The business that maintains a competitive edge survives. In the current economic climate, employee poaching to develop additional revenue is quite common. A poached employee brings the information they possess from the prior employer. Where a competitor has improperly and unlawfully acquired another business’s confidential information or guarded trade secrets, immediate legal action is warranted.

With a signed non-compete or confidentiality agreement, an employer can seek to enforce the agreement against the former employee. With or without such an agreement, a business can seek to bar the competitor itself from using any such improperly acquired confidential information where misappropriation of a trade secret can be shown, such as the competitor’s use of a protected customer list or database acquired from the former employee.

To prevail on a claim for misappropriation of a trade secret, a plaintiff must demonstrate that the information at issue was a trade secret, that it was misappropriated, and that it was used in the defendant’s business.

In Illinois, an employer can use the Illinois Trade Secrets Act as an effective tool to stop the use by a competitor of a trade secret through an injunction, as well as to seek damages from the competitor for any harm caused by the competitor’s use of same.

Under the Act, a trade secret is any reasonably protected confidential information or process from which an employer can derive an economic benefit. A trade secret can include technical or even non-technical data, including a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers. The information must be sufficiently secret to derive economic value from not being generally known to other persons who could make use of same, and must be the subject of reasonable efforts to maintain its secrecy or confidentiality.

In addition to the statutory requirements, Illinois courts evaluate six factors to assess misappropriation of trade secrets. These factors include: (1) the extent to which the information is known outside of the plaintiff’s business, (2) the extent to which the information is known by employees and others involved in the plaintiff’s business, (3) the extent of measures taken by the plaintiff to guard the secrecy of the information, (4) the value of the information to the plaintiff’s business and to its competitors, (5) the amount of time, effort and money expended by the plaintiff in developing the information, and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. These factors serve as guidelines as opposed to a rigid multi-part test.

The law entitles you to keep your secrets secret.

***

Larry Kowalczyk, a Shareholder with Querrey & Harrow, concentrates his practice in complex litigation for private business entities as well as municipal entities. He has successfully handled business trade secret issues, including obtaining entry of first a TRO, and then a permanent injunction, in a recent trade secret matter. If you have questions regarding this bulletin, please contact Mr. Kowalczyk via lkowalczyk@querrey.com.