PEPSICO, INC. v. WILLIAM E. REDMOND, JR.
54 F.3d 1262(U.S. Ct. of App. 7th Cir. 1995)

FLAUM, Circuit Judge:

Plaintiff PepsiCo, Inc., sought a preliminary injunction against defendants William Redmond and the Quaker Oats Company to prevent Redmond, a former PepsiCo employee, from divulging PepsiCo trade secrets and confidential information in his new job with Quaker and from assuming any duties with Quaker relating to beverage pricing, marketing, and distribution. The district court agreed with PepsiCo and granted the injunction. We now affirm that decision.

The facts of this case lay against a backdrop of fierce beverage-industry competition between Quaker and PepsiCo, especially in "sports drinks" and "new age drinks." Quaker's sports drink, "Gatorade," is the dominant brand in its market niche. PepsiCo introduced its Gatorade rival, "All Sport," in March and April of 1994, but sales of All Sport lag far behind those of Gatorade. Quaker also has the lead in the new-age-drink category. Although PepsiCo has entered the market through joint ventures with the Thomas J. Lipton Company and Ocean Spray Cranberries, Inc., Quaker purchased Snapple Beverage Corp., a large new-age-drink maker, in late 1994. PepsiCo's products have about half of Snapple's market share. Both companies see 1995 as an important year for their products: PepsiCo has developed extensive plans to increase its market presence, while Quaker is trying to solidify its lead by integrating Gatorade and Snapple distribution. Meanwhile, PepsiCo and Quaker each face strong competition from Coca Cola Co., which has its own sports drink, "PowerAde," and which introduced its own Snapple-rival, "Fruitopia," in 1994, as well as from independent beverage producers.

William Redmond, Jr., worked for PepsiCo in its PepsiCola North America division ("PCNA") from 1984 to 1994. Redmond became the General Manager of the Northern California Business Unit in June, 1993, and was promoted one year later to General Manager of the business unit covering all of California, a unit having annual revenues of more than 500 million dollars and representing twenty percent of PCNA's profit for all of the United States.

Redmond's relatively high-level position at PCNA gave him access to inside information and trade secrets. Redmond, like other PepsiCo management employees, had signed a confidentiality agreement with PepsiCo. That agreement stated in relevant part that he:

> would not disclose at any time, to anyone other than officers or employees of [PepsiCo], or make use of, confidential information relating to the business of [PepsiCo] . . . obtained while in the employ of [PepsiCo], which shall not be generally known or available to the public or recognized as standard practices.

Donald Uzzi, who had left PepsiCo in the beginning of 1994 to become the head of Quaker's Gatorade division, began courting Redmond for Quaker in May, 1994. Redmond met in Chicago with Quaker officers in August, 1994, and on October 20, 1994, Quaker, through

Uzzi, offered Redmond the position of Vice President--On Premise Sales for Gatorade. Redmond did not then accept the offer but continued to negotiate for more money. Throughout this time, Redmond kept his dealings with Quaker secret from his employers at PCNA.

On November 8, 1994, Uzzi extended Redmond a written offer for the position of Vice President - Field Operations for Gatorade and Redmond accepted. Later that same day, Redmond called William Bensyl, the Senior Vice President of Human Resources for PCNA, and told him that he had an offer from Quaker to become the Chief Operating Officer of the combined Gatorade and Snapple company but had not yet accepted it. Redmond also asked whether he should, in light of the offer, carry out his plans to make calls upon certain PCNA customers. Bensyl told Redmond to make the visits.

Redmond also misstated his situation to a number of his PCNA colleagues, including Craig Weatherup, PCNA's President and Chief Executive Officer, and Brenda Barnes, PCNA's Chief Operating Officer and Redmond's immediate superior. As with Bensyl, Redmond told them that he had been offered the position of Chief Operating Officer at Gatorade and that he was leaning "60/40" in favor of accepting the new position.

