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BLOG

Illinois Court Dismisses Trade Secret Claims Despite Allegations of Possession of Confidential Information and Admissions of Solicitation

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In *Packaging Corp. v. Patrick Croner*, the Northern District of Illinois recently denied a plaintiff's motion for preliminary injunction and dismissed the plaintiff's trade secret claims, holding that mere possession of trade secrets and mere solicitation of plaintiff's clients do not constitute "misappropriation" of trade secrets under the Defend Trade Secrets Act (DTSA).

The plaintiff, Packaging Corporation of America, Inc. (PCA), filed a lawsuit alleging that a former employee, Patrick Croner, violated the Defend Trade Secrets Act (DTSA), 18 U.S.C. § 1831 *et seq.*, after he went to work for a competitor, Welch Packaging (Welch), and began soliciting clients, allegedly utilizing confidential information he took from PCA.

PCA based their allegations of unauthorized disclosure of PCA's trade secrets on the fact that Croner admitted to having solicited former PCA clients and on the inference that because Croner had not returned any confidential information to PCA, he was using this information in connection with those solicitations. The court rejected this inference, reasoning that "mere possession of trade secrets does not suffice to plausibly allege disclosure or use of those trade secrets" without further factual support. The court also rejected PCA's contention that they had sufficiently alleged trade secret misappropriation under the doctrine of "inevitable disclosure"—namely, that Croner necessarily would have disclosed PCA's secrets in his role and work at Welch. The court noted that PCA failed to allege anything with respect to the actions Welch had or had not taken to prevent trade secret disclosure and failed to assert a sufficient foundation that Croner had the intent or high probability of using its trade secrets. The court also concluded that PCA insufficiently pleaded that Croner could not operate or function in his new position without relying on trade secrets. In fact, Croner's contract affirmatively allowed him to immediately compete with the plaintiff and begin soliciting PCA clients 12-months after his resignation unless the clients were ones Croner himself brought to the employment relationship with PCA, for which he could begin servicing immediately. Therefore, the court concluded that while it was *possible* Croner used trade secrets, the complaint alleged no facts that made it *plausible* to infer that he did so.

The court also rejected the contention that because Croner had admitted to deleting confidential PCA files off his personal computer, he had engaged in spoliation of evidence and was therefore deceptive about the fact that he misappropriated PCA's trade secrets. The court held that the deletions supported Croner's claim that he did not use or disclose any trade secrets as he took active steps to ensure he no longer possessed confidential information.

TIP: Before asserting a trade secret misappropriation claim, a company needs to assess what specific evidence it has of the trade secret being used or disclosed, particularly in jurisdictions that disfavor or do not apply the inevitable disclosure doctrine.

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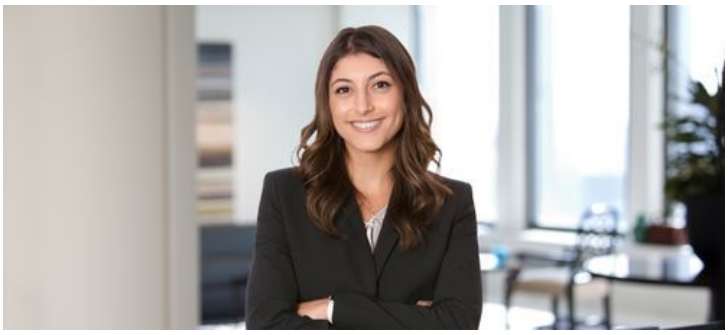

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