An Intoxicating Trade Secret: Sam Adams Versus Anchor Steam

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Describing itself as doing business in the "Better Beer" part of the beer market, Boston Beer Corporation – the maker of Sam Adams beers – filed a lawsuit yesterday against competitors Anchor Brewing Company and Anchor Brewers & Distillers – the maker of Anchor Steam beers – as well as Judd Hausner. (For this post, I will refer to the companies by their trade names as "Sam Adams" and "Anchor Steam.") Sam Adams states that Hausner is a former employee who resigned effective September 22, 2011 to join Anchor Steam.

According to Sam Adams' Verified Complaint (which is available in pdf format below), Hausner executed an Employment Agreement when he joined Sam Adams at the end of 2006. The Agreement contains non-disclosure and non-compete provisions. Interestingly, the one-year non-compete provision is limited to distributors of "beer or ale having a wholesale price within twenty-five percent (25%) of the wholesale price of any of [Sam Adams'] products." This appears to be an attempt by Sam Adams to limit the scope of the non-compete in a price-dominated market.

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The Agreement also contains provisions requiring that it be construed under Massachusetts law and that litigation regarding the Agreement take place in Massachusetts courts. This is a significant issue, as the Complaint states that Hausner is a resident of California and Anchor Steam has its principal place of business in California. Because California law is very hostile to the enforcement of non-compete provisions, the jurisdiction and governing law are likely to be significant in this dispute. Hausner and Anchor Steam may choose to file a competing action in California and then to try to convince the two courts that the matter should proceed in California.

Sam Adams also alleges in the Verified Complaint that Hausner recently attended divisional sales meetings where he learned about the Company's "secret plan for introducing new products in 2012," as well as confidential pricing information. Sam Adams claims that Hausner will inevitably disclose this information in performing sales and marketing tasks for Anchor Steam. This allegation is noteworthy because the Inevitable Disclosure Doctrine's seminal case – PepsiCo v. Redmond – was also a dispute between two beverage companies regarding the potential disclosure of new product and pricing information. In that case, sport drinks were at issue instead of beer.

Sam Adams asks in the Verified Complaint for money damages and injunctive relief, with the latter coming in the form of a preliminary and permanent injunction forbidding Hausner from working for Anchor Steam or from using Sam Adams' confidential information. At present, Sam Adams has not filed a motion for a preliminary injunction or a motion for expedited discovery, which are two oft-complementary measures taken by employers who feel threatened with the prospect of immediate, irreparable harm from a former employee. That said, the case is young, so Sam Adams has time to use these tools.

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