The Inevitable Disclosure Doctrine: Safeguarding the Privacy of Trade Secrets

by Jessica Lee

Most employers have trade secrets: information that is secret and valuable and gives the employer an advantage over competitors who do not have that information. Certain employees, including executives, salespeople, and technical staff, necessarily have access to trade secrets, which is not a problem if they remain loyal to their current employer. However, an employee may leave to work for a competitor, perhaps for a substantial increase in pay because of the information and expertise learned while working for the previous employer. There may not be a non-compete agreement in place to prevent an employee from working for a competitor in a substantially similar position.

Even if an employee wanted to preserve the former employer's trade secrets, it may not be realistic to think he or she could compartmentalize and avoid being influenced by the former employer's valuable trade secret information when performing similar duties for a competitor. In such circumstances, the former employer may have a remedy if it can establish the elements of the inevitable disclosure doctrine (also referred to in this article as the "doctrine").

This article defines the inevitable disclosure doctrine and discusses the seminal case applying the doctrine. It outlines public policies that both favor the doctrine's application and support its rejection. The article also provides examples of cases applying and rejecting the doctrine in other jurisdictions. Finally, the article recommends measures employers might take to safeguard the privacy of their trade secrets. Many of these steps should help prevent the need to rely on, and litigate, the inevitable disclosure doctrine.

Overview of Inevitable Disclosure Doctrine

The inevitable disclosure doctrine is a judicially created doctrine that permits courts to issue an injunction prohibiting an employee from working for a competitor of his or her former employer. It is a tool that allows courts to restrain an employee from working for a competitor, even in the absence of a noncompete agreement or any evidence of actual wrongdoing. For the doctrine to be used, the court must find that the employee could not help but disclose his or her former employer's trade secrets in performing the new job—in other words, the disclosure would be "inevitable." To win the injunction, the former employer must show, at a minimum, that the former employee had access to the employer's trade secrets and that his or her new job with the competitor renders disclosure or use of those trade secrets inevitable.

Because the inevitable disclosure doctrine prevents threatened misappropriation of the former employer's trade secrets, it arguably finds support in the Uniform Trade Secrets Act ("UTSA"), which Colorado has adopted. The UTSA allows courts to enjoin actual and threatened misappropriation of trade secrets. Nevertheless, Colorado courts have not yet adopted or rejected the inevitable disclosure doctrine in any published opinion.

The doctrine effectively imposes a non-compete restriction on the employee where the employer did not negotiate for one. Noncompete agreements have been disfavored historically throughout the United States. This is because such agreements restrict employees' mobility and prevent them from marketing their most valuable knowledge and skills to employers, who have an interest in obtaining talented labor. Nevertheless, most state laws, including Colorado's, permit noncompete agreements for the protection of trade secrets, reasoning that employers should not be discouraged from pursuing technological, medical, and other advances, inasmuch as society as a whole would continue to benefit from such advances.

Most courts view the inevitable disclosure doctrine as merely a means of demonstrating threatened misappropriation, which the UTSA addresses. Other courts, however, have described the inevitable disclosure doctrine as creating a third type of misappropriation—in addition to actual and threatened misappropriation—and thus not expressly justified by the UTSA.

Because there are so many competing interests at stake, courts that have addressed the inevitable disclosure doctrine are all over the map in terms of whether to apply the doctrine at all and, if so, under what circumstances. Colorado courts have not yet articulated a test for applying the inevitable disclosure doctrine.

Seminal Case: PepsiCo, Inc. v. Redmond

The Seventh Circuit Court was one of the first circuit courts to uphold an injunction based on the inevitable disclo-
sure doctrine. PepsiCo, Inc. v. Redmond, which was decided in 1995 and is the leading case applying this doctrine, involved a rivalry between PepsiCo and Quaker Oats for the sports drink market.

Defendant Redmond began working for PepsiCo in 1984. When he joined the company, he signed a confidentiality agreement but he did not sign a noncompete agreement.