On November 10, 1994, Redmond met with Barnes and told her that he had decided to accept the Quaker offer and was resigning from PCNA. Barnes immediately took Redmond to Bensyl, who told Redmond that PepsiCo was considering legal action against him.

True to its word, PepsiCo filed this diversity suit on November 16, 1994, seeking a temporary restraining order to enjoin Redmond from assuming his duties at Quaker and to prevent him from disclosing trade secrets or confidential information to his new employer. The district court granted PepsiCo's request that same day but dissolved the order sua sponte two days later, after determining that PepsiCo had failed to meet its burden of establishing that it would suffer irreparable harm. The court found that PepsiCo's fears about Redmond were based upon a mistaken understanding of his new position at Quaker and that the likelihood that Redmond would improperly reveal any confidential information did not "rise above mere speculation."

From November 23, 1994, to December 1, 1994, the district court conducted a preliminary injunction hearing on the same matter. At the hearing, PepsiCo offered evidence of a number of trade secrets and confidential information it desired protected and to which Redmond was privy. First, it identified PCNA's "Strategic Plan," an annually revised document that contains PCNA's plans to compete, its financial goals, and its strategies for manufacturing, production, marketing, packaging, and distribution for the coming three years. Strategic Plans are developed by Weatherup and his staff with input from PCNA's general managers, including Redmond, and are considered highly confidential. The Strategic Plan derives much of its value from the fact that it is secret and competitors cannot anticipate PCNA's next moves. PCNA managers received the most recent Strategic Plan at a meeting in July, 1994, a meeting Redmond attended. PCNA also presented information at the meeting regarding its plans for Lipton ready-to-drink teas and for All Sport for 1995 and beyond, including new flavors and package sizes.

Second, PepsiCo pointed to PCNA's Annual Operating Plan ("AOP") as a trade secret. The AOP is a national plan for a given year and guides PCNA's plans, promotional event calendars, growth expectations, and operational changes in that year. The AOP, which is implemented by PCNA unit General Managers, including Redmond, contains specific information regarding all PCNA initiatives for the forthcoming year. The AOP bears a label that reads "Private and Confidential -- Do Not Reproduce" and is considered highly confidential by PCNA managers.

In particular, the AOP contains important and sensitive information about "pricing architecture" -- how PCNA prices its products in the marketplace. Pricing architecture covers both a national pricing approach and specific price points for given areas. Pricing architecture also encompasses PCNA's objectives for All Sport and its new age drinks with reference to trade channels, package sizes and other characteristics of both the products and the customers at which the products are aimed. Additionally, PCNA's pricing architecture outlines PCNA's customer development agreements. These agreements between PCNA and retailers provide for the retailer's participation in certain merchandising activities for PCNA products. As with other information contained in the AOP, pricing architecture is highly confidential and would be extremely valuable to a competitor. Knowing PCNA's pricing architecture would allow a competitor to anticipate PCNA's pricing moves and underbid PCNA strategically whenever and wherever the competitor so desired. PepsiCo introduced evidence that Redmond had detailed knowledge of PCNA's pricing architecture and that he was aware of and had been involved in preparing PCNA's customer development agreements with PCNA's California and California-based national customers. Indeed, PepsiCo showed that Redmond, as the General Manager for California, would have been responsible for implementing the pricing architecture guidelines for his business unit.

PepsiCo also showed that Redmond had intimate knowledge of PCNA "attack plans" for specific markets. Pursuant to these plans, PCNA dedicates extra funds to supporting its brands against other brands in selected markets. To use a hypothetical example, PCNA might budget an additional $ 500,000 to spend in Chicago at a particular time to help All Sport close its market gap with Gatorade. Testimony and documents demonstrated Redmond's awareness of these plans and his participation in drafting some of them.

Finally, PepsiCo offered evidence of PCNA trade secrets regarding innovations in its selling and delivery systems. Under this plan, PCNA is testing a new delivery system that could give PCNA an advantage over its competitors in negotiations with retailers over shelf space and merchandising. Redmond has knowledge of this secret because PCNA, which has invested over a million dollars in developing the system during the past two years, is testing the pilot program in California.

