

Elm city cheese company

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The case analysis considered the infringement case filed by Elm City Cheese Company against Federico covering. The action covers its Italian-style grated cheese product that the defendant intended to appropriate without permission in his own cheese company established after resigning from Elm City Cheese Company. The court decided in favor of the plaintiffs and against the defendant. Non-disclosure, non-competition, and consumer protection are the legal issues covered by trademark law, federal labor law, and consumer protection law.

The ethical issues involve the infringement on the part of the defendant and claim for restriction on the part of the plaintiff. The three ethical perspectives, utilitarian, categorical imperative, and justice as fairness, provide different considerations in determining the issue. Injunctive relief and/or fine for damages are corrective measures for infringement and imposition of security measures is the corrective measure for restriction. Background There are two primary stakeholders in Elm City Cheese Company, Inc. et al v. Federico et al. (1999), which was decided in Connecticut.

One is the plaintiff, Elm City Cheese Company, a smallfamily-owned cheese manufacturing company operated by the Weinstein family since the 1950s and based in Connecticut. The company specifically manufactured Italian-style grated cheese using its own recipe and manufacturing process since the company started. The other is Mark Federico, a former accountant and trusted friend of the Weinstein family, who resigned and together with his associates established a similar company manufacturing the same kind of cheese produced by the Weinstein family for sale in the same market.

The plaintiff filed an action against the defendant under the Uniform Trade Secrets Act to protect his trade secret from appropriation by another person without permission. The Elm City Cheese Company sought court action because the appropriation of its trade secret, the recipe and process of making Italian-style grated cheese, would significantly affect its business. Although, the company established by the defendant was in Rhode Island a contiguous state, the proximity means that the defendant would be using the trade secret to compete directly with Elm City Cheese Company in practically the same market.

The resolution of the issue is crucial to the exercise of the exclusive proprietary right of Elm City Cheese Company over its trade secret, which it has kept within the family. The defendant was trusted as part of the family. As an accountant, the defendant handled the finances of both the business and the family. He was also a party to the day-to-day operations of Elm City Cheese Company and a privy to all the trade secrets of the company. The resolution of the action brought against the defendant would determine the ability of the defendant to manufacture and market the same kind of cheese made by the Weinstein family.

The court ruled in favor of plaintiff and against the defendant. Legal Analysis Three legal issues emerged from the case relative to the Uniform Trade Secrets Act, unfair competition law, and federal consumer protection law. First is whether the defendant violated the duty not to disclose or use trade secrets of a former employer. Second is whether the defendant violated the duty not to compete with a previous employer. Third is whether the

defendant violated the principle of consumer protection in appropriating the trade secret of a former employer.

The court ruled against the defendant on these issues. Non-disclosure and limited use of trade secrets governed operates as a duty of employees based on three tests. The first test is when the imposition of the duty is necessary in protecting the legitimate interest of the employer and the appropriate protection is confidentiality. The second test is when the restriction imposed for the operation of non-disclosure does not exceed a period deemed necessary in protecting an employer's interest.

The third test is that the geographical scope of the limitation does not go beyond what is necessary to secure the employer's interest. Concurrently, the legitimate interests of an employer are trade secrets and information on customers such as customer contacts. (Perritt, 1994) Confidentiality and non-disclosure as duties exacted by employers from employees during and during a reasonable period immediately following the termination of employment operates based on the assumption that the employer holds a legitimate interest that requires protection.

In the Elm City Cheese Company case, the Connecticut Supreme Court through a majority vote assumed the existence of an obligation, implicit in the employment contract (Perritt, 1994), of Federico to maintain the confidentiality and not to disclose or use the trade secrets of his former employer. The court also supported the existence of a trade secret covering Italian-style grated cheese, which required reasonable protection. Federico cannot use the trade secret in his own company for three years.

However, the dissenting opinion expressed the lack of a trade secret and non-operation on the confidentiality and non-disclosure principle because there was no sufficient evidence to indicate that the company and the Weinstein family regarded and intended as trade secret its recipe and manufacturing process. The employee manual did not mention about its trade secret and its interest to protect this trade secret by exacting the duty of confidentiality and non-disclosure from its employees via the employment contract.

Nevertheless, it was apparent that the Weinstein family trusted the defendant as a family and relied on this fiduciary relationship to protect its interests (Glusman & Ciociola, 2006). The company never contemplated the need for explicit imposition of the duty from the defendant. Non-competition with a previous employer operates through the test of reasonableness. A restriction on the employer not to compete with the employer should be to secure a protectible interest such as trade secrets. This considers two pitting interests.

