Schwan's Consumer Brands North America

2005 | Cited 0 times | D. Minnesota | December 9, 2005

MEMORANDUM OPINION AND ORDER

Introduction

The above-entitled matter came before the undersigned United States District Judge on December 6, 2005, pursuant to a Motion for Temporary Restraining Order brought by Plaintiff Schwan's Consumer Brands North America, Inc. ("Schwan"). In its Verified Complaint (the "Complaint"), Schwan sets forth four counts: (1) Breach of Covenant Not-to-Compete (against Defendants Mark Rusin ("Rusin") and Joseph M. Vojvoda ("Vojvoda")); (2) Breach of Confidentiality Covenant (against Rusin and Vojvoda); (3) Tortious Interference with Contractual Relations (against Defendants Home Run Inn, Inc. ("Home Run Inn"), and Power Play Distributors, LLC ("PPD"); and (4) Misappropriation of Schwan's Trade Secret and Confidential and Proprietary Information (against all Defendants). For the reasons set forth below, Plaintiff's Motion for Temporary Restraining Order is denied. However, the parties should review carefully the directive of this Court found in the Conclusion of this Order on page 12.

Background

This motion for a temporary restraining order arises out of a dispute between Schwan and two of its former employees, Rusin and Vojvoda, regarding Rusin and Vojvoda's employment by PPD, a direct competitor of Schwan, and Rusin and Vojvoda's purported retention and use of Schwan's alleged confidential and proprietary information after the employees left their employment with Schwan.

Schwan is a national manufacturer and distributor of frozen foods. PPD is a regional distributor of frozen foods serving Illinois, parts of northwest Indiana, and Milwaukee, Wisconsin. One of the product lines that PPD distributes is Home Run Inn pizza. Home Run Inn is a company that was founded as a tavern and Italian restaurant on Chicago's south side.

Rusin and Vojvoda both began working at Schwan in 1995 as route drivers.[1] Vojvoda was promoted to a management position in 1999; Rusin was promoted to management in 2000. In 2001, Schwan's went through a reorganization and changed Vojvoda's and Rusin's titles to Customer Operations Supervisors. Schwan asserts that Vojvoda and Rusin were promoted into these positions.[2] Vojvoda and Rusin assert that although their titles changed, there was no change to their duties or territories. Further, Vojvoda and Rusin contend that they received a pay cut at the time of the title changes.

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According to Schwan, the terms of Rusin and Vojvoda's employment as Customer Operations Supervisors were governed by new Employee Confidentiality, Patent and Non-competition Agreements (the "Agreements") that each executed upon receiving the new job titles. The Agreements defined Confidential Information as follows:

1.1 "Confidential Information" means information not generally known and proprietary to the Company, including, but not limited to, any knowledge or information concerning the Company's inventions, patents, copyrights, trade marks, trade secrets, research, development, manufacturing, purchasing, accounting, financial performance, engineering, leasing, servicing, business systems, processes, equipment, formulations, recipes, ingredients, sales and distribution techniques, marketing plans and strategies, pricing, new product developments, new business concepts, supplier lists, customer lists, vendor lists, broker lists and information concerning manufacturing costs, raw material costs and pricing. (Complaint Exs. 1, 2.) The Agreements prohibited disclosure of Confidential Information, as follows:

1.2 Nondisclosure. Employee shall not, during or at any time after the term of this Agreement, directly or indirectly, use, disseminate, or disclose to any person, firm, or other business entity for any purpose contrary to the interests of the company, any Confidential Information which was disclosed to Employee or known by Employee as a consequence of or through Employee's employment by the Company. (Id.) The Agreements stated that Rusin and Vojvoda agreed to return any proprietary information to the company upon termination of their employment. (Id. at § 1.3.)

The Agreements also included Non-competition provisions that stated as follows:

3.1 Similar Business. During the term of Employee's employment by the Company and for twelve (12) months after termination of such employment, Employee agrees that Employee will not, without the prior written consent of Employee's supervisor, directly or indirectly, whether as an employee, officer, director, independent contractor, consultant, stockholder, partner or otherwise,

(i) engage in or assist other to engage in or have any interest in any business which competes with the Company in the Area assigned to Employee, or (ii) contact or solicit competing business from anyone who has been a customer of the Company in the Area assigned to Employee.

