

No. 66279-I

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION ONE

ROBERT S. MOORE,
Appellant,

v.

COMMERCIAL AIRCRAFT INTERIORS, LLC, and JERRY WELCH,
INDIVIDUALLY AND AS PRESIDENT AND CHIEF EXECUTIVE
OFFICER OF COMMERCIAL AIRCRAFT INTERIORS, LLC,
Respondent,

APPELLANT'S REPLY BRIEF

Kelby D. Fletcher
STOKES LAWRENCE, P.S.
800 Fifth Avenue, Suite 4000
Seattle, Washington 98104-3099
(206) 626-6000

Attorneys for Appellant Robert S.
Moore

FILED
APR 11 2012
TB

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ARGUMENT	2
	A.	What CAI Does Not Contest.....2
	B.	Defenses to Tortious Interference Actions.3
	C.	CAI’s Assertion of Good Faith.4
	i.	The Meaning of “Good Faith.”4
	ii.	There Is No Evidence Of Good Faith.6
	D.	CAI Could Not, Consistent With CR 11, Bring An Action Against Moore.....6
	i.	Misappropriation of Trade Secret.7
	ii.	Breach of Contract.9
	E.	CAI Based Its Actions On ‘Inevitable Disclosure.9
	F.	CAI Used Improper Means To Protect Its Trade Secrets..... 11
	G.	CAI Had an Improper Purpose When It Interfered With Moore’s Employment Expectancy..... 13
	H.	The Claim For Unlawful Blacklisting Was Improperly Dismissed..... 14
	I.	Reversal of CAI’s Summary Judgment and Entry of Judgment for Moore is Appropriate. 15
III.	CONCLUSION.....	15

TABLE OF AUTHORITIES

Washington Cases

<i>Brown v. Safeway Stores, Inc.</i> , 94 Wn.2d 359, 617 P.2d 704 (1980).....	12
<i>Deep Water Brewing, LLC v. Fairway Res., Ltd.</i> , 152 Wn. App. 229, 215 P.3d 990 (2009).....	11
<i>Impehoven v. Dep't of Revenue</i> , 120 Wn.2d 357, 841 P.2d 752 (1992).....	15
<i>Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Group, Inc.</i> , 114 Wn. App. 151, 52 P.3d 30 (2002).....	6
<i>O'Brien v. Western Union Tel. Co.</i> , 62 Wash. 598, 114 P. 441 (1911)	15
<i>Pac. Nw. Shooting Park Ass'n v. City of Sequim</i> , 158 Wn.2d 342, 144 P.3d 276 (2006).....	2
<i>Pleas v. City of Seattle</i> , 112 Wn.2d 794, 774 P.2d 1158 (1989).....	3
<i>Raymond v. Pacific Chem.</i> , 98 Wn. App. 739, 992 P.2d 517 (1999).....	12
<i>Schooley v. Pinch's Deli Market, Inc.</i> , 134 Wn.2d 468, 951 P.2d 749 (1998).....	15

Additional Cases

<i>Bimbo Bakeries USA, Inc. v. Botticella</i> , 613 F.3d 102 (3d Cir. 2010)	10
<i>H&R Block E. Tax Servs., Inc. v. Enchura</i> , 122 F. Supp. 2d 1067 (W.D. Mo. 2000)	10
<i>PepsiCo, Inc. v. Redmond</i> , 54 F.3d 1262 (7th Cir. 1995)	10

Statutes

RCW 19.108	7
RCW 19.108.020(1).....	7
RCW 19.108.040	9
RCW 49.44.010	4, 6, 14, 15
RCW 62A.1-201(19).....	5
RCW 62A.2-103(1)(b).....	5

Court Rules

Civil Rule 11 6, 9
GR 14.1(a)..... 14

Additional Authorities

Black’s Law Dictionary, 762 (9th ed. 2009)..... 5
Restatement (Second) of Contracts, Id. at § 205, cmt. a..... 4
Restatement (Second) of Torts, § 767, comment 1..... 3
Schwartz, Jason et al., *2010 Trade Secrets Litigation Round-Up*,
81 P.T.C.J. 354 at 2 (Jan. 21, 2011)..... 7
W. Keeton, Prosser & Keeton on Torts, § 129 (5th ed.)..... 12
WPI 352.01.01 3
WPI 352.03 3

I. INTRODUCTION

Defendant CAI claims that it acted in good faith in order to protect its trade secrets when it threatened litigation to prevent its competitor, IAI¹, from hiring Moore. In doing so, it is claiming a privilege on which it has the burden of proof.

