



Trade Secrets and Noncompete Agreements: WHAT YOU NEED TO KNOW

Enforcing and Litigating Across Borders, Including Through ADR

**Presented by:
Nancy Geenen and Russell Beck**

January 21, 2010



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2

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3






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 - General Commercial Litigation
 - Intellectual Property Litigation
 - Privacy, Security & Information Management
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- Author, *Negotiating, Drafting, and Enforcing Noncompetition Agreements and Related Restrictive Covenants* (3rd ed., MCLE, Inc., 2009)
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Why?

5

“More Than Half of Ex-Employees Admit to Stealing Company Data According to New Study”

– *N.Y. Times* (Feb. 23, 2009)

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Topics To Be Covered

6

A. The Basics

1. Noncompetes
2. Trade Secrets
3. Basics of ADR

B. Cross-Border Complications

1. Interstate Issues
2. International Complications

C. Practical Suggestions

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The Basics: Noncompetes

7

A. Reasonable

- Time
- Space
- Scope

B. Legitimate Business Interests

- Trade secrets
- Confidential information
- Goodwill
- Special Skills

C. Public Policy

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The Basics: Trade Secrets

8

■ Applicable Laws

- State/Federal Statutes
- Uniform Trade Secrets Act
- Restatement of Torts § 757, comment b
- Common Law

■ Defining Aspects

- Information
- Secret
- Value

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The Basics: ADR

9

- Mediation
- Arbitration
- Binding Mediation
- Other

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Cross-Border Complications: Interstate

10

- From California to Florida and everywhere in between
- Continually changing landscape (Illinois, Wisconsin, Texas, Georgia, Massachusetts)
- The Blue Pencil, the Red Pencil, and Reformation
- Consideration – Pre-Employment and Mid-Employment

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Cross-Border Complications: Interstate

11

- TRIPS
- NAFTA
- Wild, Wild West (East)
- Germany
- Spain
- India

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Practical Suggestions

12

Prevention: The Trade Secret Audit

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Practical Suggestions

13

Prevention

- Agreements
 - Noncompete Agreements
 - Nondisclosure Agreements
 - Nonsolicitation Agreements
 - No Poach Agreements
- Must-Haves
 - Choice of Law
 - Venue
 - Drafting for variation in laws

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Practical Suggestions

14

Enforcement

- Home town advantage
- Speed

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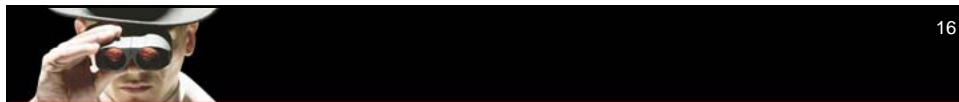
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16

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