



HOOTERS SUES COMPETITOR FOR TRADE SECRET THEFT

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Hooters, the world famous – if not oddly tacky – restaurant known for its overly-friendly female waitresses and buffalo wings, has recently filed suit in a U.S. federal court against an up-and-coming competitor, the Twin Peaks restaurant chain. See *Hooters of America, LLC v. La Cima Restaurants, LLC*, Case No. 1:11-cv-03299 (N.D. Ga. Sep. 28, 2011). Hooters, which has approximately 400 restaurants worldwide, accuses Twin Peaks' franchise development partner, La Cima, of misappropriating Hooters' trade secrets by hiring a group of former Hooters executives. The principal alleged perpetrator is Joseph Hummel, Hooters' former vice president of operations and purchasing. Hooters alleges that he gained unauthorized access to its computer systems and stole sensitive trade secrets and confidential business information in order to benefit La Cima and Twin Peaks. Among those items Hooters accuses him of stealing are a blueprint used to recruit and retain employees, sales figures, and information about private contracts negotiated with vendors. He allegedly sent the information to his private email after his employment with Hooters ended.

Although Twin Peaks has just 15 locations in the United States, it has plans to more than double its franchise in the next few years. Just like Hooters, Twin Peaks employs an all-female wait staff. Regardless of whether Hooters' allegations against Twin Peaks, La Cima, and Hummel are ultimately proven in court, cases such as this one are all too common – especially in difficult economic times. Everyone is looking for a competitive advantage – by any means they can obtain it. Likewise established corporations are inclined to defend vigorously any loss of competitive advantage and prevent new players to get a foothold in an already shrinking landscape.

Corporate executives need to know that they have the recourse to aggressively protect their trade secrets. Most states, including Florida, have adopted the Uniform Trade Secrets Act. In Florida, trade secrets are defined as information in any form that (1) derives independent economic value, whether actual or potential, from not being generally known to, and not being readily available to other persons, and (2) is subject to efforts to maintain its secrecy. § 688.002(4), FLA. STAT. If a corporation believes that someone has misappropriated its trade secrets, it can seek both an injunction and damages. §§ 688.003 and 688.004, FLA. STAT. An injunction is a court order prohibiting a party from using and disclosing those secrets from that point forward. § 688.003(1),

FLA. STAT. Damages, on the other hand, can include both the actual monetary loss the misappropriation caused, along with any unjust enrichment not accounted for when computing the loss. § 688.004(1), FLA. STAT. The court is also free to require the misappropriating party to pay a reasonable royalty for the unauthorized disclosure or use of the trade secret. *Id.*

Diaz Reus has handled many trade secrets cases for its clients, both in state and federal courts; a number of which have been substantially large in scale including one involving a major corporation with wireless telephones sold around Latin America. Likewise, Diaz Reus has also handled numerous smaller cases, including one involving a customer list owned by a local neighborhood newspaper. Regardless of its size, the most important thing a company can do is to protect itself beforehand with a confidentiality agreement that allows immediate injunctive relief upon breach. If an employee breaches the agreement, the company should then take aggressive court measures to protect its rights. In *Hooters v. La Cima*, for example, Hooters is asking the court to terminate Hummel's employment with La Cima/Twin Peaks and conduct a forensic examination of La Cima's computer drives and storage devices.

As Hooters is well aware, in the long run, trade secrets can mean the difference between success and failure. Armed with knowledge of your rights, you can help ensure your company's continued viability in every economic climate.