

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

RPA, INC.,		:	
	Plaintiff	:	NO: 10-02528
		:	
vs.		:	
		:	
		:	
GARY R. RHOADS,		:	CIVIL ACTION
	Defendant	:	

OPINION

Plaintiff is in the business of performing executive searches, primarily for academia. Defendant was employed by Plaintiff in February 2005 and was laid off sometime in 2009.

On November 22, 2010 the Plaintiff Filed a Motion for Preliminary Injunction requesting this Court to issue an order “compelling the Defendant to return to Plaintiff all trade secrets, and enjoining the Defendant from use of those trade secrets.” The Plaintiff claims that in the course of the Defendant’s employment by Plaintiff he had access to the Plaintiff’s database, which includes records of clients and potential clients, lists of professionals who may be candidates in executive searches and other information gathered regarding some of those professionals.

Plaintiff claims that this database or compilation is entitled to trade secret protection and the Defendant should be enjoined from using information from the database. The Defendant while indicating that he has deleted the Plaintiff’s database from his computer and discarded any hardcopy materials, also argues that the

information is not protected and the Plaintiff has not met its burden of proof with regard to injunctive relief.

Our Supreme Court has established six (6) essential prerequisites which a party must establish prior to obtaining injunctive relief. In order to obtain an injunction a plaintiff must show the following:

1) that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; 2) that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings; 3) that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; **4) that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits;** 5) that the injunction it seeks is reasonably suited to abate the offending activity; and, 6) that a preliminary injunction will not adversely affect the public interest. (Citations omitted)(Emphasis added).

Iron Age Corp. v. Dvorak, 880 A.2d 657, 662 (Pa.Super. 2005).

Following a hearing, this Court finds that the Plaintiff has failed to establish several of the necessary elements. Specifically, the Plaintiff has failed to establish that its right to relief is clear and that it is likely to prevail on the merits. The Plaintiff has additionally failed to establish that injunctive relief is necessary to prevent immediate and irreparable harm.

In order to prevail in the underlying action, the Plaintiff must prove that the Defendant used trade secret information and in doing so gained an unfair competitive advantage in securing business from potential clients of the Plaintiff. The trade secret information at issue is the database which contains a listing of Plaintiff's clients. In Iron Age Corporation, *supra*, the Court reviewed the issue of whether customer lists

are entitled to trade secret protection. In upholding the lower's court's denial of protection, the Superior Court held:

Appellant correctly argues that our Supreme Court has held that, under certain circumstances, customer lists and customer data may be entitled to protection as trade secrets. Morgan's Home Equipment Corp. v. Martucci, 390 Pa. 618, 624, 136 A.2d 838, 842 (1957). Furthermore, a trade secret may include compiled information which gives one business an opportunity to obtain an advantage over competitors. Wellspan Health v. Bayliss, 2005 Pa Super 76, 869 A.2d 990, 997 (Pa.Super. 2005). Nevertheless, customer lists 'are at the very periphery of the law of unfair competition.' Renee Beauty Salons, Inc., 652 A.2d at 1347. There is no legal incentive to protect the compilation of such lists 'because they are developed in the normal course of business anyway.' Fidelity Fund, Inc. v. DiSanto, 347 Pa. Super. 112, 500 A.2d 431, 436 (Pa.Super. 1985)...Also, information will not be given injunctive relief as a trade secret if it can be obtained through legitimate means by a competitor. Wellspan Health, 869 A.2d at 997.

Id. at 663-4.

Although the database took years to assemble, most of the information contained within it is readily available to the public and easily ascertainable through legitimate means. Accordingly, the Plaintiff has failed to establish that the activity it seeks to restrain is actionable and that its right to relief is clear.

The Plaintiff has also failed to establish that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. To the contrary, Plaintiff's Reply to New Matter indicates that the Plaintiff has not experienced a downturn in business, and that "business is good."

ORDER

AND NOW, this 7th day of February, 2011, this Court finds that the Plaintiff has failed to show that a preliminary injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated in damages. Furthermore,

the Plaintiff has failed to demonstrate that its right to relief is clear and that the wrong is manifest. Accordingly, the Plaintiff's Motion for a Preliminary Injunction is DENIED.

BY THE COURT,

Richard A. Gray, J.

cc: Jonathan E. Butterfield, Esquire

Gary R. Rhoads
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Gary Weber, Esquire