3.2 Non-solicitation of Employees. Employee agrees that during the term of Employee's employment and for twelve (12) months after the termination of such employment, Employee will not directly or indirectly induce or attempt to induce any person who is an employee of the Company to leave the employ of Company.

3.3 Notice to Subsequent Employers. Following termination, Employee shall notify any potential new employer, prior to accepting employment, of the existence of this Agreement and provide such employer with a copy thereof. (Id.)

Vojvoda voluntarily left his position with Schwan on June 10, 2005, and went to work for PPD as a route driver. His initial territory with PPD was the southwest suburbs of Chicago. In November 2005, Vojvoda was promoted to District Manager with PPD and his territory was increased to include northwest Indiana. Just prior to this lawsuit being filed, however, Vojvoda was demoted to route driver and currently has no territory for PPD. Defendants assert that PPD is in the process of creating a route for Vojvoda that does not overlap with the territory that he had while working for Schwan.

On September 23, 2005, Rusin voluntarily left his position with Schwan and went to work for PPD as a route driver. Rusin's territory with PPD has included Chicago's southern and southeastern suburbs. Defendants assert this is a territory in which Rusin never worked while employed by Schwan.

Schwan filed this motion on November 30, 2005, in Hennepin County District Court. On December 1, 2005, Defendants removed the action to this Court. In its Motion for Temporary Restraining Order, Schwan asserts that by taking employment with PPD and Home Run Inn, companies that compete with Schwan in the frozen food industry, Vovjoda and Rusin have breached the non-compete provisions of the Agreements. Schwan also contends that Vojvoda and Rusin breached the Agreements because they failed to notify PPD or Home Run Inn of the existence of the Agreements when they began working for PPD.

Schwan further asserts that by working with PPD and Home Run Inn, Vojvoda and Rusin have disclosed, and will inevitably disclose, Schwan's trade secrets to the benefit of their new employers. Specifically, Schwan asserts that it discovered that Vojvoda had been transmitting Schwan trade secrets to his home computer from Schwan, including employee contact information. Schwan also contends that Rusin used sales data from his position at Schwan to lure a Schwan customer to choose Home Run Inn products over Schwan products. Schwan alleges that Rusin shared Schwan sales figures from one of his former Schwan routes with the management of Niemann Food Inc., Store #473 in Quincy, Illinois ("Niemann Foods").[3]

Schwan asserts that Niemann Food Store #473 will be taking freezer space formerly allotted to Schwan products and stocking it with Home Run Inn products, marking the first time that Niemann Foods has stocked Home Run Inn private label in the store. Finally, Schwan contends that Rusin compiled Schwan sales data just before he quit and misappropriated Schwan information from Kroger, a customer of Schwan, related to shelf-placement of Schwan products.

Defendants assert that the Agreements that Vojvoda and Rusin signed are invalid and unenforceable because they are not supported by consideration. Defendants contend that even if the Agreements are enforceable, they are overbroad in their geographical scope. Moreover, Defendants contend that PPD and Home Run Inn were not aware of the existence of any non-compete restrictions on Vojvoda's and Rusin's employment until October 10, 2005, when Schwan informed Home Run Inn about the existence of the Agreements.[4]

Defendants contend that Rusin and Vojvoda began working for PPD upon their own initiative and that PPD and Home Run Inn have not solicited any of Schwan's employees. Defendants further contend that PPD secured the shelf space at Niemann Foods after two years of soliciting and developing a customer relationship, and that Rusin had no contact with Niemann Foods until after PPD secured the account. Defendants assert that upon securing the shelf space for the PPD products, PPD merely sent Rusin to coordinate placement of the PPD products at Niemann Foods. At that time, Defendants contend that Rusin presented a three-page document introducing the Home Run Inn brand to Niemann Foods and detailing public market share information for Home Run Inn and other brands. Defendants assert that the figures on this document came from ACNielsen research.

