

LinkedIn and keeping your business contacts safe

When it comes to business development, LinkedIn has replaced the old fashioned address book for keeping up with business contacts.

But whilst many companies encourage employees to use the online social networking site to keep in touch with customers, few have realised the downside of such relationships when an employee moves on.

For whilst company-held data such as a customer database clearly belongs to the company and is easily protected against misuse, in the LinkedIn era the boundaries are blurred with employees making personal contacts in their business role.

But following a case in the High Court which tackled this thorny issue, employers now have a clearer route to tackle any misuse of contacts.

Being called the LinkedIn injunction, employers may be able to act to secure contacts cultivated on behalf of the company in circumstances where they can show a legitimate proprietary interest in an employee's LinkedIn profile. The company needs to be able to show that the loss or misuse of an employee's profile may give rise to "irreparable harm that cannot be compensated" by any financial payment.

In the case of *Whitmar Publications Limited v. Gamage and Others*, publishing company Whitmar was granted a restraining injunction against three former employees who had set up in competition, alleging they did so whilst still employed. Whitmar also alleged that contact information had been collected from members of LinkedIn groups that were maintained by Whitmar.

The Court agreed that the LinkedIn groups involved constituted legitimate company property as one of the employees involved was responsible for maintaining these as part of their employment duties and using Whitmar's computers, with a clear aim of promoting Whitmar's business.

It also accepted that the former employees had used contact information from the LinkedIn groups to send out promotional material about their new company. Granting

the injunction to restrain the use of Whitmar's confidential information, the ex-employees were also required to return confidential information and open up their computer systems for forensic inspection.

Director of Simcocks Irini Newby said: "The take-aways from this case are that employers need to make sure any LinkedIn account is opened using an agreed company email address that belongs to the company, rather than with a personal email and that all content such as photographs and individual profile descriptions of an employee's current role, should be cleared by the company before publication."

She added: "Most importantly, all job descriptions should clearly say that cultivating connections via LinkedIn is a part of business development for the company, with employment contracts and social media policies specifying that any LinkedIn activity by an employee is being conducted on the employer's behalf to contribute to a database of proprietary trade information and that compensation is being given for doing so, as it takes place during working hours."

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