Having shown Redmond's intimate knowledge of PCNA's plans for 1995, PepsiCo argued that Redmond would inevitably disclose that information to Quaker in his new position, at which he would have substantial input as to Gatorade and Snapple pricing, costs, margins, distribution systems, products, packaging and marketing, and could give Quaker an unfair advantage in its upcoming skirmishes with PepsiCo. Redmond and Quaker countered that Redmond's primary initial duties at Quaker as Vice President - Field Operations would be to integrate Gatorade and Snapple distribution and then to manage that distribution as well as the promotion, marketing and sales of these products. Redmond asserted that the integration would be conducted according to a pre-existing plan and that his special knowledge of PCNA strategies would be irrelevant. This irrelevance would derive not only from the fact that Redmond would be implementing pre-existing plans but also from the fact that PCNA and Quaker distribute their products in entirely different ways: PCNA's distribution system is vertically integrated (i.e., PCNA owns the system) and delivers its product directly to retailers, while Quaker ships its product to wholesalers and customer warehouses and relies on independent distributors. The defendants also pointed out that Redmond had signed a confidentiality agreement with Quaker preventing him from disclosing "any confidential information belonging to others," as well as the Quaker Code of Ethics, which prohibits employees from engaging in "illegal or improper acts to acquire a competitor's trade secrets." Redmond additionally promised at the hearing that should he be faced with a situation at Quaker that might involve the use or disclosure of PCNA information, he would seek advice from Quaker's in-house counsel and would refrain from making the decision.

PepsiCo responded to the defendants' representations by pointing out that the evidence did not show that Redmond would simply be implementing a business plan already in place. On the contrary, as of November, 1994, the plan to integrate Gatorade and Snapple distribution consisted of a single distributorship agreement and a twopage "contract terms summary." Such a basic plan would not lend itself to widespread application among the over 300 independent Snapple distributors. Since the integration process would likely face resistance from Snapple distributors and Quaker had no scheme to deal with this probability, Redmond, as the person in charge of the integration, would likely have a great deal of influence on the process. PepsiCo further argued that Snapple's 1995 marketing and promotion plans had not necessarily been completed prior to Redmond's joining Quaker, that Uzzi disagreed with portions of the Snapple plans, and that the plans were open to re-evaluation. Uzzi testified that the plan for integrating Gatorade and Snapple distribution is something that would happen in the future. Redmond would therefore likely have input in remaking these plans, and if he did, he would inevitably be making decisions with PCNA's strategic plans and 1995 AOP in mind. Moreover, PepsiCo continued, diverging testimony made it difficult to know exactly what Redmond would be doing at Quaker. Redmond described his job as "managing the entire sales effort of Gatorade at the field level, possibly including strategic planning," and at least at one point considered his job to be equivalent to that of a Chief Operating Officer. Uzzi, on the other hand, characterized Redmond's position as "primarily and initially to restructure and integrate our -- the distribution systems for Snapple and for Gatorade, as per our distribution plan" and then to "execute marketing, promotion and sales plans in the marketplace." Uzzi also denied having given Redmond detailed information about any business plans, while Redmond described such a plan in depth in an affidavit and said that he received the information from Uzzi. Thus, PepsiCo asserted, Redmond would have a high position in the Gatorade hierarchy, and PCNA trade secrets and confidential information would necessarily influence his decisions. Even if Redmond could somehow refrain from relying on this information, as he promised he would, his actions in leaving PCNA, Uzzi's actions in hiring Redmond, and the varying testimony regarding Redmond's new [**13] responsibilities, made Redmond's assurances to PepsiCo less than comforting.

