Are You Doing Enough to Protect Your Company's Secrets?

Insights
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A decade ago, I litigated a trade secret/unfair competition dispute between two large plastics manufacturers. The Plaintiff was based in southwest Florida, the Defendant in southern Alabama. The factual dispute is interesting, though not necessarily particularly pertinent to the subject I want to address in this post.

In the litigation, the manufacturer in southwest Florida sued the manufacturer in southern Alabama to prevent the defendant from hiring a mid-level manager from the Plaintiff's company, to perform similar job functions for the Defendant. Essentially, the duties were the same -- manage the production of the goods being manufactured at the factory level, supervise workers, spot check product, confirm order completion, ensure timely shipment and delivery. The two companies produced different products and sold to different industries and customers. The Plaintiff produced goods for the boating and marine industry. The Defendant produced goods for the film and medical services industries. On its face, these would not appear to be companies in direct, or even indirect, competition with each other.

The plaintiff argued successfully that it didn't matter what products were produced, what mattered were the skills they taught the manager, the highly specialized training they provided, and their worry that their production technics and other information about how they conducted business were trade secrets that, if known to another plastics manufacturer, could be utilized to eventually compete directly with the plaintiff, and that the manager could provide intimate trade secrets belonging to the plaintiff to the defendant, significantly improving the defendant's efficiency, technique and production costs.

However, what proved most convincing to the court regarding the plaintiff's concerns was the extreme measures they took to protect their trade secrets and other confidential or proprietary business information. They included, among other things:

1. Every employee without exception (not just those with anticipated access to confidential information or trade secrets) signed a confidentiality agreement upon hire, promising not to take or to divulge any company information during or at any time after employment ended;
2. The agreements were renewed annually, and a new agreement was required to be executed by every departing employee;

3. Every employee provided a computer work station was required to maintain a secret password or login, and were forbidden from allowing any other employee to log on to their computer. Doing so, or sharing one's password, was an immediately fireable offense;
4. Failure to turn off one's computer before leaving work each day was an immediately fireable offense;
5. Secret passwords were changed every 30 days;
6. Key documents and other information were maintained in locked offices or storage rooms, with extremely limited access. Allowing an unauthorized person access to the locked offices or storage rooms was an immediately fireable offense;
7. Any visitor to the premises was required to execute a confidentiality agreement;
8. Visitors were not permitted to bring cameras into the facility;
9. Vendors, including the gentlemen who stocked the snack machines in the company cafeteria, were required to execute a confidentiality agreement.

In retrospect, considering the current environment of data breaches, cyber security failures and class action litigation against the likes of Yahoo, Equifax, Best Buy and others, the security measures employed by the plaintiff in the above-described litigation may seem, frankly, pedestrian. We might think our concerns about trade secret protection should be directed outward, externally, toward the mysterious "hackers," we hear of but know very little about.

In truth, the extreme measures employed by the plastics manufacturing plaintiff are as pertinent and valuable to employers today as ever. This is because, according to industry research, more than 70 percent of the known thefts of companies' trade secrets and confidential information are internal, by disgruntled employees or former employees, by employees looking to jump ship and bring valuable information to their new employers, likely our competitors.

Importantly, Courts (like the one in the above-described litigation), in examining such cases, focus intently on what efforts the plaintiff took to protect their valuable information. You cannot possibly do too much to protect your valuable information. You most certainly can do too little.

Review your trade secret protection measures today, and remain vigilant in doing so. It will protect your business and, if necessary, will allow you to successfully enforce such measures in the unfortunate instance where you, too, must litigate your claims.

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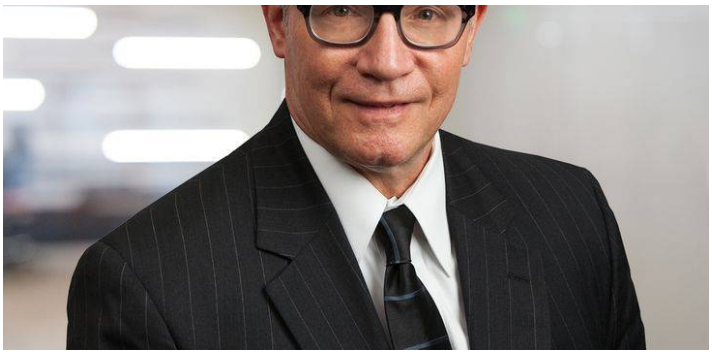

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