

Even Hooters Has Trade Secrets

Insights

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Hooters Sues Competitor For Trade Secret Theft by Former Hooters Executive But Conspicuously Omits Former Employee From Lawsuit



Hooters recently sued a competitor, La Cima Restaurants, alleging widespread misappropriation of trade secrets. That's right. Trade secrets.

"What trade secrets could Hooters possibly have?," you might be wondering? Well, according to Hooters, plenty.

For starters, Hooters says that the "casual dining industry operates on extremely thin profit margins." Thus, it felt compelled to file suit when it allegedly discovered that a former Executive Vice President, Joseph Hummel, downloaded and transported to his private email address "a substantial volume of...sensitive and highly confidential business information." Among the allegedly pilfered data are compilations of sales figures reflecting the comparative strength of Hooters restaurants, specific plans to capitalize on internal markets forecasts, and specific restaurant franchise performance data.

To make matters worse, Hooters alleges that Hummel stole much of this data after his employment ended when it neglected by “oversight” to discontinue his electronic access to Hooters’ computer systems. By doing so, Hooters claims that Hummel violated the Computer Fraud & Act, the Electronic Communications Privacy Act, and misappropriated Hooters’ trade secrets. (A copy of the Complaint is available in pdf format below.)

So aside from the fact that this case involves claims by a restaurant chain that euphemistically describes itself as a “beach-themed establishment” with “iconic” wait staff who portray “an all-American cheerleader image,” what is initially so interesting about Hooters’ claims? It didn’t sue Hummel.

Conspicuously absent from Hooters’ Complaint is Hummel himself, the alleged protagonist. Even though Hooters’ entire complaint revolves around allegations of Hummel’s alleged misconduct, Hooters chose not to include Hummel as a defendant. It’s not clear from the complaint why it Hooters chose not to sue him. Perhaps Hooters feels it has sufficiently covered its bases by suing La Cima because Hummel is a “Partner and Chief Operating Officer.” Perhaps Hummel has a counterclaim that Hooters wants to avoid. Perhaps there is some other reason not readily apparent from the Complaint.

But, because Hooters has not sued Hummel, the Complaint lacks a claim for breach of contract. Hooters alleges that Hummel signed an agreement with a confidentiality provision that precluded Hummel from disclosing its confidential information. It even alleges that La Cima tortiously interfered with Hummel’s contract “by inducing Hummel to violate his contractual duties of confidentiality....” But because Hummel is not a defendant, there is no claim for breach of contract.

As noted above, Hooters also claims that Hummel violated the Computer Fraud & Abuse Act, the Electronic Communications Privacy Act, and misappropriated Hooters’ trade secrets. But because Hummel’s not a defendant, these claims are not directed against him. Instead, Hooters repeatedly alleges that La Cima is “vicariously liable for Hummel’s violations....”

Also conspicuously absent from Hooters’ filing – a motion for injunctive relief. Hooters filed its action against La Cima on September 29, 2011. It claims that in the absence of injunctive relief it will be “immediately and irreparably harmed” if La Cima is allowed to keep Hummel in its employ because he will “inevitably” use Hooters’ trade secrets. But Hooters did not file a motion for an injunction, nor did it file a motion for expedited discovery. Maybe it intends to file one or both of these motions soon. Maybe it is trying to settle the case. But when a plaintiff files a case alleging that a former employee downloaded hundreds of pages of confidential documents, one has to wonder why the plaintiff has not filed a motion seeking the relief set out in its Complaint. Whatever the reason, if this case is not settled soon, it is one to keep an eye on.

Michael R. Greco is a partner in the Employee Defection & Trade Secrets Practice Group at Fisher Phillips. To receive notice of future blog posts either [follow Michael R. Greco on Twitter](#) or on [LinkedIn](#), or subscribe to this blog's RSS feed.

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Michael R. Greco
Regional Managing Partner
303.218.3655
[Email](#)