Although Defendants contend that Schwan's Motion for Temporary Restraining Order is without merit, Defendants have agreed, in significant part, to comply with the relief that Schwan requests. Specifically, PPD and Home Run Inn have agreed not to hire from Schwan for a reasonable period of time; they have agreed not to allow Rusin and Vojvoda to work in the territories that they covered for Schwan for a reasonable period of time; and Rusin and Vojvoda have agreed to return any purportedly confidential or proprietary Schwan information that they have and take reasonable measures to assure against use or disclosure of such information.

Schwan requests, however, that Rusin and Vojvoda be prohibited entirely from working for PPD and Home Run Inn for the period set forth in the Agreements.

Discussion

I. Standard of Review

Under Eighth Circuit precedent, a temporary restraining order may be granted only if the moving party can demonstrate: (1) a likelihood of success on the merits; (2) that the balance of harms favors the movant; (3) that the public interest favors the movant; and (4) that the movant will suffer irreparable harm absent the restraining order. Dataphase Sys., Inc. v. C L Sys., Inc., 640 F.2d 109, 113 (8th Cir. 1981). "None of these factors by itself is determinative; rather, in each case the four factors must be balanced to determine whether they tilt toward or away from granting a preliminary injunction." West Pub. Co. v. Mead Data Cent., Inc., 799 F.2d 1219, 1222 (8th Cir. 1986), cert. denied, 479 U.S. 1070 (1987). The party requesting the injunctive relief bears the "complete burden" of proving all the factors listed above. Gelco Corp. v. Coniston Partners, 811 F.2d 414, 418 (8th Cir. 1987).

II. The Dataphase Factors

A. Likelihood of Success on the Merits

1. Breach of Contract Claims (Counts I and II)

Schwan's motion is based on the premise that Rusin and Vojvoda have retained and intend to use Schwan's proprietary and confidential information, and that Rusin and Vojvoda's employment with PPD violates the non-compete provisions of the Agreements. Defendants counter that the Agreements were invalid for lack of consideration and therefore Schwan cannot succeed on this claim.

If valid, the Agreements are governed by Minnesota law. In Minnesota, courts generally disfavor non-competition agreements because they are agreements in partial restraint of trade. Nat'l Recruiters, Inc. v. Cashman, 323 N.W.2d 736, 740 (Minn. 1982). To be valid, the agreement must be reasonable in scope, Overholt Crop Ins. Serv. Co., Inc. v. Bredeson, 437 N.W.2d 698, 703--04 (Minn. Ct. App. 1989), and supported by sufficient consideration. A restrictive covenant entered into at the beginning of an employment relationship does not require independent consideration. Cashman, 323 N.W.2d at 740. However, if the agreement is not entered into at the beginning of the employment relationship, it must be supported by independent consideration in order to be valid and enforceable. Id. Continued employment may suffice as independent consideration "if the agreement is bargained for and provides the employee with 'real advantages.'" Midwest Sports Mktg., Inc. v. Hillerich & Bradsby of Canada, Ltd., 552 N.W.2d 254, 265 (Minn. Ct. App. 1996) (citing Freeman v. Duluth Clinic, Inc., 334 N.W.2d 626, 630 (Minn. 1983)).

Rusin and Vojvoda assert that they received no consideration for signing the 2001 Agreements, and that, in fact, they received pay cuts at that time. Thus, Defendants contend that the Agreements are invalid. Schwan, on the other hand, contends that Rusin and Vojvoda each received raises when their titles changed in 2001, and that these raises served as consideration for the Agreements.

Because a genuine issue of fact exists as to the consideration given to Rusin and Vojvoda in exchange for their signatures on the Agreements, the Court finds that Schwan has not met its burden of demonstrating that the Agreements are valid. Accordingly, Schwan has not demonstrated a likelihood of success on the merits of its breach of contract claims. Moreover, if the Court were to determine that the Agreements are supported by consideration and valid, the reading of the non-competition portion of the Agreements suggested by Schwan raises a concern that the Agreements are overbroad. Although the Court would be willing to impose restrictions on Rusin and Vojvoda's ability to continue working in the same geographical areas to which they were assigned, under the terms of the Agreements, the Court would be unwilling to give the Agreements the broad reading that Schwan suggests.[5]

