



## LinkedIn Torpedoes Employer's Trade Secrets Claim

Insights

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In a sobering reminder that online social media is changing the way many companies do business in unforeseen ways, a federal court recently shot down an employer's trade secret claim based largely upon the availability of information via the internet. In *Sasqua Group, Inc. v. Courtney*, a magistrate judge for the United States District Court for the Eastern District of New York held that although an employer's customer list may have been a trade secret years ago, "the exponential proliferation of information made available through full-blown use of the Internet [presents] a different story." The district court subsequently adopted and approved the magistrate's lengthy and detailed opinion.

Sasqua Group is an executive search consulting firm specializing in the recruitment and placement of professionals for the financial services industry. When it parted ways with a former recruiter named Lori Courtney, Sasqua sought an injunction to preclude Courtney from misappropriating its trade secrets. According to Sasqua, Courtney had access to its customer database prior to her departure, and the database was the "lifeblood" of its business. The database contained client contact information, individual candidate profiles, contact hiring preferences, employment backgrounds, descriptions of previous interactions with clients, resumes and other information. From Sasqua's viewpoint, the database was highly proprietary. Courtney had a different perspective, and the Court agreed.

Courtney testified that "virtually all personnel in the capital markets industry...have their contact information on Bloomberg, LinkedIn, Facebook or other publicly available databases." During the hearing, Courtney was asked what she would do "if she had amnesia tomorrow, lost her blackberry" and "needed to identify" decision makers and prospective clients. Her answer resonated with the court: she would use the internet and the vast amount of information available on it, which she claimed she could find through a five-minute search. Courtney explained that she could start with LinkedIn "because people put their whole profile on LinkedIn." She explained that if she wanted to find the decisionmaker at a particular company, she could simply enter the name of the company in the search box. Seconds later, she would have a list of employees, their positions, current title, prior jobs, undergraduate school, dates of attendance, experience, objectives, and even contact information. If she wanted more information, she could do a search on Google and she would have thousands of search results, many of which pointed to news stories recounting companies' hiring plans. The court concluded that the information publicly available "exceeded the amount and level of detail contained in the Sasqua database." The clients, their contact information, and other data was readily accessible.

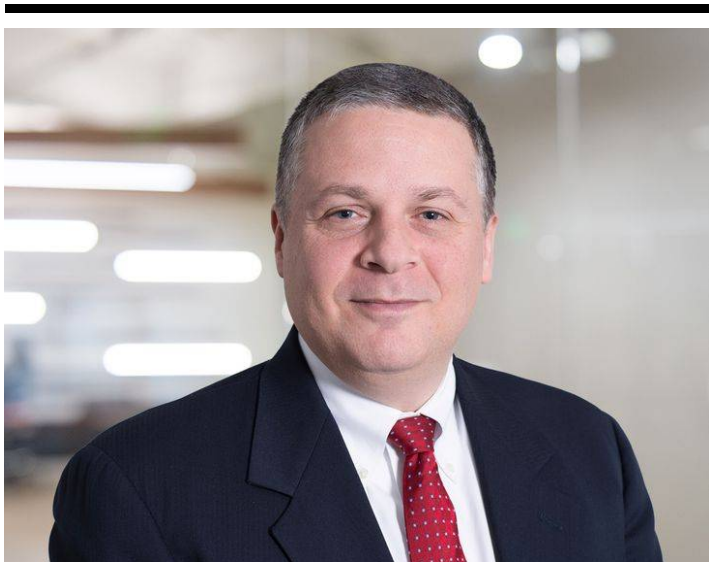
Does this mean that employers seeking trade secret status for customer lists and related information should throw up their hands and surrender? No. This case presents a textbook example of what not to do if an employer regards its client information as confidential. For starters, Sasqua did not require Courtney to sign a confidentiality or nonsolicitation agreement. Nor did it take reasonable measures to protect the database in question. Its computers were not password protected; all employees had free access to the database, including at work and remotely from home. The database did not contain legends designating confidential information embedded within its pages to remind employees that the information was confidential. The database was shared with potential business partners without restriction. Firewalls and security software were not installed. As the court stated, "Sasqua failed to take even basic steps to protect the secrecy of the information contained in its database."

The "takeaway" from this case is not that social media and the proliferation of information via the internet will undermine protection of customer lists and related information. Rather, the lesson is that employers need to be vigorous in the efforts to keep their secrets secret. A copy of the magistrate judge's opinion and the district court's confirmation is available in pdf format at the bottom of this post. As always, please feel free to share your comments, thoughts and questions in the comment section below.

[Sasqua Group Magistrate's Report & Recommendation.pdf \(202.46 kb\)](#)

[Sasqua Group Order Adopting Magistrate's R&R.pdf \(11.84 kb\)](#)

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