell miniature electrical connector products. An employee of the plaintiff contacted the defendant, Ulti-Mate Connector Corporation, about a potential position as an independent sales representative, and also forwarded some mechanical drawings to a contractor of Ulti-Mate, who later testified that he did not forward the drawings to Ulti-Mate or use them in any way.

When the employee resigned and the plaintiff learned that he intended to provide services to Ulti-Mate, the plaintiff immediately filed suit. The plaintiff claimed that Ulti-Mate had tortiously interfered with its employment of the former employee, misappropriated its trade secrets, and aided and abetted the employee in breaching his duty of loyalty. The plaintiff filed a motion for a Temporary Restraining Order (TRO), seeking to prohibit its former employee from providing any services to Ulti-Mate, among other things.

The District Court in Anoka County, Minnesota, ruled in Ulti-Mate's favor, denying the TRO. Among other things, the Court ruled that the plaintiff had not shown that it was likely to prevail on the merits of any of its claims. The Court noted, both at the hearing and in its subsequent Order, that the plaintiff was "essentially requesting that the Court ... *ex post facto* impose ... a noncompete covenant when one was never entered into." The Court further expressed doubts over whether the plaintiff had adequately maintained the confidentiality of its purported trade secrets, and faulted the plaintiff for being unable to substantiate many of its allegations.

This case demonstrates several important practice pointers for businesses. First, if an employer wishes to restrict its employees' ability to compete after departing, it is imperative that the employer require the employees to sign non-compete agreements. Such agreements are enforceable, subject to certain restrictions and requirements, in most states. Most courts, like the court in this case, are unlikely to allow an employer to retroactively impose non-compete restrictions on a former employee absent a signed non-compete agreement.

Second, businesses must treat their trade secrets as trade secrets. Information that might otherwise constitute a trade secret may lose its protection if its owner does not take reasonable efforts to protect its confidentiality.

Finally, this case demonstrates the need to develop and implement an effective litigation strategy when seeking to enforce non-compete and/or trade secret rights. Here, the plaintiff decided to seek a TRO immediately upon filing suit. In some cases, that strategy makes sense because of the urgent need for immediate action, but in other cases, the better strategy is to conduct discovery first and then, based on the evidence, determine whether, when and how to seek injunctive relief.

Andy Tanick, a partner in Ford & Harrison's Minneapolis office and member of the firm's Non-Compete Practice Group, represented Ulti-Mate in the case discussed above. For more information about this case or this topic, or for a copy of his recently-published FAQ's on Minnesota non-compete law, please contact Mr. Tanick at 612-486-1623 or atanick@fordharrison.com.