

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FISHER/UNITECH, INC.,	)	
	)	
Plaintiff,	)	
	)	No. 13 C 02090
v.	)	
	)	Judge John J. Tharp, Jr.
COMPUTER AIDED TECHNOLOGY,	)	
INC., RODGER P. REAUME, and	)	
RICHARD WERNETH,	)	
	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

Since January 1, 2013, plaintiff Fisher/Unitech and defendant Computer Aided Technology, Inc. (“CATI”) have been competing resellers of design software and three-dimensional printing equipment manufactured by Stratasys. This case arises from defendant Rodger Reaume’s resignation from his sales position at Fisher/Unitech and his subsequent employment with CATI in a similar role. Fisher/Unitech sued Reaume, CATI, and its president Richard Werneth, primarily alleging the misappropriation of trade secrets and breach of Reaume’s employment agreement, including a non-compete provision that purports to bar him from working for any Fisher/Unitech competitor in any capacity anywhere within 200 miles of a Fisher/Unitech office or territory. On March 22, the Court entered a temporary restraining order prohibiting the dissemination and use of Fisher/Unitech’s confidential information and restricting Reaume from selling or assisting CATI in selling 3-D printing technology in his former Fisher/Unitech territory or to any customer or potential customer with whom Reaume had contact while employed by Fisher/Unitech. TRO, Dkt. # 13 (Mar. 22, 2013). The parties returned

for a preliminary injunction hearing on April 3 and 5, 2013, and the TRO has been extended pending this ruling by agreement of the parties and for good cause shown.

The parties stipulated to convert the TRO into a preliminary injunction insofar as it relates to Fisher/Unitech's confidential information. The Court agrees that preliminary injunctive relief in this regard is warranted; Fisher/Unitech has presented substantial evidence that Reaume appropriated a large volume of documents from Fisher/Unitech that he transferred to his CATI-issued laptop computer and, in some cases, shared via email with CATI both before and after his employment with Fisher/Unitech ended. The parties are working cooperatively to preserve and forensically analyze the relevant computer systems and investigate the extent of any misappropriation, and they agree that Reaume, Werneth, and CATI cannot use any confidential information obtained from Fisher/Unitech or make contact with any customers about whom Reaume possessed confidential information. That leaves only the non-compete provision of Reaume's employment contract for the Court to address.

#### **FACTS<sup>1</sup>**

Reaume signed an employment agreement with Fisher/Unitech on September 10, 2010, and for the next year and a half, he worked for Fisher/Unitech as a Rapid Technology Business Manager—a salesman. In that position, he primarily sold high-end Fortus brand 3-D printers, made by Stratasys, Inc. (now Stratsys Ltd.). Stratasys is described by the parties as the market leader in 3-D printing technology, particularly with respect to equipment capable of direct digital manufacturing (DDM), which produce not only 3-D prototypes but also durable end-use parts.

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<sup>1</sup> These facts are based on the parties' pleadings, the affidavits and other materials submitted with those pleadings, and the evidence presented during the preliminary injunction hearing. As such, they are necessarily preliminary and remain subject to modification after the parties have fully litigated these issues on the merits. However, consistent with Fed. R. Civ. P. 65(a)(2), any evidence that was received on the motion and that would be admissible at trial is part of the trial record and need not be repeated at trial.

Fisher/Unitech was formerly one of 10 to 12 “level one” resellers authorized by Stratasys to sell its highest end production-grade printers, and it was the only such reseller in the territory comprising Kansas, Missouri, Illinois, Wisconsin, Michigan, Indiana, Ohio, and Kentucky.

Effective January 1, 2013, Stratasys, Inc. merged with another manufacturer of 3-D printers, Objet Ltd. The new company, named Stratasys Ltd., now sells Objet equipment in addition to Stratasys’s three lines of printers: the Idea series, the Design series, and the Production series, which includes the high-end Fortus printers that Reaume primarily sold. CATI was a reseller of Objet printers before the merger. CATI had no experience selling the Stratasys equipment, and Fisher/Unitech lacked experience with the Objet line. Since the merger, both CATI and Fisher/Unitech, among other resellers, now sell both Objet and Stratasys equipment, and neither has the exclusivity arrangements they enjoyed before the merger.