On December 15, 1994, the district court issued an order enjoining Redmond from assuming his position at Quaker through May, 1995, and permanently from using or disclosing any PCNA trade secrets or confidential information. . . . The court, which completely adopted PepsiCo's position, found that Redmond's new job posed a clear threat of misappropriation of trade secrets and confidential information that could be enjoined under Illinois statutory and common law. The court also emphasized Redmond's lack of forthrightness both in his activities before accepting his job with Quaker and in his testimony as factors leading the court to believe the threat of misappropriation was real. This appeal followed.

Both parties agree that the primary issue on appeal is whether the district court correctly concluded that PepsiCo had a reasonable likelihood of success on its various claims for trade secret misappropriation and breach of a confidentiality agreement. . . . The district court concluded that PepsiCo satisfied the other requirements for a preliminary injunction: whether PepsiCo has an adequate remedy at law or will be irreparably harmed if the injunction does not issue; whether the threatened injury to PepsiCo outweighs the threatened harm the injunction may inflict on Quaker and Redmond; and whether the granting of the preliminary injunction will disserve the public interest. Quaker and Redmond do not challenge these holdings on appeal.

The Illinois Trade Secrets Act ("ITSA"), which governs the trade secret issues in this case, provides that a court may enjoin the "actual or threatened misappropriation" of a trade secret. A party seeking an injunction must therefore prove both the existence of a trade secret and the misappropriation. The defendants' appeal focuses solely on misappropriation; although the defendants only reluctantly refer to PepsiCo's marketing and distribution plans as trade secrets, they do not seriously contest that this information falls under the ITSA.

The question of threatened or inevitable misappropriation in this case lies at the heart of a basic tension in trade secret law. Trade secret law serves to protect "standards of commercial morality" and "encourage[ ] invention and innovation" while maintaining "the public interest in having free and open competition in the manufacture and sale of unpatented goods." Yet that same law should not prevent workers from pursuing their livelihoods when they leave their current positions. . . .

This tension is particularly exacerbated when a plaintiff sues to prevent not the actual misappropriation of trade secrets but the mere threat that it will occur. While the ITSA plainly permits a court to enjoin the threat of misappropriation of trade secrets, there is little law in Illinois or in this circuit establishing what constitutes threatened or inevitable misappropriation. . . .

The ITSA [and relevant cases] . . . lead to the same conclusion: a plaintiff may prove a claim of trade secret misappropriation by demonstrating that defendant's new employment will inevitably lead him to rely on the plaintiff's trade secrets. The defendants are incorrect that Illinois law does not allow a court to enjoin the "inevitable" disclosure of trade secrets. Questions remain, however, as to what constitutes inevitable misappropriation and whether PepsiCo's submissions . . . meet that standard. We hold that they do.

PepsiCo presented substantial evidence at the preliminary injunction hearing that Redmond possessed extensive and intimate knowledge about PCNA's strategic goals for 1995 in sports drinks and new age drinks. The district court concluded on the basis of that presentation 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 PCNA trade secrets. It is not the "general skills and knowledge acquired during his tenure with" PepsiCo that PepsiCo seeks to keep from falling into Quaker's hands, but rather "the particularized plans or processes developed by [PCNA] and disclosed to him while the employer-employee relationship existed, which are unknown to others in the industry and which give the employer an advantage over his competitors." . . . Admittedly, PepsiCo has not brought a traditional trade secret case, in which a former employee has knowledge of a special manufacturing process or customer list and can give a competitor an unfair advantage by transferring the technology or customers to that competitor. PepsiCo has not contended that Quaker has stolen the All Sport formula or its list of distributors. Rather PepsiCo has asserted that Redmond cannot help but rely on PCNA trade secrets as he help plots Gatorade and Snapple's new course, and that these secrets will enable Quaker to achieve a substantial advantage by knowing exactly how PCNA will price, distribute, and market its sports drinks and new age drinks and being able to respond strategically. This type of trade secret problem may arise less often, but it nevertheless falls within the realm of trade secret protection under the present circumstances.