CAI asserted in its Response that the appropriate inquiry is “whether CAI had a good faith belief that its trade secrets were jeopardized by its competitor threatening to hire its former employee.” Response at 11. CAI has not produced an operable definition of “good faith” nor has it produced any evidence that Moore could or would disclose any CAI trade secret to IAI. Without any evidence that Moore possessed any of its trade secrets or that he could or would disclose them, CAI could not have acted in “good faith.” CAI’s threatened litigation against IAI therefore constituted an improper means in protecting its alleged trade secrets. And because it acted deliberately to prevent Moore from obtaining employment, CAI acted with an improper purpose, one which is clearly proscribed by Washington law, RCW 49.44.010.

It is best to test CAI’s assertion that it “would have a potential cause of action for misappropriation of trade secrets...as well as under

¹ IAI (International Aero Interiors) is now known as Volant. Moore referred to IAI in his opening brief and will continue to refer to IAI in this Reply.

Moore's contractual obligation not to disclose CAI's trade secrets."

Response at 11-12.

CAI would have been within its rights to tell both Moore and IAI that Moore may have been exposed to CAI's trade secrets and that those secrets ought to be respected. It went beyond its rights when it asserted it "will institute legal action to protect its confidential information...and to prohibit the unfair competition by [IAI] that would result from such employment." Response at 4-5, quoting from CAI's letter to IAI, reproduced in full at Appendix 'A.' Lacking evidence of any threat or any breach, such a suit would run afoul of Civil Rule (CR) 11. CAI had the opportunity in this case to engage in discovery to support its contentions and it chose not to do so. It relied, instead, on the bare assertion that it acted in good **faith**.

II. ARGUMENT

A. What CAI Does Not Contest.

CAI does not dispute four of the five elements of the claim for tortious interference with Moore's expectancy of employment by IAI. Among the elements conceded by CAI, therefore, is that its letter to IAI induced or caused the termination of the expectancy. *See, generally, Pac. Nw. Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 351, 144 P.3d 276 (2006).

CAI also does not dispute that seeking and holding lawful employment has constitutional dimensions in this state and that interference with employment must be looked at through a constitutional lens.

There is no dispute about the correctness of the trial court's determinations that certain of CAI's evidence was inadmissible. Thus, there is no evidence that Moore possessed any information about CAI's trade secrets by memory or otherwise. Nor is there any evidence that CAI's trade secrets involving bidding formulae, customer and supplier lists and methods used to obtain surplus interior parts from Boeing would be useful to IAI. Brief of Appellant at 11-12.

B. Defenses to Tortious Interference Actions.

CAI did not address whether Moore had to prove improper means and/or purpose or whether CAI has an affirmative defense on which it has the burden of proof. See, Brief of Appellant at 15-16. “[M]atters of privilege and justification continue to be affirmative defenses to be raised by the defendant.” *Pleas v. City of Seattle*, 112 Wn.2d 794, 804, 774 P.2d 1158 (1989); *see also* WPI 352.01.01.

Generally, it is a question of fact as to whether interference with an expectancy is improper. Restatement (Second) of Torts, § 767, comment 1; WPI 352.03, Comment (Determination of impropriety “is ordinarily left

to the jury, to obtain its common feel for the state of community mores and for the manner in which they would operate....”) Here, however, a statute, RCW 49.44.010, provides guidance as to community standards - preventing a person from obtaining employment is blacklisting and unlawful.

C. CAI’s Assertion of Good Faith.

CAI repeatedly states that it acted in “good faith” and from that concludes that it used proper means and had a proper purpose in preventing Moore from becoming employed by IAI. (“The inquiry is whether CAI had a good faith belief that its trade secrets were jeopardized by its competitor threatening to hire its former employee, and thus whether CAI’s assertion of its rights was made in good faith.” Brief of Respondent at 11.)

CAI does not provide a definition of “good faith” nor does it point to the evidence in support of its supposed belief that Moore’s potential employment with IAI would jeopardize its trade secrets other than the facts that IAI was a competitor of CAI, that Moore was exposed to CAI trade secrets and that Moore would be employed by IAI.

i. The Meaning of “Good Faith.”

