

Bottom Line Business Insights

What Thomas' English Muffins Can Teach You About Non-Compete Agreements



Posted at 8:24 AM on March 9, 2010 by Eliot Wagonheim

A week or so ago, I came across a story in the legal press that reminded me of something I wish more of my clients would focus on: [Non-Compete Agreements](#). The story was about a lawsuit filed against Chris Botticella, a former Senior VP of the company that owns [Thomas' English Muffins](#). It seems that Mr. Botticella had accepted a new position as a senior executive at Hostess, one of Thomas' competitors in the baked goods space. Thomas' sued to prevent him from taking the job, and won.

Why? Well, it seems that Botticella is one of only 7 people on the planet – yes, the planet – who knows the secret to how Thomas' English Muffins are made. And Thomas' certainly didn't want him taking that knowledge to one of its biggest competitors. As a result of the court's decision, my guess is that Botticella is going to have a tough time finding work as counter help at the corner bakery, much less as a senior executive at a large, national baked goods company.

How does a lawsuit over English Muffins relate to YOUR business? Simple: your people are your greatest asset, and, when they leave, potentially your greatest liability. They literally have the power to make or break your business. Every business guru will tell you this, but then you're left to your own devices to figure out what it all means, and how to protect your business' reliance on this sometimes unpredictable asset.

Perhaps the most important way you can protect your business' customer accounts, secrets, processes, plans, and the like from traveling to a competitor after the defection of a key employee is to require key employees to sign a well-crafted Non-Compete or Non-Solicitation Agreement.

A Non-Compete or Non-Solicitation Agreement will prevent your best sales executive (you know, the one whose accounts resulted in 68% of your gross income last year) from leaving your company for a competitor, and taking her business with her to boot. Additionally, if you've got any proprietary systems or technologies, it's imperative that you protect them. Your competitors will likely pay top dollar to lure away your key sales executive, information systems guy, CEO, or key manufacturing process employee. The loss of such an employee (and your competitor's gain of that employee) will be felt where it hurts the most: your bottom line. Equally as

important, they are enforceable. As recently as 5 weeks ago, Judge Richard D. Bennett of the United States District Court for the District of Maryland reaffirmed in [TEKSystems, Inc. v. Bolton](#) not only that a Non-Compete is enforceable if reasonable in scope, but also that it will be automatically extended for the period the employee is found to have been in breach.

Do you have employees whose loss would or could have a devastating effect on your revenues or your business? If you do, or even if you're not sure, feel free to give me a call or shoot me an email and we'll discuss it. I'll be happy to answer your questions and point you in the right direction. Free of charge. And with no obligation. You can also read more about Non-Competition Agreements in our recently released [Business Owner's Pocket Guide](#).

In the next entry, I'll be writing about some of the important provisions a Non-Compete or Non-Solicitation Agreement should contain, and the real effects of these agreements. Stay tuned.