After ten years at PepsiCo, Redmond became general manager of the business unit covering California that accounted for 20 percent of PepsiCo's profit for the United States. Redmond's high position in the company gave him access to inside information, including: (1) PepsiCo's national and regional marketing and financial strategies for the upcoming year; (2) the company's plan for specific markets; and (3) PepsiCo's plan of attack for increasing its share in the sports drink market.

In 1994, without informing PepsiCo, Redmond began negotiating for employment with the sports drink division of Quaker Oats. Redmond ultimately accepted a job offer from Quaker Oats to become Vice President—Field Operations of the company's sports drink division. However, Redmond informed his PepsiCo supervisors that he had accepted an offer to become Quaker's Chief Operating Officer. Shortly thereafter, PepsiCo filed a diversity suit against Redmond and Quaker Oats, seeking to enjoin his employment at Quaker Oats.

In the Illinois district court, PepsiCo argued that Redmond would inevitably disclose the trade secrets he acquired while employed at PepsiCo, inasmuch as his new position gave him substantial input on the marketing of Quaker Oats's sports drink products. The defendants argued that Redmond would be responsible for implementing Quaker Oats's pre-existing business plans; therefore, any special knowledge of PepsiCo's strategies would be irrelevant. The defendants also noted that Redmond had signed a confidentiality agreement that prohibited the disclosure of any trade secrets or confidential information. Nonetheless, the court agreed with PepsiCo and enjoined Redmond from working at Quaker Oats.

The Seventh Circuit Court reviewed the Illinois Trade Secrets Act and relevant case law. The court concluded that a plaintiff may prove a claim of trade secret misappropriation by demonstrating that defendant's new employ-
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disclose its trade secrets to his new employer. The district court acknowledged that the inevitable disclosure doctrine "has been used as a vehicle for showing that an injunction is necessary to prevent the misappropriation of trade secrets." Because Iowa's trade secrets act authorized courts to enjoin actual or threatened misappropriation, the *Barilla* court concluded that the doctrine was "just one way of showing a threatened disclosure." (Emphasis added.)

According to the *Barilla* court, to invoke the inevitable disclosure doctrine, an employer must prove not only that the employee had access to or knowledge of trade secrets and that the duties of his or her next job overlap with the duties of his or her former job, but that he or she would be able to remember the trade secret information in a usable form. The testimony before the court failed to show that Wright retained any of the trade secret information to which he was exposed while working for Barilla. Nevertheless, the missing physical evidence of trade secret information that Wright took when he left Barilla convinced the court that a legitimate threat of disclosure existed. The court found that the missing physical evidence "weighed against Wright's credibility and in favor of a nefarious intent" and that there were "simply too many indications that Wright may use this information to further his position at AIPC." Therefore, the court enjoined Wright from working for AIPC or any other competitor of Barilla for approximately one year.

**Pennsylvania:** In a 2000 case, *Hyman Cos. v. Erwin Pearl, Inc.* a Pennsylvania district court considered whether to enter an injunction prohibiting an attorney, Brozost, from representing the plaintiff's competitor in lease negotiations. After working as the plaintiff's general counsel for several years, Brozost had become employed by the defendant companies. There, he performed the same job duties and responsibilities for them that he had performed for the plaintiff as its general counsel. According to the plaintiff, the lease negotiations would inevitably to use or disclose the plaintiff's trade secret information.

The court found that Brozost had "acquired significant and detailed information regarding [the plaintiff's] operations in the . . . years he was employed." Although most of this information was "general knowledge," the court found that Brozost also had acquired "specific knowledge . . . with respect to the lease negotiations which he had undertaken on [the plaintiff's] behalf" that was "properly classified as confidential and proprietary information."

The court also found that Brozost owed a fiduciary duty to the plaintiff and had a duty not to use or disclose its confidential and proprietary information to the plaintiff's disadvantage. The court noted that even in the absence of a restrictive covenant, a former employer can enjoin the competitive use of confidential information obtained as a result of the trust and confidence of a former employer.

Accordingly, the court issued a permanent injunction preventing Brozost from representing the defendants in competing transactions with the plaintiff and from disclosing the plaintiff's trade secret information.