As the resellers dealt with the effects of the Stratasys-Objet merger, Werneth recruited Reaume to join CATI. Reaume accepted a position on February 21, 2012, and he quit his job at Fisher/Unitech on March 7, 2013. In the meantime, he appropriated documents from Fisher/Unitech by emailing them to his personal email account or storing them on a portable thumb drive. He subsequently transferred some or all of that information to his CATI-issued laptop computer when he began working there. Reaume also emailed documents to CATI while he was still working for Fisher/Unitech; for instance, on February 27, 2013, he sent CATI’s president, Richard Werneth, samples of price quotes for product bundles that Werneth had inquired about. As previously noted, these activities are the basis of many of Fisher/Unitech’s claims and will be the subject of continuing injunctive relief until the claims are resolved on their merits.

In addition to imposing confidentiality requirements, Reaume's employment agreement with Fisher/Unitech contained the following clause:

NON-COMPETE AGREEMENT: Recognizing that various items of Information are special and unique assets of the company, Employee agrees and covenants that for a period of 2 years following the termination of this Agreement, whether such termination is voluntary or involuntary, Employee will not directly or indirectly engage in any business competitive with Employer. This covenant shall apply to the geographical area that includes the area within a 200 mile radius of any Fisher/Unitech Inc. office or territory. Directly or indirectly engaging in any competitive business includes, but is not limited to, (1) engaging in a business as owner, partner, or agent, (ii) becoming an employee of any third party that is engaged in such business, (iii) becoming interested directly or indirectly in any such business, or (iv) soliciting any customer of Employer for the benefit of a third party that is engaged in such business.

The parties do not dispute that CATI is a competitive business with respect to Fisher/Unitech, nor that Reaume's employment with CATI would violate the non-compete clause if enforced according to its terms.

#### DISCUSSION

To obtain a preliminary injunction, Fisher/Unitech must establish that it is likely to succeed on the merits, that it is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in its favor, and that an injunction is in the public interest. *See Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). In addressing these factors the Court considers only the claim that Reaume breached the employment agreement's non-compete provision; as noted, the parties have stipulated to the entry of a preliminary injunction with respect to use of any confidential information Reaume took from Fisher/Unitech. The first question, then, is whether Fisher/Unitech is likely to succeed on its breach of contract claim as to the non-compete clause; this question turns not on whether a breach occurred—it did—but on whether the non-compete provision is enforceable to begin with.

The parties dispute whether the employment provision in this case should be governed by Illinois or Michigan law, but save for one issue discussed further below, the parties have identified, and the Court has discerned, no material difference between the law of either state with respect to the requirements of a valid non-compete provision. Both Illinois and Michigan allow the use of restrictive covenants, including non-compete provisions, in employment agreements, to the extent they are reasonable. *Reliable Fire Equipment Co. v. Arredondo*, 965 N.E.2d 393, 396 (Ill. 2011); *St. Clair Medical, P.C. v. Borgiel*, 715 N.W.2d 914, 918-19 (Mich. Ct. App. 2006). In Illinois, the validity of non-compete provisions is governed by common law. *See Reliable Fire Equip. Co.*, 965 N.E. 2d at 397. Michigan law is statutory, but it is widely held that the statute was simply a codification of existing common law. *See* M.C.L.A. 445.774a(1); *St. Clair Medical, P.C.* 715 N.W.2d at 918-19; *Bristol Window and Door, Inc. v. Hoogenstyn*, 650 N.W.2d 670, 679 (Mich. Ct. App. 2002).

As a component of reasonableness, both states require that a non-compete provision protect a legitimate business interest of the employer. Under Illinois law, whether the employer has a legitimate interest depends on the totality of the circumstances, including non-exclusive factors such as “the near-permanence of customer relationships, the employee’s acquisition of confidential information through his employment, and time and place restrictions.” *Reliable Fire Equip. Co.*, 965 N.E. 2d at 403. Similarly, under Michigan law, the “reasonableness of a covenant not to compete is not analyzed in the abstract, but in the context of the employer’s particular business interest and the function and knowledge of the particular employee.” *Whirlpool Corp. v. Burns*, 457 F. Supp. 2d 806, 812 (W.D. Mich. 2006) (applying Michigan law).

In this case, Fisher/Unitech argues that the noncompete provision is necessary to enforce its legitimate business interest in protecting its confidential information. According to Fisher/Unitech, CATI will gain an unfair competitive advantage if Reaume is permitted to work for CATI in territory where the two companies compete because he will inevitably rely on confidential information he acquired from Fisher/Unitech. CATI, on the other hand, contends that the existing injunction adequately protects Fisher/Unitech's confidential information, and therefore, any further restriction on Reaume's business activity is a straightforward limitation of competition. According to CATI, the non-compete clause goes beyond protecting confidential information to unfairly restrict Reaume from applying his general knowledge and experience in the field of selling high-end 3-D printing technology.