Business firms consider trade secrets form part of company assets and an area of expenditure or investment by the firm. Employees could consider those covered by what the company considers as trade secrets as personal attributes. Decisions lean towards business interest in special circumstances when knowledge or skills comprise a special area of investment by companies. (Filipp, 2008) A non-competition clause in the employment contract also signifies the employee's transfer of its personal attributes to the company (Cava, 1990).

In the Elm City Cheese company case, accounting as the area for work of the defendant appears only to have an indirect relation to knowledge of the recipe and manufacturing process of the company. This puts into question whether the work of the defendant for the company, constitutes a special circumstance as raised by the dissenting opinion. The employment contract also does not include a non-competition clause. Nevertheless, the court placed stress on the fiduciary regard of the company towards the employers and his position as privy to trade secrets and the implied non-competition duty.

This means that Federico and his company Lomar infringed the implied non-competition duty and practiced unfair competition (Sander, 1997) by establishing a cheese manufacturing company producing the same product as Elm City Cheese Company. The court held that Federico could manufacture other types of cheeses other than Italian-style grated cheese. Trademark laws secure consumer protection is by ensuring that trademarks and other intellectual property are able to enable differentiation by consumers and guarantee their choice.

Infringement of trademark laws would defeat differentiation since two companies or two brands sell exactly the same product. (Sander, 1997) Public interest operates as a factor considered in determining cases involving trade secrets (Filipp, 2008). Federico and his company Lomar violated the principle of consumer protection in appropriating the trade secrets by making the same product as that of Elm City Cheese Company. This could cause confusion among consumers. Ethical Analysis Two ethical issues emerge from the case.

One is whether Federico can establish a similar company and manufacture the same product as his former employer. The other is whether the Elm City Cheese Company can restrict Federico from engaging in a similar business and products. The utilitarian perspective considers ethical action as that which considers the well-being of all people involved or affected by the issue. As such, actions should enable the achievement of the greatest benefit with the least detriment to the affected persons. Actions should also secure the greatest benefit for the most people.

(Johnson, 2007) Based on this perspective, the appropriation of the trade secrets of Elm City Cheese Company by Federico constitutes unethical behavior because it results in greater detriment to more people relative to the personal benefit to him. The court action to restrict Federico and Lomar from appropriating the trade secrets of Elm City Cheese Company constitutes ethical action. The parties adversely affected by the infringement includes the Weinstein family, its employees, and its customers while the parties benefiting from the infringement is Federico, other company owners, and its employees.

Federico can ensure greater benefits by establishing products of its own to provide the same benefits but with no detriment to other parties. The categorical imperative perspective explains that the pursuit of ethical action is an imperative and without any qualifications. Individual should pursue what is ethical regardless of what the consequences could be. (Johnson, 2007) In the Elm City Cheese Company case, the ethical action is for Federico to honor the trade secrets of the company and the Weinstein

family. He cannot claim any aspect of the trade secret as his personal attribute to justify his appropriation of the trade secret.

Since the ethical action is categorical imperative, it is unethical for Federico to appropriate the trade secrets of his previous employer as a way of competing with Elm City Cheese Company. Federico should not have deviated from this ethical action even if he would have trouble in developing his own cheese product. The justice as fairness perspective provides that ethical action is something aligns with the equal application and protection of rights. This also means the consistency in the treatment of people except only when there are significant differences that justify variance in treatment.

There should also be distribution of benefits and burdens across a group. (Johnson, 2007) In application, while Federico has the right to establish his own company similar to the Weinstein family, there should be equal protection of rights. Since Elm City Cheese Company has exclusive proprietary right over its Italian-style grated cheese, Federico should respect this right in the same manner that Elm City Cheese Company would respect the exclusive appropriation rights of Federico over the cheese products he exclusively and uniquely developed for his cheese company.

Contributing Factors Elm City Cheese Company is a small family-owned business. While its corporate culture is typical of small family run companies, this allowed unethical behavior to happen. The corporate culture of Elm City Cheese Company heavily relies on fiduciary relations. As a direct result, apart from the basic elements of an employment contract, other duties expected from employees impliedly operates through legal provisions but

not explicitly communicated or included in the contract. This is typical of small family-run firms.