In a 2004 case, *Doebler's Pennsylvania Hybrids, Inc. v. Doebler Seeds, LLC.* the Third Circuit Court predicted that Pennsylvania would apply the inevitable disclosure doctrine based on a state superior court case, *Air Products & Chemicals, Inc. v. Johnson.* In *Air Products & Chemicals, Inc.* the Pennsylvania Superior Court restrained an employee from disclosing confidential information to a new employer and participating in certain aspects of his new job because of the risk of disclosure. The *Doebler* court therefore upheld, under Pennsylvania law, an injunction preventing the appellants from competing with their former employer, despite the fact they had not signed noncompete agreements, because they used their former employer's "own confidential information to compete." (Emphasis added.)

**North Carolina: In Merck & Co. v. Lyon,** a federal court in North Carolina enjoined a former employee from working on a specific product made by the plaintiff's competitor. The court held that North Carolina would enjoin threatened misappropriation based upon an inevitable disclosure theory where the injunction is limited to protecting specifically defined trade secrets, but the trade secret will have to be clearly identified and of significant value.

According to the court, an employer could prove a "likelihood of disclosure" by showing: (1) the degree of similarity between the employee's former and current position; (2) the value of the information; (3) the degree of competition between the former and new employer; (4) the new employee's efforts to safeguard the former employer's trade secrets; and (5) the former employee's lack of forthrightness, both in his or her activities before accepting the job and in his testimony. After reviewing these factors, the *Merck* court concluded that the defendant was likely to misappropriate his former employer's trade secrets and, thus, an injunction was appropriate.

**Courts Rejecting or Limiting the Doctrine**

Lower courts in California, Florida, Michigan, New York, and Virginia have either rejected or severely limited the application of the inevitable disclosure doctrine. However, the supreme courts in each of these states have yet to decide the issue.

**California:** The leading California case on the inevitable disclosure doctrine may be a 1999 case, *Bayer Corp. v. Roche Molecular Systems.* In that case, Betzolos quit his job as a marketing manager for Bayer and accepted a similar position with a competitor, Roche. Thereupon, Bayer instituted legal action and requested a preliminary injunction against Roche.

In ruling on the injunction, the district court stated that it was "likely that Bayer will prove all the elements of its trade-secrets case but one: actual or threatened use or disclosure." (Emphasis added.) To fill this gap, Bayer tried to invoke the inevitable disclosure doctrine by arguing that the disclosure of its trade secrets was unavoidable, because Betzolos inevitably would use them in his new job with Roche. The court discussed the *PepsiCo* decision and noted that the doctrine "allows plaintiff employers to demonstrate threatened misappropriation without evidence of an employee's intent to disclose trade secrets." Nevertheless, the court flatly rejected adoption of the inevitable disclosure doctrine. Instead, the court held that "California trade-secrets law does not recognize the theory of inevitable disclosure." Such a theory, the court reasoned, would be inconsistent with the state's strong public policy in favor of employee mobility and against covenants that restrict such mobility. The inevitable disclosure doctrine essentially creates an after-the-fact non-compete agreement. Therefore, in California, a trade-secrets plaintiff must show an actual use of trade secrets or an actual threat of misappropriation. Bayer could not make this requisite showing, so its
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motion for a preliminary injunction was denied.\textsuperscript{64} Florida: A federal court in Florida refused to apply the inevitable disclosure doctrine in \textit{Del Monte Fresh Produce Co. v. Dole Food Co.}\textsuperscript{65} In this case, Funk was a Senior Vice-President in charge of Research and Development for Del Monte. He signed a confidentiality agreement with Del Monte, but never signed a non-compete agreement. After sixteen years of service, Funk resigned and went to work for Dole as Vice-President of Quality Assurance. Del Monte subsequently sued Dole and Funk and moved for a preliminary injunction to prevent the defendants from misappropriating its trade secrets.\textsuperscript{66}

