

# Zooming In: How Using Zoom Improperly Can Destroy Trade Secret Protections

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In April, our editor, Joe Lavigne, explained [how employers can ensure trade secret protections while allowing employees to work from home during the pandemic](#). The article advised employers to restrict the transmission of trade secrets through social media platforms like Zoom. A recent decision out of Delaware confirmed that the failure to use Zoom privacy and security settings may result in the loss of trade secret protections.

In *Smash Franchise Partners, LLC v. Kanda Holdings, Inc.*, a Delaware Court of Chancery ruled that a trade secret plaintiff did not take reasonable steps to protect its trade secrets when it failed to incorporate Zoom privacy and security features and disclosed its confidential and proprietary business strategies on an open Zoom call.

Smash Franchise Partners is a franchisor of mobile trash compactors that allows customers to save on waste management and disposal by compacting trash on site. Smash sells its compactors and business model to franchisees. However, prospective franchisees are required to sign a non-disclosure agreement (NDA) before being introduced to the product and business model.

In December 2019, the defendants signed an NDA and participated in several open Zoom calls regarding the cost of doing business, business strategies, and targeted customers. The defendants subsequently decided to open their own mobile trash compacting business in direct competition with Smash.

Smash immediately filed suit against the new competitor claiming the defendants misappropriated its trade secrets, and Smash sought an injunction to prohibit the defendants from operating their competing business. To obtain a preliminary injunction, Smash was required to show a reasonable likelihood of success on their trade secret claim.

The Delaware court determined that Smash could not show a likelihood of success on the merits of its trade secret claim because it did not take reasonable steps to protect the trade secrets. The court reached this conclusion after emphasizing that any trade secrets defendants allegedly misappropriated were disclosed during open Zoom calls. Notably, Zoom offers security features to ensure confidentiality is maintained, *i.e.* Zoom hosts can hold private meetings that require

passwords to prevent unauthorized participants from joining. Smash did not use this feature or follow its own procedure, which required roll be called before any prospective franchisee presentation and the removal of unauthorized participants.

**The lesson.** Work from home is here to stay. Zoom and other social media applications like it have become critical to the seamless and immediate transfer of ideas and business information in the remote workplace era. Employers must takes steps to ensure that the use of Zoom and other tools does not result in the loss of trade secret protections. When using Zoom to hold meetings where proprietary business information is disclosed, companies must use security features that permit password-protected meeting links, and they should also implement other procedures like taking a roll call and removing unauthorized participants.

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