2. Tortious Interference Claim (Count III)

Schwan's tortious interference claim is based on the premise that PPD and Home Run Inn knew of the 2001 Agreements that Rusin and Vovjoda signed prior to "soliciting" and hiring Rusin and Vojvoda. Thus, Schwan asserts that PPD and Home Run Inn improperly induced Rusin's and Vovjoda's breaches of the Agreements and improperly interfered with Schwan's contractual

relationships with Rusin and Vojvoda. In response, PPD and Home Run Inn contend that they did not solicit the employment of Rusin and Vojvoda, but that Rusin and Vojvoda approached PPD and Home Run Inn on their own volition. Further, PPD and Home Run Inn assert that they did not know of the existence of the Agreements until after they hired Rusin and Vojvoda.

The Court finds that Schwan is unlikely to succeed on the merits of this claim. First, as noted above, a genuine issue of material fact exists as to the validity of the Agreements. Further, upon learning of the existence of the Agreements, PPD immediately changed its policy from interviewing and hiring Schwan employees and agreed to comply with the terms of the Agreements as to Rusin and Vojvoda-even while still challenging the validity of the Agreements. As such, the Court finds that Schwan has not established that PPD and Home Run Inn knowingly enticed Rusin and Vovjoda to breach.

3. Misappropriation of Trade Secrets Claim (Count IV)

Schwan asserts that Defendants have misappropriated Schwan's trade secrets and confidential and proprietary information. Specifically, Schwan contends that Rusin emailed eight ".pdf" files of information that employees use to sell Schwan products to his home before leaving Schwan. Schwan also contends that Rusin used sales data from Schwan to lure Niemann Foods, a Schwan customer, away from Schwan. Specifically, Schwan points to a brochure that Rusin allegedly gave to Niemann Foods that listed market analysis information of Schwan's, and many other frozen food providers', pizza. (Declaration of Jay Williams, Ex. H.) Schwan also asserts that Vojvoda sent sales contact lists to his home computer from work.

The Court finds that these issues are insufficient to support a claim for misappropriation of trade secrets or proprietary information. Primarily, based on the information before the Court, the Court is not able to identify the trade secrets or confidential information that has been allegedly misappropriated in a manner that would allow the Court to appropriately tailor relief. Schwan has identified one document, "Exhibit H" noted above, that identifies ACNielsen marketing information for Home Run Inn and Schwan pizza in comparison to many other brands. Schwan has provided the Court with no information to counter Defendants' assertion that this information was publicly available. Moreover, the Court would be left to speculate as to the confidential or proprietary nature of any other documents to which Schwan alludes, as it is unclear to the Court that the documents that Rusin and Vojvoda were alleged to have taken were trade secrets entitled to protection. Finally, because the Court is left to speculate as to the confidential or proprietary nature of the information that Vojvoda and Rusin allegedly have, the Court finds no merit to Schwan's assertions of inevitable disclosure. Thus, the Court finds that Schwan has not established that it is likely to succeed on the merits of its misappropriation claim.

B. Irreparable Harm

Plaintiff must establish that a sufficient threat of irreparable harm will result without injunctive relief, such harm which is not compensable by money damages. Graham Webb Int'l v. Helene Curtis Inc., 17 F. Supp. 2d 919, 924 (D. Minn. 1998).

Schwan asserts that irreparable harm can be inferred from Vojvoda's and Rusin's breaches of the Agreements. Further, Schwan contends that it will suffer irreparable harm if Vojvoda and Rusin are allowed to profit from their alleged wrongdoing by securing Schwan's business as PPD employees. Defendants contend that Schwan cannot demonstrate irreparable harm because Schwan cannot demonstrate a likelihood of success on the merits, because Schwan delayed bringing the motion until more than five months after PPD hired Vojvoda, and because PPD and Home Run Inn defused any potential of Schwan suffering irreparable harm by changing its hiring practices regarding Schwan employees and demoting Vojvoda so that he no longer worked in his former Schwan territory.

