

CLIENT ALERTS

Is Panera Bread's Method for Preparation of Mac and Cheese a Trade Secret?

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Probably not, but the idea of moving swiftly is always a good one.

You may have read recently that Panera Bread discharged an employee for “revealing” that the mac and cheese it serves in its restaurants was boiled in a bag and then served to customers. The now-former employee showed a video of herself preparing the mac and cheese at a Panera Bread restaurant, which she then posted on social media. Her video received nearly a million views. Panera Bread then terminated her employment. Is there something that can be learned from this recent event that found its way into the news cycle?

Was the “method” that Panera Bread used in preparing mac and cheese a trade secret? Was it confidential? Was it proprietary? Did Panera Bread act appropriately in its termination of the employee? Did the employee have a right to post as she did? These questions and possible lessons are really not the point of this note. The method was likely not trade secret or otherwise protectable. The employee was likely at will and her choice to post the video need not have been a “basis” for her termination.

So what, then, can be learned from this event? The need for speed. Regardless of what formed the basis of Panera Bread’s actions, it took action and it did so swiftly. Putting aside the issue of whether Panera Bread’s technique was even protectable (I hardly believe it was or could be), whenever a situation arises involving the use or disclosure of a trade secret, confidential or otherwise proprietary information, the need to move swiftly is key. There really should be no debate about so doing when your information may have been leaked or otherwise disseminated without your approval.

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Phillip C. Korovesis
Of Counsel

Ivonne M. Soler
Senior Attorney

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In any action involving the protection of your trade secret, confidential or proprietary information, of course, you need to adequately apprise the situation. However, remember that your actions must be swift in order to be effective in protecting that information. Moving swiftly also impacts a court's view if an injunction is sought. Sitting on your hands never helps.

So, while boiling mac and cheese in a bag and then serving it in a chain restaurant may not be protectable as a trade secret or confidential bit of information, the need to move swiftly in protecting your critical company information is paramount. Never forget that.

Phil Korovesis

313.983.7458

korovesis@butzel.com