



Virtuoso Legal

Intellectual Property Specialists

31 Harrogate Road
Leeds, LS7 3PD
England

Tel: +44 (0) 844 800 8871
Fax: (0) 844 800 8872

Web: www.virtuosolegal.com

“Intellectual Property lies at the centre of the modern company's economic success or failure”

Lester Thurow : Economist

Trade marks & Brands

Patents & Inventions

Copyright

Designs

Database rights

Data Protection

Licensing and Franchising

Intellectual Property agreements

New Media Agreements such as directors and authors rights

Transactional Intellectual Property

Principal: Elizabeth M Ward BSc (Hons)
Associate solicitor Kirsten Toft BSc (Hons)
Associate solicitor Deborah Niven LLB (Hons)
Practice Manager Elizabeth Lock BSc (Hons)

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The Enemy Within

by Elizabeth Ward
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Companies spend thousands of pounds every year on external IT security systems. These are used to stop people from hacking in to the company's computerized systems thereby preventing loss of confidential information and trade secrets to competitors. Indeed the market is littered with products such as firewalls and other security measures which are specifically put in place to stop systems from being accessed by unauthorised third parties.

But what happens to a company when the enemy is a person with authorised access who is not acting in the best interests of the company? For example, key members of staff may plan to leave a company and in doing so take valuable customer databases, trade secrets or confidential information and documents such as drawings, business plans or pricing details. Allowing a new competitor into the market with your company's confidential information can be catastrophic (if not fatal) if left unchallenged. Proving that a member of staff, or indeed a director or other senior employee, has taken such valuable information can be difficult and the remedies are almost always expensive. However there are ways of protecting your valuable company assets.

In the United Kingdom the Courts may in certain circumstances grant what are known as "springboard" injunctions to stop new businesses setting up and using confidential information which has been taken without the consent of the owner to "springboard" them ahead. Generally speaking, the Courts will not allow former employees, or even business partners, free rein to do as they wish with confidential information, especially where such valuable data is taken in breach of an employment or partnership contract containing express restrictive covenants.

As with all legal cases, the preparation of evidence is the vital starting point. It is important to instruct lawyers who understand the need for proper evidence to be presented to the Court in order to obtain the relevant Court Order. The Court places a heavy onus on the Applicant to provide accurate and compelling evidence before it will grant an injunction or a search order which will allow the Applicant to search premises in order to

obtain certain documents. However, many solicitors are not technologically literate themselves and do not know how to use a lot of information technology which is common in businesses. Where this happens the lawyer does not necessarily know how to marshal the thousands of documents that can be retrieved from an IT system in order to prove the theft of confidential information. Although there are automated systems which can be used to catalogue vast amounts of documents these do not necessarily sieve out the key information required to take a court case forward. In this situation it pays to be very methodical and to know exactly how the IT systems have been set up and how the individuals working those systems have used the data. By way of example, by searching electronically created "metadata" within documents saved on a computer, it can be seen when the document was last opened, by whom and how it was changed. It is vitally important to appoint a solicitor with the relevant know-how to look at the recovered information and to find out exactly where the needle in the haystack is located. Virtuoso Legal has such expertise and has applied it on a number of occasions for companies in the past 12 months. In some instances Virtuoso Legal has used its expertise when acting as a Supervising Solicitor to oversee a search order to recover data and has assisted the parties in sorting the wheat from the chaff.

Serving and obtaining such Court proceedings can be a complex business but it always pays to get the right advice in the first place and to have the relevant expertise on board to prove the case. To leave the loss of trade secrets to fate can cause enormous and incalculable damage to companies.