

Going Way, Way Back To Mr. Peabody's 1868 Trade Secret Case: The Importance Of Confidentiality Agreements

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I was at my desk on a recent afternoon, scrolling through various trade secret cases that had recently been decided and hoping to find one worthy of mention here, when I noticed something a little unusual. The research service we subscribe to allows attorneys to sort cases in any number of ways, including by federal or state courts, by individual states, by judge, and, of course, by date ranges. The date option for my trade secret search caught my eye, looking something like this:

The chart is noteworthy for two reasons. First, it shows clearly that trade secret cases have exploded over the last few years, a trend consistent with the daily advances in our country's technological capabilities. There are simply more and more breakthroughs worthy of protection these days. Second, the cases stretched back to the 1860s. I couldn't help but wonder what the issues were in a case back then, so I clicked.

When I read that it involved a Mr. Peabody, I had to read on. When I read that the trade secret was the process for making "gunny cloth from jute butts," I was hooked. Never mind that I have absolutely no idea what that even means, but it apparently meant a lot to Mr. Peabody and his family, because they sued a former employee over the whole thing.

It seems Mr. Peabody was quite excited about his breakthrough and the large factory he built to carry on his work. He employed Mr. Norfolk to help out, but only if Norfolk first agreed to keep the process confidential. Mr. Peabody drew up a written agreement obligating Mr. Norfolk to keep as a secret the information about the machines and the experiments being carried on. The agreement also obligated Mr. Norfolk to use such information "only for the benefit of said Peabody or his assigns." Mr. Norfolk voluntarily signed the agreement.

Less than two years later, Mr. Norfolk resigned and went to work for someone else, allegedly carrying with him a number of original drawings of machinery and information about Mr. Peabody's secret processes. A lawsuit was filed days later.

The particular issue giving rise to the opinion was whether an injunction was warranted against a Mr. Cook, the third party who lured Mr. Norfolk away. The court issued such an injunction, paying special attention to the agreement between Peabody and Norfolk. "A secret of trade or manufacture," the court wrote, "does not lose its character by being confidentially disclosed to agents or servants, without whose assistance it could not be made of any value." Since the complaint alleged that Mr. Cook, "with notice of the relations between Peabody and Norfolk, has made arrangements to have the secret communicated to him by Norfolk, and together with him to use it for their own benefit," an injunction was properly issued.

As the chart shows, these types of cases happen all the time these days, and they happen in many different industries. While the law is much more developed than it was in 1868, and nearly every state has since adopted formal laws specifically protecting trade secrets, folks finding themselves in similar situations today might very well achieve the same result as Mr. Peabody. So long as they take steps to protect their secret information, and disclosures to others are made in confidence, with documented confidentiality agreements, they should be able to obtain relief in the courts.

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