There is no question that protecting confidential operational and customer information is a legitimate, protectable business interest of an employer. *See Lifetec, Inc. v. Edwards*, 880 N.E.2d 188, 200 (Ill. App. Ct. 2007); *St. Clair Medical, P.C.*, 715 N.W. 2d at 918-19. Equally well-established, however, is the principle that merely preventing competition is not a legitimate business interest that justifies a restrictive covenant. *St. Clair Medical, P.C.*, 715 N.W. 2d at 919. "To be reasonable in relation to an employer's competitive business interest, a restrictive covenant must protect against the employee's gaining some unfair advantage in competition with the employer, but not prohibit the employee from using general knowledge or skill." *Id.* at 919; *see Delta Medical Systems v. Mid-America Medical Systems, Inc.*, 772 N.E.2d 768, 780 (Ill. App. Ct. 2002) ("[I]n a competitive market, an employee must be entitled to utilize the general knowledge and skills acquired through experience in pursuing his chosen occupation").

Fisher/Unitech's legitimate interest in protecting its confidential information, including but not limited to actual trade secrets, is clearly implicated in this case. However, Fisher/Unitech

has already secured agreed injunctive relief to protect that interest and which is premised not only on the confidentiality provisions of Reaume's employment agreement with Fisher/Unitech but on the related trade-secrets and other claims as to which Fisher/Unitech demonstrated a likelihood of success on the merits. Specifically, the injunction provides:

A. Defendants Computer Aided Technology, Inc., ("CATI"), Rodger P. Reaume, and Richard Werneth, their agents, servants, employees, officers, attorneys, successors and assigns, and all persons, firms, and corporations acting in connection or participation with them or on their behalf, are enjoined from using, referencing, evaluating, relying on, transmitting or copying in any direct or indirect manner any Confidential Information of Fisher/Unitech. For purposes of this order, "Confidential Information" consists of any information regarding Fisher/Unitech's customers, prospects, leads, services, quotes, pricing, margins, inventions, product design, product bundles, or training contained in e-mails or other documents that Defendant Reaume emailed to his Yahoo.com e-mail account, transferred to a portable device, transmitted or communicated to any employee or representative of CATI, or otherwise obtained from Fisher/Unitech, or that Reaume developed or obtained on Fisher/Unitech's behalf.

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C. Defendant Rodger P. Reaume is enjoined from directly or indirectly contacting, soliciting, or transacting business with any customer or potential customer with whom he had any contact, or as to whom he otherwise possessed Confidential Information, during the last two years of his employment with Fisher/Unitech. Defendant Reaume is further enjoined from aiding or assisting Defendant CATI in contacting, soliciting, or transacting business with any such customer or potential customer. Further, Defendant CATI is enjoined from further soliciting or pursuing any potential sale(s) Reaume is enjoined from pursuing under this Order to the extent that Defendant Reaume previously used, disclosed, or provided Fisher/Unitech Confidential Information in the course of aiding or assisting CATI in soliciting or pursuing the potential sale(s).

Thus, the injunction secures Fisher/Unitech's confidential information and inhibits Reaume and CATI from contacting any customers or prospects that Reaume had dealings with or possessed any confidential information about. Given that its confidential information is already protected by statute, contract, and the preliminary injunction already agreed to by the parties, enforcement of the non-compete provision of Reaume's employment agreement, then, appears to be unnecessary.

Fisher/Unitech argues, however, that these restrictions “are not sufficient in and of themselves to protect Fisher/Unitech from other misuse of its confidential information by Defendants.” Invoking the doctrine of inevitable disclosure, see *PepsiCo, Inc. v. Redmond*, 54 F.3d 1262 (7th Cir. 1995), Fisher/Unitech posits that there is some subset of its confidential information that Reaume has absorbed and necessarily will bring to bear in his work for CATI, whether consciously and deliberately or despite his best efforts. Fisher/Unitech refers to this subset of information as its “best practices” or “know-how” that it developed for selling Stratasys DDM printers, largely through trial and error. Because that knowledge inevitably will be disclosed in the normal course of Reaume’s work, Fisher/Unitech contends, Reaume cannot be permitted to perform that work at all on behalf on Fisher/Unitech’s competitor.

