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Reasonable Efforts to Protect Trade Secrets Required

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Many companies have developed trade secrets, such as customer contact lists, that they want to protect from disclosure to maintain a competitive advantage. To preserve the secrecy of this information, owners of trade secrets often institute special procedures, such as requiring employees to sign non-disclosure and non-compete agreements. To enforce confidentiality, however, requires more than simply having the employee sign an agreement. The company must take affirmative steps to ensure the secrecy of the information.

A March 2014 decision from the United States District Court in the Southern District of Ohio, *PatientPoint Network Solutions, LLC v. Contextmedia, Inc.*, No. 1:14-CV-226, reinforces the necessity for employers to make "reasonable efforts" to protect their trade secrets. In this case, PatientPoint filed for a temporary restraining order against its former employee, Christopher Hayes, and his new employer, Contextmedia, to enforce the non-compete and non-disclosure agreement that Mr. Hayes had signed while employed by PatientPoint. To obtain a restraining order, PatientPoint had to prove that under the Ohio Uniform Trade Secrets Act (UTSA), it would likely win the case for misappropriation of trade secrets. Under the UTSA, a trade secret is defined as information (1) that has independent economic value from not being generally known and (2) that is subject to "reasonable efforts" to maintain its secrecy. The court denied PatientPoint's request for a restraining order, finding that PatientPoint failed to make reasonable efforts to maintain the secrecy of the alleged trade secrets. Specifically, PatientPoint did not require Mr. Hayes to sign a non-disclosure agreement until fourteen months after he started working at the company. This non-disclosure agreement was then superseded by a later separation agreement which did not contain non-disclosure or non-compete clauses. There was no evidence the company required any of its other employees to sign confidentiality agreements. PatientPoint also failed to make a written demand for return of Mr. Hayes' company-issued electronics or other proprietary or trade secret information for more than six months after his termination. Under these circumstances, the Southern District of Ohio concluded that PatientPoint had not taken adequate measures to ensure that its trade secrets were not disclosed.

This decision makes it clear that companies must employ protocols to ensure that their trade secrets will be protected by the courts. What constitutes a reasonable effort to protect information will vary by company, but certain protections should be universally considered. Although not mandated by the UTSA, confidentiality agreements are valuable to the success of a misappropriation case. A policy of issuing written demands for the return of all company property and trade secrets should also be followed, along with exit interviews for all departing employees during which non-disclosure should be reinforced. While these procedures may not be sufficient in every situation, utilizing them will help to demonstrate that a company has made "reasonable efforts" to protect the secrecy of its trade secrets.

If you have any questions concerning *PatientPoint*, or would like more information on protecting your company's trade secrets, please contact a member of our Intellectual Property or Employment Practices Groups.

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