

Hooters Sues Competitor over Alleged Trade Secrets Theft after Top Executives Fly Away

Article By:

Eric H. Rumbaugh

Luis I. Arroyo

Hooters of America LLC has sued a competitor in Georgia Federal Court for allegedly misappropriating its trade secrets and other confidential business information following the departure of several Hooters executives to Twin Peaks Restaurants.

Hooters' complaint alleges that former vice president of operations and purchasing, Joseph Hummel, gained unauthorized access to Hooters' computers and took trade secrets and other confidential information. Specifically, Hooters claims that around the time of his departure, Hummel downloaded and transferred confidential sales figures, employee training and retention strategies and purchasing information to his personal e-mail account. The suit also accuses Hummel of additional unauthorized access of private business information following the termination of his employment.

Hummel, as well as Hooters' former Chief Executive Officer and its general counsel, left the beach-themed restaurant franchise to join up with Twin Peaks, which operates a mountain lodge-themed restaurant chain featuring an all-female wait staff. Hooters contends that Hummel's alleged theft has allowed Twin Peaks to hit the ground running in its efforts to open 35 restaurants in the next decade, several of which are planned for markets with Hooters restaurants.

The case illustrates the potential damage that departing employees, particularly those with access to sensitive information, can wreak on an employer. Hooters has already taken one step towards protecting itself; before Hummel left, he signed a confidentiality agreement requiring him to return all confidential and proprietary information to Hooters. In addition to confidentiality agreements, employers should consider having their top executives or other employees with access to sensitive information sign non-competition agreements. Moreover, most states' trade secret statutes require businesses to take steps that are reasonable under the circumstances to protect their confidential information in order to preserve the trade secret status of that information. Accordingly, employers should consider implementing electronic security measures beyond just login credentials; limiting the number of employees who are authorized to access confidential information; and regulating employees' ability to take information off company premises.

Next, when key employees depart, and especially when they depart for a competitor, businesses

should consult with counsel immediately, and before examining (and arguably damaging) electronic evidence. Departing employees who take information often leave a shockingly obvious electronic trail; but that trail can be lost quickly if not preserved, or inadvertently destroyed if improperly accessed.

Lastly, businesses engaging talent, and especially talent that comes from a competitor, cannot be too careful or too forceful in making sure that the incoming talent does not make, retain or transfer any copies of information from their previous employer. Businesses engaging talent that acted improperly on the way out can quickly embroil their new employers in costly and risky litigation.

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National Law Review, Volume I, Number 293

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