

Court Compels Limited Forensic Imaging of Devices Potentially Containing Stolen Trade Secrets

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Plaintiff List Industries, LLC asserted claims for breach of a confidentiality provision of an employment contract as well as misappropriation of its trade secrets in violation of Ohio's Trade Secret Act against former employee Dean Scott Umina and his new employer, Top Tier Storage Products, LLC. Umina ceased working for List and, under his employment contract, was required to return all of List's files. List claims that Umina retained a hard drive issued by List, which contained List trade secrets after he ceased working for List, and then accessed List information after starting work at Top Tier, a competitor of List.

To help prove its claim, List sought to forensically image the hard drive at issue (i.e. to create an exact bit-for-bit copy) as well as two computers List believes were used to access the drive. After the parties agreed on a protocol to image the devices, which was to include both parties' experts, Defendants' expert proceeded to image the devices alone, and then Defendants refused to produce the images.

The Court concluded that the forensic imaging would "likely provide necessary data" to address the questions of whether Umina retained List information and what he may have done with that information—neither of which could be "gleaned from mere document review." The Court highlighted that the request to image the devices was not based on "mere suspicion" of misconduct in part because Umina had testified in a separate proceeding that he had accessed and used at least one of List's documents after his termination and while he was employed at Top Tier. Citing privacy and confidentiality concerns about Umina's personal files on the devices, as well as guidance offered by the Sedona Conference, the Court refused to order a "broad unfettered search" of the devices and instead created a protocol whereby Defendants' expert would remove confidential personal information from the images before giving copies of the images to Plaintiffs' expert.

TIP: While forensic analysis can be the key to many trade secret cases, victims need to be prepared to explain and justify the scope of any search.

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