The \textit{Del Monte} court began its analysis by noting that the UTSA provides for only two types of misappropriation: actual and threatened.\textsuperscript{67} However, the court observed, some courts had "derived a third type—inevitable disclosure/misappropriation."\textsuperscript{68} Del Monte requested an injunction based on the theories of threatened and inevitable disclosure. Thus, the court proceeded to analyze the sufficiency of these theories. The court had little difficulty in disposing of the inevitable disclosure doctrine. After reviewing the cases supporting the theory, the court noted that California and Florida (the two states' laws involved in the case) had neither adopted the doctrine nor cited PepsiCo\textsuperscript{69} with approval.\textsuperscript{70} Therefore, according to the court, that theory could not be relied on to provide the requested relief. Instead, the court held that absent evidence of actual or threatened misappropriation, a court should not allow a plaintiff to use inevitable disclosure as an after-the-fact noncompete agreement to enjoin an employee from working for the employer of his or her choice.\textsuperscript{71}

In so holding, the court interpreted the UTSA to require that a plaintiff prove threatened misappropriation of trade secrets by some means other than the inevitable disclosure doctrine.\textsuperscript{72} The \textit{Del Monte} court also found that no threatened disclosure had been shown. The plaintiff had demonstrated only that Funk possessed company secrets. However, there was no evidence that he took "documents or confidential information with him when he left Del Monte," and there was "no evidence that he made an effort to take such information."\textsuperscript{73} Although Funk had extensive knowledge of Del Monte's business operations, the court believed Funk's testimony that he could not recall this information with precision.\textsuperscript{74} These factors led the court to conclude that there was no threat of misappropriation.\textsuperscript{75}

Michigan: In \textit{Leach v. Ford Motor Co.},\textsuperscript{76} a Michigan court was asked to issue an injunction to prevent a former Ford executive from accepting a position with Fiat, a rival car manufacturer. The executive, Leach, had been with Ford for more than twenty-five years and was bound by both confidentiality and noncompete agreements. The latter did not apply if Leach was involuntarily terminated from the company.\textsuperscript{77} Although there was conflicting evidence as to whether Leach resigned or was involuntarily terminated, Ford contended that the inevitable disclosure of trade secrets should prevent Leach from joining Fiat, even if he was involuntarily terminated.\textsuperscript{78}
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The court disagreed with Ford's contention. The court noted that the PepsiCo decision rested in significant part on the lower court's determination that the former employee's conduct evidenced a lack of candor, and proof of his willingness to misuse trade secrets. However, subsequent decisions have indicated that the inevitable disclosure doctrine may be applied in New York only rarely. In a 1999 case, EarthWeb, Inc. v. Schlack, a New York district court refused to issue a preliminary injunction to prevent an EarthWeb employee from accepting a position at a competitive company. EarthWeb argued, inter alia, that the inevitable disclosure doctrine provided an independent basis for issuance of the injunction. The court rejected this argument and, in doing so, established a high standard for the future use of the doctrine. The EarthWeb court discussed the DoubleClick decision and noted that the DoubleClick case "appears to represent a high water mark for the inevitable disclosure doctrine in New York." Even so, the DoubleClick holding "rest[ed] heavily on evidence of the defendants' overt threat of trade secrets and breaches of fiduciary duty." According to the EarthWeb court, in cases where there was no evidence of actual misappropriation, courts were being "asked to bind the employee to an implied-in-fact restrictive covenant based on a finding of inevitable disclosure." This result was inconsistent with New York's strong public policy against such agreements. Therefore, according to the EarthWeb court, "the inevitable disclosure doctrine treads an exceedingly narrow path through judicially disfavored territory." As such, the court concluded that the doctrine should be applied rarely if there is no evidence of actual misappropriation by the employee.

Following EarthWeb, in a 2003 case, Colonize.com, Inc. v. Perlow, a New York federal district court refused to apply the inevitable disclosure doctrine. The court noted that the doctrine "is disfavored in New York because of the State's strong public policy against restrictive non-competition agreements" and, therefore, is to be used "very sparingly to grant injunctive relief only in circumstances where other evidence of theft of trade secrets exists." There was no such evidence in the Colonize.com case, so the court refused to issue the requested relief. As the court noted, "mere knowledge of the intricacies of a business is simply not enough.

