

# Employer Can Proceed With Breach Of Noncompete And Trade Secrets Claims Against Former Employee Who Refused To Relinquish Control Of LinkedIn Group

Article By:

Alexander Nestor

---

Recently, an Illinois federal district court denied in part an employee's motion to dismiss various claims asserted by his former employer, allowing the employer to proceed with its claims for breach of a non-compete agreement, violation of the Illinois Trade Secrets Act, and common law misappropriation based in part on the [employee's refusal to relinquish control over a LinkedIn group](#) that included 679 of the employer's current and potential customers.

The employer, CDM Media USA, Inc., which offers a variety of marketing and media services to its customers, sued its former employee, Robert Simms, a member of its senior management, following Simms's resignation to go work for one of CDM's larger customers. At the heart of the lawsuit was Simms's alleged refusal to change the account settings for the CIO Speaker Bureau LinkedIn Group to transfer control of the account to CDM. CDM had started the CIO Speaker Bureau LinkedIn Group approximately four years earlier. The Group was a private online community of chief information officers and senior IT executives interested in participating in or speaking at CDM events. The names of the Group members and the communications between them were not generally available to the public and CDM controlled membership in the Group. CDM assigned Simms to be the point person for the Group, as well as other online communities CDM used in connection with its business. Upon his resignation, Simms transferred control to CDM of other social media accounts he used in connection with his work, but not of the Speaker Bureau Group.

CDM alleged that Simms later used the Group membership list and communications to compete against CDM by soliciting customers and vendors and potential customers and vendors for competitive products and services in violation of the non-compete agreement he signed with CDM at the beginning of his employment. Among other things, the non-compete agreement required Simms to return CDM's confidential information upon leaving his employment, prohibited him from competing with CDM for one year following his departure, and assigned Simms's inventions to CDM. CDM also alleged that an internal investigation revealed that Simms had been using his personal cell phone to access an internal database that housed some of CDM's most sensitive information, but had failed to return his cell phone upon resigning his employment.

In his motion to dismiss, Simms argued that, with regard to the LinkedIn Group, his alleged failure to transfer control of the Group did not violate his non-compete because the Group did not "contain or

relate[] to Confidential Information.” The court rejected this argument, noting that, among other things, any private messages between Group members and Simms likely would constitute confidential information that, pursuant to the non-compete, he was obligated to return upon his departure.

With respect to the trade secrets claims, Simms argued that the Group is not secret. The court rejected this argument as well, concluding that CDM alleged that the contents of the Group, including its membership, were secret (not the Group’s existence). Thus, it was premature to decide this issue without more information about the contents and function of the Group.

This case serves as a reminder to employers to establish clear policies and procedures for ownership and management of corporate social media accounts. In addition, employers should consider whether to include content from social media accounts in their definition of confidential, proprietary and/or trade secret information. Finally, on a practical note, employers should consider granting administrator/management rights to a corporate social media account to more than one employee, so that the employer is more likely to exert control of the social media account if one of the employees departs.

© 2010-2025 Allen Matkins Leck Gamble Mallory & Natsis LLP

---

National Law Review, Volume V, Number 127

Source URL: <https://natlawreview.com/article/employer-can-proceed-breach-noncompete-and-trade-secrets-claims-against-former-emplo>