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BLOG

Court Orders Injunction against Alleged Trade Secret Thief Who Destroyed Electronic Evidence

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On February 4, 2019 a judge in North Carolina granted a preliminary injunction in favor of Ennis-Flint, a company engaged in the research, development, manufacture, and sale of pavement marking materials, and against Robert William Greer, a chemist who had worked as Director of R&D for Ennis-Flint, based on evidence of alleged trade secret theft. Forensic evidence—some of which the defendant attempted to destroy—played a significant role in the court's findings and conclusions.

During Mr. Greer's employment, he had access to certain Ennis-Flint trade secrets, including formulas, specifications, and raw material information for each of its products. When he stopped working for Ennis-Flint, he returned a company-issued phone and company-issued laptop, which contained many of Ennis-Flint's trade secrets. Despite agreeing to safeguard the company's trade secrets and not attach personal devices to company computers, Mr. Greer had copied almost 4,000 formulas from his laptop to a personal storage device before his departure and later copied at least some of those files to a personal laptop and a personal cloud storage account. Forensic analysis showed that Mr. Greer still possessed copies of those formulas when Ennis-Flint filed its lawsuit and the time the court entered a temporary restraining order that, among other things, ordered Mr. Greer to preserve and turn over for examination all electronic devices that may contain Ennis-Flint's trade secrets. Analysis further showed that Mr. Greer "undertook systematic efforts to destroy evidence . . . and to cover up that he had done so" and that, when confronted with significant forensic evidence, Mr. Greer eventually "admitted his spoliation of evidence." Specifically, among other things, Mr. Greer deleted information from his personal cloud storage account and ran different file wiping and disc cleaning tools on multiple occasions to "target, destroy, and overwrite electronic documents," including Ennis-Flint's trade secrets he had copied onto his personal laptop.

As part of its analysis, the court concluded that "in preparation for leaving his employment with Ennis-Flint, Greer took steps to assure that he could take with him a complete set of Ennis-Flint's formulas and significant additional Ennis-Flint Trade Secrets and this set of information was beyond what he had maintained during the regular course of his employment with Ennis-Flint." Furthermore, despite Mr. Greer's claims to the contrary, forensic evidence supported that Mr. Greer had interest in doing work in a competing area with a company in Hong Kong. Based on its findings of facts, the court found a sufficient likelihood of success on the merits to grant a preliminary injunction. The court will separately consider potential sanctions for Mr. Greer's spoliation and violation of the court's temporary restraining order.

TIP: Electronic forensic evidence can be the key that unlocks trade secret cases, though piecing together what a potential thief did can be nuanced and challenging, particularly if he tries to cover his tracks. Therefore, if a company suspects potential trade secret theft, it is wise to consider early on in the investigation whether to engage a trusted computer forensic expert.

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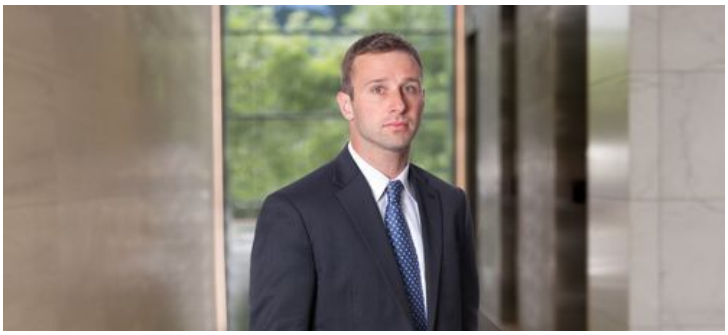

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