Managing Trade Secrets Without the Doctrine: Practice Tips

Although courts in several jurisdictions seemingly have rejected the inevitable disclosure doctrine, it appears that the doctrine has a legitimate place in trade secret law, particularly because the UTSA (which Colorado has adopted) permits injunctions to prevent threatened misappropriation. Nevertheless, given the uncertainties surrounding the doctrine, Colorado employers should take protective measures to guard the privacy of their trade secret information.

The following tips, suggested by the case law in this area, should help employers protect their valuable trade secrets and confidential information when a former employee joins a competitor. The first group of tips involves agreements with, and obligations of, the company's employees. The second group describes actions employers can take to minimize the risk of trade secret forfeiture.

Employment Agreements for Protecting Trade Secrets

As noted above, the inevitable disclosure doctrine essentially creates an after-the-fact noncompete agreement for which neither the employer nor the employee specifically bargained. Thus, the surest way to avoid having to rely on the doctrine is to enter into a noncompete agreement up front—at the beginning of, or at least during, the employment relationship. Although it still may become necessary to litigate the enforceability of the noncompete agreement, a court is more likely to enforce a negotiated agreement than to impose one that was not negotiated at all.

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Following is a discussion of three agreements employers should consider obtaining from employees with access to trade secrets: (1) noncompete agreements; (2) nonsolicitation agreements; and (3) confidentiality agreements.

Noncompete Agreements: From the employer's perspective, every employee who will be given access to trade secrets ideally should sign a noncompete agreement before he or she begins working for the company. As the EarthWeb Court noted, "Clearly, a written agreement that contains a non-compete clause is the best way of promoting predictability during the employment relationship and afterwards." 103

Although noncompete agreements are generally prohibited by Colorado statute, that same statute permits noncompete agreements for the protection of trade secrets, as long as the agreements are not broader than necessary to protect the legitimate interests of the employer. 104 In addition, there are exceptions to the general rule prohibiting noncompete agreements in Colorado if they are contracts for: (1) the sale or purchase of a business; 105 (2) recovery of certain training and education expenses; 106 and (3) executive and management personnel, as well as professional staff to management personnel. 107

Nonsolicitation Agreements: Because noncompete agreements are generally prohibited by Colorado statute, and despite the exception for contracts for the protection of trade secrets, a Colorado employer seeking to protect trade secrets also should consider having its employees execute a focused and narrowly tailored nonsolicitation agreement. Such an agreement should be similar to the nonsolicitation agreement enforced in Management Recruiters of Boulder Inc v. Miller. 108

In Miller, the Colorado Court of Appeals upheld a nonsolicitation provision involving an employee, Miller, who had worked for a recruitment agency. The employee was restricted from contacting, on behalf of his new employer, any candidates with whom he had contact during the last year of his employment. 109 Due to the presence of trade secrets, the court concluded that the provision was necessary to safeguard the plaintiff's business. 110 The court also found that the terms were reasonable in their effect and "tailored to prevent the misappropriation of trade secrets by Miller." 111

Confidentiality (Nondisclosure) Agreements: Employers concerned about their trade secrets also should have all employees with access to them sign a confidentiality, or nondisclosure, agreement. The agreement should make clear that the employee may never use or disclose the employer's trade secret information to anyone, and must return any physical copies of such information to the employer immediately on termination of employment.

Because noncompete agreements will be enforced only to the extent necessary to protect trade secrets under CRS § 8-2-113(b), there is some risk that a court considering the enforceability of a noncompete agreement may find it unnecessary in light of the confidentiality agreement. However, there is perhaps a greater risk a court would conclude there are no trade secrets to begin with if the employer did not have its employees execute confidentiality agreements to prevent their disclosure.