In *Pepsico*, the Seventh Circuit upheld the district court’s application of the inevitable disclosure doctrine as a basis for enjoining a former Pepsico executive from assuming a position at a competitor in addition to enjoining the disclosure of trade secrets and confidential information. 54 F.3d at 1265-66. There, defendant had decamped to Quaker, a competitor of Pepsico’s in the sports drink market, with deep knowledge of sensitive information including (1) Pepsico’s strategic plan; (2) its operating plan, including the “pricing architecture” for products; (3) its “attack plans” for specific markets; and (4) knowledge of its selling and delivery systems. The district court concluded that “unless Redmond possessed an uncanny ability to compartmentalize information, he would necessarily be making decisions about Gatorade and Snapple by relying on his knowledge of [Pepsico’s] trade secrets.” *Id.* at 1269. Therefore, even without actual misappropriation, an injunction was appropriate.

Fisher/Unitech argues that the sales techniques and best practices that Reaume learned exclusively through working at Fisher/Unitech, like the strategic information known to the



defendant in *Pepsico*, require precluding him from competing with his former employer lest he inevitably disclose the secret information in the course of his work. According to Fisher/Unitech's CEO and president, Charles Hess, Reaume was in possession of three kinds of confidential information that required barring him from the sale of Stratasys 3-D printers for CATI: (1) "the visualization and identification of an application that would be suitable for DDM in the first place" (2) "applying the equipment in a technical sense" and "figuring out how to make this equipment work for manufacturing"; and (3) "how to do a return on investment and how to include DDM as a portion of the overall ROI picture that ultimately convinces the [customer] to invest the company's funds into this technology." According to Fisher/Unitech, these three main areas of expertise were uniquely within its knowledge because it was an exclusive reseller of the equipment from 2009 through 2012 and had to develop appropriate techniques through trial and error.

This case is quite different from *Pepsico*. With due respect to Fisher/Unitech for its innovations in marketing an emerging technology,<sup>2</sup> the "confidential" and "unique" skills it trumpets are the very definition of the general knowledge and experience that cannot be protected with non-compete restrictions. *See St. Clair Medical, P.C.*, 715 N.W. 2d at 919; *Delta Med. Systems*, 772 N.E.2d at 780. Fisher/Unitech peppers its briefs with references to "best practices," "know-how," and "intangible knowledge" including "processes" and "techniques" that need protecting. But when its witnesses were called upon to put evidentiary meat on these rhetorical bones, they described nothing more than general knowledge and experience that any Stratasys reseller would likely develop through "on the job training" and "trial and error"—the

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<sup>2</sup> According to the record, although 3-D printing has existed in some form for decades, DDM is a cutting-edge, industry-changing development. However, Fisher/Unitech's confidential information, which pertains to potential applications for particular customers, should not be confused with the manufacturer's proprietary technology.

purported sources of Fisher/Unitech's supposedly unique and proprietary sales practices. For instance, Fisher/Unitech pointed to Reaume's knowledge of Fisher/Unitech's successes or failures in developing and marketing particular applications of DDM technology—knowledge obtained through painstaking trial and error that CATI, unfairly, would not have to replicate. But “legwork” is not confidential information, nor is one firm entitled to protection because it was the first to develop certain knowledge. *See Southwest Whey, Inc. v. Nutrition 101, Inc.*, 117 F.Supp.2d 770, 777 (C.D. Ill. 2000).

Fisher/Unitech's witnesses repeatedly emphasized that Reaume had acquired certain “skills” by virtue of working for Fisher/Unitech. But Hess also conceded that those skills were “something that every sales rep who sells DDM technology needs to know about in order to sell the product.” Similarly, Hess initially stated that no one would have these skills without working at Fisher/Unitech, but he ultimately conceded that similar on-the-job experience would have been available at the dozen other level-one Stratasys dealers. *See Unisource Worldwide, Inc. v. Carrara*, 244 F.Supp.2d 977, 988 (C.D. Ill. 2003) (“Unisource does not allege that it has any secret methods or processes for selling products that differ from the methods and processes of its competitors.”). Indeed, with respect to all three types of purportedly confidential information he identified, Hess testified that the unique knowledge came simply from doing the job. First, the “visualization” of new applications for DDM—finding customers—is a skill learned through on-the-job training. Second, an understanding of the technology and how to use it meet a particular customer's needs was also acquired through experience, and would be needed by anyone selling DDM technology. Third, preparing a credible return on investment analysis—closing the deal—was the product of experience. Skills learned through employment are “exactly the generalized knowledge and expertise” that are “not subject to restriction.” *See Capsonic Group v. Swick*, 537