In its brief, CAI does not provide the Court with any definition or understanding of “good faith.” As the Restatement (Second) of Contracts

has noted, “[t]he phrase ‘good faith’ is used in a variety of contexts, and its meaning varies somewhat with the context.” *Id.* at § 205, cmt. *a*.

The Uniform Commercial Code generally defines “good faith” as “honesty in fact in the conduct or transaction concerned.” RCW 62A.1-201(19). In the case of a merchant, the UCC definition is “honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.” RCW 62A.2-103(1)(b).

Black’s Law Dictionary defines “good faith” as a “state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one’s duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or profession, or (4) absence of intent to defraud or to seek unconscionable advantage.” Black’s Law Dictionary, 762 (9th ed. 2009).

What seems clear in these varied definitions is that the actor claiming “good faith” must have an honest belief in its conduct and must adhere to reasonable standards of conduct. CAI has not produced evidence of either. Moore has demonstrated the absence of both and has affirmatively shown that CAI’s conduct violated a state law, RCW 49.44.010, which prohibits exactly what CAI did in this case: Blacklisting.

ii. There Is No Evidence Of Good Faith.

One will search in vain for admissible evidence establishing that CAI acted in “good faith.”

It is clear that in Washington, sending a, “letter or writing, with or without name signed...for the purpose of preventing any other person from obtaining employment” is unlawful blacklisting, a crime. RCW 49.44.010. This is a statutory statement of community standards to which employers and their agents must adhere. *See, e.g., Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Group, Inc.*, 114 Wn. App. 151, 159, 52 P.3d 30 (2002) (Employer hired employee knowing of non-competition agreement with former employer and thereby tortiously interfered with former employer’s expectancy; “identifiable standards of business ethics or recognized community customs as to acceptable conduct have developed, such that the determination of whether the interference was improper should be made as a matter of law, similar to negligence per se. Interference with a business expectancy in violation of a contract not to compete is such a case.”) (internal quotes and citations deleted.)

D. CAI Could Not, Consistent With CR 11, Bring An Action Against Moore.

Civil Rule 11 requires that any pleading signed by a party or a lawyer certifies that it is “well grounded in fact,” “warranted by existing

law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law,” and that it is not made “for any improper purpose.”

CAI did not bring an action against Moore but it contends it could have in order to protect its trade secrets. It could do so, it contended in its Response, on the basis of a misappropriation of trade secrets or for Moore’s breach of his non-disclosure agreements with CAI.

In the context of this case, CAI had the opportunity to conduct discovery in the ten months this case was pending in the trial court. It chose not to do so. From that, one can properly surmise that from CAI’s perspective, there were no facts to discover.²

i. Misappropriation of Trade Secret.

This is a claim which CAI contends it could have brought against Moore, had he been hired by IAI, under the Uniform Trade Secrets Act, RCW 19.108. That statute, among other things, allows a court to enjoin, “actual or threatened misappropriation” of a trade secret. RCW 19.108.020(1). In turn, a “[m]isappropriation” is “disclosure or use of a

² A ‘best practice’ in trade secret protection is “timely development of computer forensic evidence upon the departure of a key employee. Without such evidence, the injunction here....would not likely have been issued.” Schwartz, Jason et al., *2010 Trade Secrets Litigation Round-Up*, 81 P.T.C.J. 354 at 2 (Jan. 21, 2011) (discussing *Bimbo Bakeries v. Botticella*, cited *infra* at p. 10).

trade secret of another” by a person who has a “duty . . . to maintain its secrecy or limits its use....”

In order, therefore, to establish a violation of RCW 19.108.020(1) CAI would be required to have facts tending to show that Moore actually disclosed or threatened to disclose its trade secrets. There is no admissible evidence that Moore possessed any trade secret of CAI either by memory or otherwise.

Similarly, there is no evidence that Moore threatened to disclose any CAI trade secret to any person or entity. To the contrary, CAI and Moore had a trusting relationship: Moore and the current president of CAI worked together at IAI before they each came to CAI. Appellant’s Brief at 5. Moore left CAI in order to assist in brokering an acquisition of CAI by IAI. When that deal did not materialize, CAI re-hired Moore. CAI never required Moore to sign a post-employment restraint (PER) such as a non-competition agreement because of this trust. *Id.* at 4-6. There is no evidence in this record which shows that Moore had any desire to betray that trust.

The implication by CAI in its Brief at 12, n. 2 that it could have brought an action for threatened misappropriation is, therefore, curious and incorrect.