Other Ways to Safeguard Trade Secrets

In addition to having employees execute employment agreements for the protection of trade secrets, employers can take a variety of other actions to limit and control the dissemination, storage, and exposure of confidential information, both within and outside the organization. Following are some suggestions employers can follow to minimize the risk of losing their trade secrets. Employers should:

- Grant access to highly confidential information on a strict "need-to-know" basis
- Give employees who need access to such information passwords or access codes that other employees do not have
- Periodically change passwords and reset access cards
- Not disseminate highly confidential information to any third parties, possibly including independent contractors 112
- Mark highly confidential documents appropriately and never store them on unsecured back-up disks 113
- Consider maintaining confidential information in a "secured, climate regulated vault that [is] accessible only to those who know [the] combination" 114
- Consider implementing regular procedures to safeguard confidential material, such as distributing contact lists on a weekly basis, precluding employees from sharing their lists with co-workers, collecting the lists at some point in the future, and shredding lists on a regular basis 115
- Consider holding training programs for their employees, emphasizing ways to safeguard privacy of trade secret information
- Address the importance of safeguarding the employer's trade secrets in training and policy manuals
- Conduct Internet searches for unauthorized website postings by former and current employees
- Pre-approve articles and presentations given to outsiders, as well as any public announcements about the company
- Although it sounds obvious, refrain from giving public tours of your facilities, especially to the company's competitors 116
- Consider notifying employees that unauthorized disclosure of trade secrets is grounds for immediate termination
- Upon termination, ensure that the departing employee returns all confidential information and is reminded...
of his or her obligations under the various agreements discussed above.

Employers are not required to adopt all or even most of these measures to seek trade secret protection from the courts. Colorado courts do not impose a standard of perfection or unreasonable expense. Each case is fact-specific and must be viewed in context. Nevertheless, an employer should take reasonable steps and measures to protect its trade secrets and, if it does so, it may never need to rely on the inevitable disclosure doctrine.

Conclusion

The inevitable disclosure doctrine would seem to be proper as long as it is somewhat narrowly construed. The cases discussed in this article suggest different ways the courts have reached this result. Under the strictest of these cases, employers have been required to present evidence of actual misappropriation or threatened misappropriation of confidential information or trade secrets. Employers also have been required to present some evidence of lack of candor by the employee or apparent willingness to misuse the former employer's trade secrets—in other words, a "nefarious intent."119

Some courts have required employers to demonstrate that the employee not only had access to trade secrets, but that he or she would be able to remember the trade secret information in a usable form.120 One commentator has suggested that employers should show that it is inevitable the employee will use a specific trade secret in the course of performing an identified job responsibility inherent in the employee's new position.121 Employers who seek to avoid themselves of the inevitable disclosure doctrine in Colorado should be mindful of these factors and demonstrate their presence to the greatest extent possible. Conversely, employers and employees seeking to avoid application of the doctrine should show that these "inevitability-plus-requirements" are absent and, therefore, the inevitable disclosure doctrine should not be applied.

Above all, every employer should avoid the need to rely on the inevitable disclosure doctrine if possible, by taking measures to protect their trade secrets before their employees defect to competitors. Although there is no perfect way for a company to guarantee that its trade secrets will remain private and secure, the tips in this article provide a good starting point for protecting trade secrets at the source. In addition, they build a solid foundation to support a claim for injunctive relief based on the inevitable disclosure doctrine, should an employee decide to "join the opposing team before the big game."122

NOTES

1. See, e.g., Del Monte Fresh Produce Co. v. Dole Food Co., 148 F.Supp. 2d 1326, 1335 (S.D. Fla. 2001) (In an inevitable disclosure case, "a court can issue an injunction to prevent an employee from working for the former employer's competitor if the employer can demonstrate a real and present danger of disclosure.").

2. PepsiCo, Inc., 54 F.3d 1262 (7th Cir. 1995).

3. See Uniform Trade Secrets Act ("UTSA") § 2(a) (1990) ("actual or threatened misappropriation may be enjoined").

4. Notably, Colorado has adopted the UTSA, including the provision authorizing injunctive relief to "prevent or restrain actual or threatened misappropriation of a trade secret." (Emphasis added.) CRS § 7-74-103. Under the Colorado UTSA, "trade secrets" are "the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, improvement, confidential business or financial information, listing of names, addresses, or telephone numbers, or other information relating to any business or profession which is secret and of value. To be a 'trade secret,' the owner thereof must have taken measures to prevent the secret from becoming available to persons other than those selected by the owner to have access thereto for limited purposes." CRS § 7-74-102(4).