The small size of the organization means that the owners know all the managers and employees by name and even some personal information. Most of the managers and employees live in the same community and the relationship could even extend beyond the workplace. However, by relying on trust alone based on the assumption that this would deter any unethical action this also creates room for abuse. Federico was trusted as part of the family and he was privy to sensitive information, related to his work as accountant. The non-expectation of violation of the trust and lack of precaution or complacency enabled the unethical action to happen.

Another characteristic of the corporate culture of Elm City Cheese Company is its informal system of management. The policies and rules are based on the basic principles of human relations and largely unwritten. The company has no provision in its employment manual about the confidentiality of its trade secrets and expectations of non-disclosure from its employees. The same information does not appear in its employment contracts. This led to the infringement, whether this was due to the belief of appropriateness of the action due to lack of written rules or due to knowing appropriation of trade secrets.

Ethical Decision Factors to Consider In the first issue on whether it is ethical for Federico to establish a similar company and manufacture the same product as that of his former employer covers various factors. The utilitarian perspective identifies these factors as the stakeholders or the parties affected by the action as well as the benefits and harm to these

stakeholders. If more stakeholders experience harm or if the overall detriment outweighs the benefits then the action is unethical. The party concerned should cease from doing the action.

If the party pushed through with the action, then that party should face the consequences for inflicting harm. Based on the categorical imperative perspective, the consideration is the nature of the action, particularly whether this adheres to ethical norms and reasonable expectations of practice. If the action is unethical, the person should not pursue it even if the person does not agree with it or the person suffers some form of loss. If the person pursues the action, then the imperative penalty for pursuing that action follows.

The justice as fairness perspectives calls for the consideration of the existence of rights and its equal application. If the action violates equal protection of rights, then it is unethical and involves the liability that comes with the violation of rights. The second issue on whether Elm City Cheese Company can restrict Federico from engaging in a similar business and the same product, the different perspective also identify different considerations. The utilitarian perspective points to the weighing of costs and benefits to stakeholders.

The restriction is ethical if this ensures the greatest benefit with the least harm to the parties affected. The categorical imperative provides the consideration of whether Federico, being in the same position as the Weinstein family, would also seek restriction against a former employee infringing its trade secrets. The justice as fairness identifies the exercise and protection of rights by one person that is also available to another person,

such as if the right to seek restriction applies to Elm City Cheese Company as well as Lomar. Recommended Corrective Action

The corrective action for the issue on infringement of trade secrets and non-competition is injunctive relief to cease disclosure or maintain confidentiality and fine for damages (Filipp, 2008) for the Italian-style grated cheese product made by Lomar. However, Lomar can manufacture other kinds of cheese products. Injunctive relief running three years was the penalty imposed by the court on Federico for his actions. Pepsi Company sought injunctive relief in 1995 to prevent the employment of an executive officer at Gatorade/Snapple since this would necessitate disclosure of its trade secrets (Brown & Gutterman, 2005).

The corrective action for the issue on the claim for restriction is to enforce security measures in areas make the trade secret vulnerable. There should be explicit and active efforts to protect the trade secret to claim infringement. (Cava, 1990) Elm City Cheese Company should exercise active effort to protect its trade secrets. Coca-cola exercise security measures to protect its cola recipe. It withdrew from India when a law required the company to share its recipe with a local manufacturer. Coca-cola also preferred to keep its recipe secret instead of obtaining patent.

(Pendergrast, 2000) KFC also keeps its colonel's original chicken recipe in a guarded vault accessible to only a few top executives (Chartrand, 2001). Elm City Cheese Company needs to make changes in its policies to prevent a repeat of these issues in the future. One change is to incorporate explicit provisions covering its trade secrets in company policies and employee manuals (Cava, 1990; Filipp, 2008). This constitutes a security measure

because employees aware of the policies would not likely to unknowingly infringe and in case of infringement there is clear evidence of the existence of trade secrets subject to protection.

The other change is to include confidentiality and non-disclosure clauses in employment contracts, especially for personnel becoming privy to trade secrets, to an extent deemed reasonable (Cava, 1990; Filipp, 2008). As another security measure, the company can adopt this to deter infringement or gain a strong basis for claims. Reference List Brown, R. L. , & Gutterman, A. S. (eds.) (2005). Emerging companies guide. Chicago, IL: American Bar Association. Cava, A. (1990). Trade secrets and covenants not to compete: Beware of winning the battle but losing the war.

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Elm City Cheese Company, Inc. et al v. Federico, et al. , 251 Conn. 59, 752 A. 2d 1037 (1999).