Had CAI brought an action against Moore for actual or threatened misappropriation, Moore would have been entitled to sanctions under CR 11 and also would be entitled to attorneys' fees under RCW 19.108.040 because the "claim of misappropriation [was] made in bad faith...."

ii. Breach of Contract.

As with the Trade Secrets Act, there is no evidence that Moore breached, or anticipated breaching, his non-disclosure agreements with CAI. Certainly, any assertion otherwise would not be "well grounded in fact" and would subject CAI to sanctions under CR 11. In order for CAI to assert that its, "legally protected interests *may* be impaired by a contract between others," Brief of Respondent at 8 (*italics in original*), it must have some basis for that belief. This is another way of saying that CAI did not have a good faith basis for its interference with Moore's employment.

E. CAI Based Its Actions On 'Inevitable Disclosure.

It is clear that CAI invoked the "inevitable disclosure" doctrine in its interference with Moore's employment by IAI. In its brief, it claimed, "[IAI's] employment of Moore was objectionable because it would necessarily result in Moore disclosing CAI's trade secrets...." Respondent's Brief at 4. This is consistent with what it disclosed in discovery and in its pleadings. Brief of Appellant at 9-10.

If there is such a thing as ‘pure’ inevitable disclosure, that would run afoul of the Washington constitution. And, because there is no admissible evidence that Moore retained knowledge of any CAI trade secret in any form or that the CAI trade secrets would have any value to IAI, even a “pure” inevitable disclosure claim would run afoul of CR 11.

But the inevitable disclosure doctrine is actually a misnomer. Its application depends upon some mendacity or other otherwise opprobrious conduct of the former employee. *See, e.g., Bimbo Bakeries USA, Inc. v. Botticella*, 613 F.3d 102, 111 (3d Cir. 2010)(Pennsylvania courts “paradoxically...apply the ‘inevitable disclosure doctrine’ to grant injunctions based not on a trade secret’s *inevitable* disclosure but on its likely disclosure.”)(italics in original); *PepsiCo, Inc. v. Redmond*, 54 F.3d 1262, 1270 (7th Cir. 1995) (Employee’s “lack of forthrightness on some occasions, and out and out lies on others” resulted in a finding that he “could not be trusted to act with the necessary sensitivity and good faith” regarding PepsiCo’s trade secrets); *H&R Block E. Tax Servs., Inc. v. Enchura*, 122 F. Supp. 2d 1067, 1075 (W.D. Mo. 2000) (“[R]ather, demonstrated inevitability *in combination with* a finding that there is unwillingness to preserve confidentiality is required. The Court finds no evidence to support the latter finding...”)(italics in original.)

Inevitable disclosure in either its pure form or as applied by the courts which have considered it would not be available to CAI. And, on the record in this case, invocation of the doctrine in an action by CAI against Moore would entitle Moore to sanctions.

F. CAI Used Improper Means To Protect Its Trade Secrets.

CAI threatened to sue Moore and/or IAI if Moore started work at IAI. Brief of Respondent at 4-5. This, it is conceded, prevented IAI from employing Moore.

CAI had available to it other means to protect its trade secrets. It could have entered into a PER with Moore on any of three occasions; it could have informed Moore and IAI that Moore was exposed to trade secret information and advised that it expected those secrets to be respected; it could have inquired of IAI whether it would agree not to require Moore to disclose CAI trade secrets.

Without any evidence of jeopardy to its trade secrets, CAI chose instead to prevent Moore from obtaining lawful employment. The alternatives noted above would have served to allow CAI to “protect [its] own present existing economic interests, such as...a prior contract of his own....” *Deep Water Brewing, LLC v. Fairway Res., Ltd.*, 152 Wn. App. 229, 264, 215 P.3d 990 (2009)(quoting W. Keeton, Prosser & Keeton on

Torts, § 129 (5th ed.)). It is, therefore, disingenuous for CAI to assert that its, “actions in this case were carefully deployed solely for the protection of its confidential information.” Brief of Respondent at 16.