6. See Del Monte Fresh Produce Co., supra, note 1 at 1335.


8. Interestingly, PepsiCo, Inc. and Quaker Oats merged in 2001. According to a PepsiCo statement, "Quaker's powerful Gatorade brand, the world's number one sports drink, will make PepsiCo the clear leader in the United States in non-carbonated beverages." See http://www.pepsi.com/investors/annual-reports2000/quaker.shtml.


10. Id.

11. Id. at 1265.

12. Id.

13. Id. at 1264.

14. Id. at 1265.

15. Id. at 1266.

16. Id.

17. Id. at 1272.

18. Id. at 1258.

19. Id. at 1270.

20. Id.

21. Id. at 1271.

22. See, e.g., Eastman Kodak Co. v. Pouers Film Prods., 189 A.D. 556 (N.Y. 1919).

23. See, e.g., Colonize.com v. Perlou, No. 03-CV-466, 2003 U.S. Dist. LEXIS 20021, at *9, *13, *15 (N.D.N.Y. Oct. 23, 2003) ("A covenant not to compete in an employment setting will be specifically enforceable only to the extent that it is also necessary to protect employer's legitimate interests, not harmful to the general public and not unreasonably burdensome to the employee."). (Internal quotations omitted.)

24. See Barilla Am., Inc., supra, note 5 at *33 (S.D.Iowa July 5, 2002) ("The public interest in protecting valuable trade secrets is embodied and articulated in the Iowa legislature's passage of the Iowa Trade Secrets Act. . . . The Court therefore finds that the public interest is served by enjoining the disclosure of trade secrets."). (Internal citations and quotations omitted.)

25. See UTSA § 2(a) (1990) ("[a]ctual or threatened misappropriation may be enjoined"); Restatement (Third) of Unfair Competition § 44 (1985) ("Injunctive relief may be awarded to prevent a continuing or threatened appropriation of another's trade secret").

26. See, e.g., Colonize.com, supra, note 23 at *13 ("Restrictions against the use by a former employee of his accumulated experience, skill, appreciation of intangibles and judgment in his new employment would effectively bar him from all employment and are beyond legal limits and would have to be declared void."); CMI Int'l, Inc. v. Internet Int'l Corp., 849 N.W.2d 808, 813 (Mich.Ct.App. 2002) ("Even assuming that the concept of 'threatened misappropriation' of trade secrets encompasses a concept of inevitable disclosure, that concept must not compromise the right of employees to change jobs."); Bayer Corp. v. Roche Molecular Sys., 72 F.Supp.2d 1111, 1115 (N.D.Cal. 1999) (noting that courts were reluctant to apply the inevitable disclosure doctrine because of strong public policies in favor of employee mobility.").

27. See, e.g., Colonize.com, supra, note 23 at *13, *15 (the doctrine is disfavored in New York because of state's strong public policy against restrictive noncompete agreements); Bayer Corp., supra, note 26 at 1119 ("California public policy favors mobility and freedom."); Lafourche Speech & Language Servs. v. Juckett, 652 So.2d 679, 680 (La.App. 1st Cir. 1995) (noncompete agreements not favored in Louisiana and generally "deemed to be against public policy").