Quaker and Redmond assert that they have not and do not intend to use whatever confidential information Redmond has by virtue of his former employment. They point out that Redmond has already signed an agreement with Quaker not to disclose any trade secrets or confidential information gleaned from his earlier employment. They also note with regard to distribution systems that even if Quaker wanted to steal information about PCNA's distribution plans, they would be completely useless in attempting to integrate the Gatorade and Snapple beverage lines.

. . . the danger of misappropriation in the present case is not that Quaker threatens to use PCNA's secrets to create distribution systems or coopt PCNA's advertising and marketing ideas. Rather, PepsiCo believes that Quaker, unfairly armed with knowledge of PCNA's plans, will be able to anticipate its distribution, packaging, pricing, and marketing moves. Redmond and Quaker even concede that Redmond might be faced with a decision that could be influenced by certain confidential information that he obtained while at PepsiCo. In other words, PepsiCo finds itself in the position of a coach, one of whose players has left, playbook in hand, to join the opposing team before the big game. Quaker and Redmond's protestations that their distribution systems and plans are entirely different from PCNA's are thus not really responsive.

The district court also concluded from the evidence that Uzzi's actions in hiring Redmond and Redmond's actions in pursuing and accepting his new job demonstrated a lack of candor on their part and proof of their willingness to misuse PCNA trade secrets, findings Quaker and Redmond vigorously challenge. The court expressly found that:

> Redmond's lack of forthrightness on some occasions, and out and out lies on others, in the period between the time he accepted the position with defendant Quaker and when he informed plaintiff that he had accepted that position leads the court to conclude that defendant Redmond could not be trusted to act with the necessary sensitivity and good faith under the circumstances in which the only practical verification that he was not using plaintiff's secrets would be defendant Redmond's word to that effect.

. . . That conclusion was not an abuse of discretion.

Thus, when we couple the demonstrated inevitability that Redmond would rely on PCNA trade secrets in his new job at Quaker with the district court's reluctance to believe that Redmond would refrain from disclosing these secrets in his new position (or that Quaker would ensure Redmond did not disclose them), we conclude that the district court correctly decided that PepsiCo demonstrated a likelihood of success on its statutory claim of trade secret misappropriation. . . .

For the same reasons we concluded that the district court did not abuse its discretion in granting the preliminary injunction on the issue of trade secret misappropriation, we also agree with its decision on the likelihood of Redmond's breach of his confidentiality agreement should he begin working at Quaker. Because Redmond's position at Quaker would initially cause him to disclose trade secrets, it would necessarily force him to breach his agreement not to disclose confidential information acquired while employed in PCNA.

Quaker and Remond do not assert that the confidentiality agreement is invalid; such agreements are enforceable when supported by adequate consideration. Rather, they argue that "inevitable" breaches of these contracts may not be enjoined. The case on which they rely, however, . . . says nothing of the sort.

Finally, Redmond and Quaker have contended in the alternative that the injunction issued against them is overbroad. They disagree in particular with the injunction's prohibition against Redmond's participation in the integration of the Snapple and Gatorade distribution systems. The defendants claim that whatever trade secret and confidential information Redmond has, that information is completely irrelevant to Quaker's integration task. They further argue that, because Redmond would only be implementing a plan already in place, the injunction is especially inappropriate.

. . . . While the defendants' arguments are not without some merit, the district court determined that the proposed integration would require Redmond to do more than execute a plan someone else had drafted. It also found that Redmond's knowledge of PCNA's trade secrets and confidential information would inevitably shape that integration and that Redmond could not be trusted to avoid that conflict of interest. If the injunction permanently enjoined Redmond from assuming these duties at Quaker, the defendants' argument would be stronger. However, the injunction against Redmond's immediate employment at Quaker extends no further than necessary and was well within the district court's discretion.

For the foregoing reasons, we affirm the district court's order enjoining Redmond from assuming his responsibilities at Quaker through May, 1995, and preventing him forever from disclosing PCNA trade secrets and confidential information.

AFFIRMED.