Citation by CAI to *Raymond v. Pacific Chem.*, 98 Wn. App. 739, 992 P.2d 517 (1999), *reversed on other grounds sub nom. Brown v. Scott Paper Worldwide Co.*, 143 Wn.2d 349, 20 P.3d 921 (2001) is not helpful to it. There, the former employer had an express PER with its former employee. The former employee sued the former employer on the basis of age discrimination and tortious interference with his later employment due to the former employer’s threat to enforce the PER. 98 Wn. App. at 743. On unspecified grounds, the former employee claimed that the PER was “invalid.” There was no evidence that the former employer’s claims with respect to the PER were in bad faith nor was there any basis on which to believe that the PER was invalid. Therefore, the tortious interference claim failed. *Id.* at 749. Here, unlike *Raymond/Brown*, there is no PER. Indeed, CAI chose not to obtain a PER on the three occasions when it could have done so. Brief of Appellant at 5.

Likewise, *Brown v. Safeway Stores, Inc.*, 94 Wn.2d 359, 617 P.2d 704 (1980) is not useful to CAI. That, too, involved an express contract, a lease. The lessor, owner of a shopping center, brought suit against the lessee, contending that the lessee was obligated to keep the premises

occupied at all times and that a “commercially reasonable” subtenant had to be found after lessee left the shopping center and moved its store to another location. *Id.* at 369. The lessor contended that a sub-tenant had to produce comparable gross sales and customer traffic in the shopping center. *Id.* The lessee counterclaimed for interference in its sub-tenancy with a third party. The sub-lessee obtained a rent reduction from what the lessee was obligated to pay. 94 Wn.2d at 363. Although it is not clear from the Court’s decision, the reduction in rent might have been due to the litigation brought by the lessor. *Id.* In any event, the lessee remained obligated on its lease. The lessee’s claim for tortious interference by lessor with its sub-tenancy failed under these circumstances. *Id.* at 376. Litigation by the lessor against its lessee was appropriate in order, “to protect [lessor’s] interests in the shopping center lease.” *Id.* There was no issue about the good faith of the lessor, presumably because of the reduced customer traffic likely to be produced by the sub-tenant when compared with the lessee. The lessor had, therefore, a verifiable protectable interest in its shopping center.

G. CAI Had an Improper Purpose When It Interfered With Moore’s Employment Expectancy.

There can be no doubt that CAI intended to, and did, prevent Moore from becoming employed with IAI. The means by which it

effected its intent, the threat of litigation, were improper. And the end result, its purpose, was likewise improper and, therefore, actionable. CAI's counterclaim against Moore and its third party claim against IAI reveal CAI's hostility over the failed negotiations brokered by Moore in which IAI investigated an acquisition of CAI. See, Brief of Appellant at 6 and n.1. Indeed, the current president of CAI had formerly worked with Moore at IAI. *Id.* at 5.

H. The Claim For Unlawful Blacklisting Was Improperly Dismissed.

CAI contends that RCW 49.44.010 is "archaic" and that "union-busting no longer poses the menace it did at the turn of the twentieth century...." Brief of Respondent at 17-18. That fails to take into consideration that the Legislature has seen fit to retain the statute. And CAI's position fails to take heed of current events in Ohio, Indiana and even in Washington in which anti-union and anti-collective action animus runs rampant.

Citation by CAI to an unreported decision, Brief of Respondent at 17, n.3, is inappropriate and should be disregarded. GR 14.1(a). While the Supreme Court decided a civil action under this criminal statute, it did so without discussion. *O'Brien v. Western Union Tel. Co.*, 62 Wash. 598,

114 P. 441 (1911). That decision is, at the very least, an indicia that a civil action exists under the statute.

More recent decisions of our Supreme Court recognize that a civil claim may arise from a criminal statute. *See, e.g., Schooley v. Pinch's Deli Market, Inc.*, 134 Wn.2d 468, 473-78, 951 P.2d 749 (1998) (negligently selling alcohol to minors in violation of RCW 66.44.270, a criminal statute). CAI did not address that in its Reply.

What RCW 49.44.010 does so precisely is to serve as a reminder to employers and their lawyers that issuing writings in order to prevent a worker from obtaining employment under the circumstances of this case is 'blacklisting' and unlawful. That is precisely what CAI did. This statute to negate the notion put forth by CAI that its "actions in this case were carefully deployed...." Brief of Respondent at 16.

I. Reversal of CAI's Summary Judgment and Entry of Judgment for Moore is Appropriate.

Moore has demonstrated that on the record created by the parties on their cross-motions for summary judgment that judgment for CAI was error and that Moore should have judgment on liability. This Court may award judgment to Moore. *See, Impehoven v. Dep't of Revenue*, 120 Wn.2d 357, 365, 841 P.2d 752 (1992).