The Court recognizes that Schwan could potentially suffer irreparable harm in the form of lost client relationships and goodwill if Rusin and Vojvoda were to breach an enforceable restrictive covenant. However, as noted above, a genuine issue of material fact remains as to the validity of the Agreements at issue here and to the confidential or proprietary nature of any information that Rusin and Vojvoda are alleged to have retained. In addition, the Court notes that due to Defendants' representations, little remains of the relief that Schwan sought at the outset of this proceeding.

C. Balance of Harms and Public Interest

Finally, the Court must weigh the harms between the parties and evaluate the public interest. The Court finds that these two factors weigh in favor of Defendants. First, it is unclear to the Court whether Rusin and Vojvoda have retained any confidential information. Defendants have agreed to refrain from nearly all of the behavior of which Schwan complains. On the other hand, if the Court were to grant the restraining order to the extent Schwan requests, the Court would be putting Rusin and Vojvoda out of work entirely, when questions remain as to the validity of the Agreements upon which Schwan bases its non-competition claims. Public policy weighs against this. Thus, these factors weigh against granting Schwan's motion for a temporary restraining order.

Conclusion

Consistent with Defendants' representations to Schwan and to the Court at oral argument in this matter, the Court directs that, at least until this matter is resolved differently by a preliminary injunction or by the expiration of the twelve-month periods as noted in the Agreements, PPD and Home Run Inn shall not interview and hire Schwan employees; PPD and Home Run Inn shall not allow Rusin and Vojvoda to work in the territories that they covered for Schwan; and Rusin and Vojvoda shall return any purportedly confidential or proprietary Schwan information that they have and take reasonable measures to assure against the use or disclosure of such information.

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For the reasons stated, LET IT BE ORDERED THAT:

1. Plaintiff's Motion for a Temporary Restraining Order (Doc. No. 2) is DENIED.

2. The parties shall contact Lowell Lindquist, the Court's Calendar Clerk, at 651-848-1296 to schedule a date for a preliminary injunction hearing. If the parties are unable to agree on discovery issues or on a briefing calendar, the parties shall contact Mary Lenner, Magistrate Judge Jeanne J. Graham's Calendar Clerk, at 651-848-1890.

3. Additionally, the parties should contact Magistrate Judge Graham's chambers to schedule a settlement conference prior to any preliminary injunction hearing.

1. The Complaint asserts that Vojvoda and Rusin executed employment agreements as an initial condition of their employment with Schwan. (Complaint at ¶ 6.) Schwan provided the Court (and opposing counsel) with copies of the 1995 employment agreements just minutes before oral argument on this matter. (Declaration of Ray Maroney at Ex. 1.) However, Schwan has not argued or briefed the effect that these 1995 agreements would have on the motion currently pending before this Court.

2. In the papers provided just prior to oral argument on this matter, Schwan's Customer Operations Manager, Ray Maroney, stated that the change in title resulted in salary increases for both Rusin and Vojvoda. (Id. at ¶ 4.)

3. Schwan alleges, without further support, that the information regarding the Niemann store came directly from one of Niemann's managers, Pat Althaus.

4. Defendants assert that the day after Home Run Inn became aware of this information, PPD's president, Jay Williams, verbally informed his sales managers of this information and told them not to hire any current or former Schwan employee. Williams also created a memorandum memorializing this information.

5. At oral argument on this matter, Schwan also submitted copies of Employment Agreements signed by Vojvoda and Rusin in 1995 when they began working as route drivers for Schwan. (Declaration of Ray Maroney at ¶ 3, Ex. 1.) The 1995 agreements state that an employee will not "within any area or with any customer assigned to Employee during any of the last twelve (12) months of Employee's employment hereunder, engage in the wholesale route sales of frozen food products sold or distributed through [Schwan's] wholesale route system . . . ." (Id. at § 6.) If the Court were to find the 2001 Agreements invalid, and to impose the non-competition requirements stated in the 1995 agreements on Rusin and Vojvoda, the conduct that is complained of would not necessarily be prohibited by the 1995 agreements. Rusin and Vojvoda have agreed not to work in the territories that were previously assigned to them at Schwan, and injunctive relief prohibiting them entirely from working for a Schwan competitor would be inappropriate considering the language of the 1995 agreements.