29. Barilla Am., Inc., supra, note 5.

30. Id. at *6.

31. Id. at *6-8.

32. Id. at *9.

33. Id. at *10-11.

34. Id. at *21.

35. Id.

36. Id. at *25.

37. Id. at *28.

38. Id. at *31.

39. Id. at *35.

40. Id. at *35.

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42. Id. at 501.
43. Id. at 502.
44. Id. at 504 n.1.
45. Id.
46. Id. at 505.
47. Id. at 504.
48. Id. at 505.
52. Doebler Seeds, LLC, supra, note 49 at 522-23.
54. Id. at 1460.
55. See id. (citing PepsiCo, Inc., supra, note 2 at 1287).
56. See id. at 1460.
58. Id. at 1177.
59. Id.
60. Id. at 1118.
61. Id. at 1120.
63. Baxter Corp., supra, note 26 at 1120.
64. Id. at 1121.
65. Del Monte Fresh Produce Co, supra, note 1.
66. Id. at 1328.
67. Id. at 1335.
68. Id.
70. Del Monte Fresh Produce Co, supra, note 1 at 1336-37.
71. Id. at 1337.
72. Id.
73. Id. at 1339.
74. Id. See also, e.g., Barilla Am., Inc., supra, note 6 at *25 ("[A]n employer must prove not only that the employee had access to or knowledge of trade secrets and that the duties of his or her next job overlap with the duties of his or her previous job, but that he or she would be able to remember the trade secret information in a usable form.").
75. The Del Monte Fresh Produce Co. decision, supra, note 1, takes a minority view in analyzing the inevitable disclosure doctrine as a "third type" of misappropriation in addition to actual and threatened. Other courts view the inevitable disclosure doctrine as simply a means of establishing threatened misappropriation. The Del Monte decision has been criticized as misconstruing Florida law, which, unlike California, does not render void noncompete agreements in the employment context and, thus, does not have the strong public policy against covenants that restrict employee mobility. See Schaller, "Trade Secret Inevitable Disclosure Substantive, Procedural and Practical Implications of an Evolving Doctrine," JPTOS 336, 345 (May 2004).
77. Id. at 764.
78. Id. at 775.
80. Leach, supra, note 76.
81. See id., citing CMI Int'l, Inc., supra, note 26 at 813.
82. Leach, supra, note 76 at 775.
83. Id. at 777.
85. Id. at *23.
86. Id. at *16-17.
88. Id. at 303, 317.
89. DoubleClick, Inc., supra, note 84.
90. EarthWeb, Inc., supra, note 87 at 310. 91. Id.
92. Id.
93. See id.
94. Id.
96. Id. at *15.
97. Id.
98. Id. at *16.
100. See id. at 55.
101. Id.
102. CRS § 7-74-103.
103. EarthWeb, supra, note 88 at 311. 104. CRS § 8-2-113(2x)(b).
105. CRS § 8-2-113(2a).
106. CRS § 8-2-113(2x)(b).
107. CRS § 8-2-113(2x)(c).
108. Id. at 811.
109. Id. at 775. 110. Id.
111. Id.
115. See Network Telecomms, Inc. v. Boor-Crepeau, 790 P2d 901, 903 (Colo.App. 1989) (trial court erred in foreclosing employer’s opportunity to present evidence showing that its customer lists were entitled to trade secret protection).
116. See Hildreth Mfg. LLC v. Semco, Inc., 785 N.E.2d 774, 790 (Ohio App. 2003) (information did not constitute trade secrets and thus not entitled to protection because information “not subject to reasonable efforts to maintain its secrecy”).
117. See Network Telecomms, Inc., supra, note 115 at 902 (noting that “efforts to maintain secrecy are those that are reasonable under the circumstances and do not require that extreme and unduly expensive procedures be taken to protect trade secrets”).
118. See, e.g., Colonize.com, supra, note 23 at *16 (“New York courts have used the doctrine very sparingly to grant injunctive relief only in circumstances where other evidence of theft of trade secrets exists.”); see also, e.g., Bridge- stones/Firestone, Inc. v. Lockhart, 5 F.Supp.2d 667, 682 (S.D.Ind. 1998).
119. Barilla Am., Inc., supra, note 5 at *31. See also, e.g., Leach, supra, note 76 at 775 (no evidence of employee’s lack of candor or willingness to misuse trade secrets); H&R Block E. Tax Servs. v. Enchura, 122 F.Supp.2d 1067, 1076 (W.D.Mo. 2000) (“To prevail under this theory, employers must demonstrate inevitability exists with facts indicating that the nature of the secrets at issue and the nature of the employee’s past and future work justify an inference that the employee cannot help but consider secret information.”).
120. See Barilla Am., Inc., supra, note 5 at *28.