III. CONCLUSION

CAI's claims of good faith are not supported by facts.

What CAI has done prevents Moore from becoming employed by a prospective employer for over eighteen months and, it seems, in perpetuity. CAI could not have obtained such extensive relief through a non-competition-type PER. Instead, it has used the threat of litigation to intimidate a prospective employer of Moore. This is contrary to all theories advanced by CAI, contrary to the Washington Constitution and contrary to the policies set out in the Washington anti-blacklisting statute.

CAI improperly interfered with Moore's prospective employment.

Moore should be awarded judgment and the case remanded to the trial court for determination of damages

By: 

Kelby D. Fletcher
Attorneys for Appellant ROBERT S.
MOORE
STOKES LAWRENCE, P.S.
800 Fifth Avenue, Suite 4000
Seattle, WA 98104
(206) 626-6000

Attorneys for Appellant Robert S. Moore

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 13th day of May, 2011, I caused a true and correct copy of the foregoing document, "Appellant's Reply Brief," to be delivered by messenger to the following counsel of record:

Counsel for Respondent:

Don P. Badgley
Jacob D.C. Humphreys
Badgley-Mullins Law Group PLLC
701 5th Avenue, Suite 4750
Seattle, WA 98104

Dated this 13th day of May, 2011, at Seattle, Washington.



Sarah Callahan, Practice Assistant to
Kelby Fletcher

2011 MAY 13 PM 3:47



Appendix A

BADGLEY ~ MULLINS

LAW GROUP
PLLC

Don Paul Badgley
Phone: (206) 621-6553
donbadgley@badgleymullins.com
www.badgleymullins.com

October 12, 2009

Ian Rollo, President
Volant Aerospace Holdings, LLC
11817 Westar Lane
Burlington, WA 98233

VIA FIRST CLASS MAIL. and
VIA EMAIL: ianrollo@volant.aero

Re: Robert Moore / Your letter date October 5th, 2009.

Dear Mr. Rollo:

We are legal counsel to Mr. Jerry Welch and to Commercial Aircraft Interiors, LLC (CAI) and are responding to that portion of your letter concerning the potential employment of Robert Moore by Volant Aerospace Holdings.

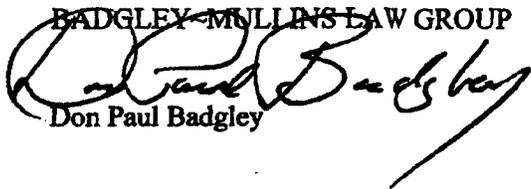
As you are aware, Mr. Moore has a long employment relationship with CAI and is intimately familiar with all aspects of the business of CAI, including its confidential information, practices, finances, employees, customers, and trade secrets. Mr. Moore's consulting agreement with CAI in connection with a potential business transaction referenced in the Letter of Intent dated January 12, 2009 acknowledges that all trade secrets and know-how of the Parties are confidential and the sole Property of the Parties.

Employment of Mr. Moore by Volant in any capacity; as consultant, employee independent contractor or otherwise would necessarily result in his breach of his common law duty not to violate his position of trust and confidence with CAI inasmuch as the companies are competitors and Mr. Moore could not avoid the use of or disregard the intimate knowledge he possesses of CAI confidential information and trade secrets. Such employment would constitute actionable unfair competition by Volant. If Mr. Moore is employed by Volant, CAI will institute legal action to protect its confidential information and trade secrets and to prohibit the unfair competition by Volant that would result from such employment, and such other remedies as are available in law or equity.

Thank you for raising this issue. Please keep CAI informed of your intended action in respect to engagement of Mr. Moore.

Very truly yours,

BADGLEY-MULLINS LAW GROUP


Don Paul Badgley

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 23rd day of May, 2011, I caused a true and correct copy of the foregoing document, "Appendix A," to be delivered by messenger to the following counsel of record:

Counsel for Respondent:

Don P. Badgley
Jacob D.C. Humphreys
Badgley-Mullins Law Group PLLC
701 5th Avenue, Suite 4750
Seattle, WA 98104

Dated this 23rd day of May, 2011, at Seattle, Washington.

A handwritten signature in black ink, appearing to read "Sarah Callahan". The signature is written in a cursive style with large, flowing loops.

Sarah Callahan
Sarah Callahan, Practice Assistant to
Kelby Fletcher