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Online Feature

June 21, 2006

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Estee Lauder Ruling Raises Key Noncompete Issues

CARLA J. ROZYCKI AND DAVID K. HAASE
SPECIAL TO LAW.COM
JUNE 21, 2006

A recent decision in U.S. District Court for the Southern District of New York held that a noncompetition agreement that prohibited a former executive, whose office was in California, from competing anywhere in the world was enforceable because it was necessary to protect the former employer's trade secret information. *Estee Lauder Companies, Inc. v. Batra,* F.Supp.2d, No. 06 CIV 2035, 2006 WL 1188183 (S.D.N.Y. May 4, 2006).

While restrictive covenant cases invariably depend upon the facts of the specific case, this holding is favorable to companies with a global presence that are concerned about being able to enforce restrictive covenants with a worldwide scope. The holding is also favorable to employers that are located outside of California and seek to enforce restrictive covenants in California.

Estee Lauder Companies Inc., which is engaged in the business of manufacturing and marketing skin care, makeup, fragrance and hair care products, sought to enforce a 12-month noncompetition restriction against Shashi Batra, a former senior executive of two of Estee Lauder's brands, Rodan and Fields (R+F) and Darphin. R+F and Darphin are primarily focused on skin care products, and both market and sell their products in the cosmetic dermatology market.

Batra was hired on Jan. 5, 2004, to serve as global general brand manager of R+F, and assumed the role of general manager for Darphin, North America on July 1, 2005. In both roles, Batra possessed substantial authority over the business of R+F worldwide and Darphin's North American operations. During his employment with Estee Lauder, Batra was responsible for developing marketing and distribution strategies for the brands he oversaw. Batra also possessed confidential information regarding new products in the development pipeline. Batra's office was located in California.

When Batra was hired, he signed an employment agreement that contained the following restrictive covenant:

> You recognize that the Company's business is very competitive and that to protect its Confidential Information the Company expects you not to compete with it for a period of time. You therefore agree that during your employment with the Company, and for a period of twelve (12) months after termination of your employment with the Company ... you will not work for or otherwise actively participate in any business on behalf of any Competitor in which you could benefit the Competitor's business or harm the Company's business by using or disclosing Confidential Information. This restriction shall apply only in the geographic areas for which you had work-related responsibility during the last twelve (12) months of your employment by the Company and in any other geographic area in which you could benefit the Competitor's business through the use or disclosure of Confidential Information.

JENNER & BLOCK'S CARLA ROZYCKI

JENNER & BLOCK'S DAVID HAASE

Beginning in the fall of 2005, Batra engaged in discussions with Nick Perricone of N.V. Perricone M.D. Ltd. (Perricone), a competitor of R+F and Darphin, regarding a position with Perricone. The New York court later found that, in violation of his duty of loyalty to Estee Lauder, Batra routinely worked on Perricone matters while he was still employed at Estee Lauder and solicited other R+L employees for assistance in performing work for Perricone.

On or about March 7, 2006, Batra served Estee Lauder with notice of his resignation and his intention to become the worldwide general manager of Perricone. When reminded of his noncompetition obligations, Batra replied that he did not believe the restrictions were enforceable in California.

On March 13, 2006, Batra and Perricone filed a lawsuit in state court in California seeking a declaratory judgment that the noncompetition provision was unenforceable. Two days later,

Estee Laueder filed a complaint in federal court in New York seeking to enforce the agreement and to prevent Batra from assuming his position with Perricone.

One of the issues decided by the court in New York was whether to apply New York or California law. Although the employment agreement contained a New York forum selection clause, Batra argued that California law should apply due to the presence of significant contacts in California and California's strong public policy against the enforcement of noncompete agreements, evidenced in California Business and Professions Code §16600, which states that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."

Numerous California court decisions have applied this provision rigidly, and some have relied on it to trump choice of law provisions stating that other states' laws shall govern the agreement. See, e.g., *Application Group, Inc. v. Hunter Group, Inc.*, 61 Cal. App. 4th 881 (Cal. App. Ct. 1998) (invalidating restrictive covenant with a Maryland choice of law provision).

In deciding that New York law should apply, the court found that (1) although Batra was based in California, the work he performed was not "centered" in California, but covered all of North America for Darphin and the entire world for R+L; (2) Estee Lauder's principal place of business and not just its headquarters was located in New York; and (3) many of the significant functions for both Darphin and R+F, for which Batra was responsible, were located in New York.

The court recognized that the noncompetition agreement would not be enforceable under California law because of California's strong public policy.

Nevertheless, the court held that California's interest in the dispute was not materially greater than that of New York, and therefore, New York law would apply. The court noted that while California had a strong public policy in favor of protecting employees, New York in turn had a strong public interest in protecting companies doing business in New York by enforcing restrictive covenants that are reasonable in time and scope. The court cited New York's status as the financial capital of the world and its interest in retaining that status.

Applying New York law, the court found that Estee Lauder had met its burden of showing irreparable harm and a likelihood of success on the merits. With regard to the likelihood of success on the merits, the court found that Batra possessed trade secrets and there was a sufficient showing that he would inevitably disclose these secrets in his employment with Perricone. The court rejected Batra's argument that in order to show a likelihood of success on the breach of contract claim, Estee Lauder was required to show that it would succeed on a misappropriation of trade secrets claim, stating that Estee Lauder simply needed to show that the disclosure would inevitably occur, not that it already had occurred.

The court then addressed the reasonableness of the scope of the agreement. The court recognized that, with regard to the R+F business, the restriction constituted a worldwide prohibition. While the court noted that while "under some circumstances, such a widespread restriction would be patently unreasonable, on the facts presented, it is not so here, given the scope of Batra's responsibilities for R+F and Darphin and the international scope of Estee Lauder's business and the cosmetic industry in general."

In addition, the court found that the fact that Estee Lauder had contracted to pay Batra his salary during the noncompetition period negated the importance of the all-encompassing nature of the worldwide geographic scope, since Batra would remain able to earn a living.

However, the court found that the 12-month restriction was overly broad, as Estee Lauder had previously waived enforcement of the full term of other, similarly situated employees' noncompetition agreements and had offered to reduce Batra's restrictive period to four months if he remained with Estee Lauder for another month. In light of this, the court held that the proper period of enforcement was five months.

This decision is significant for four reasons. First, the Estee Lauder court recognized that, in certain circumstances, even a worldwide restriction on competition can be enforceable.

Second, the court rejected Batra's argument that, since he was employed in California, the court should defer to California's strong public policy against enforcement of noncompetition agreements. To the contrary, while the court recognized such a policy, it held that, under the totality of the circumstances, New York's interests in enforcing the restrictive covenant were equally significant. This may be seen as a backlash against California courts' approach in refusing to enforce restrictive covenants, even those with a choice of law of a different state.

Third, the use of Estee Lauder's settlement offer of reducing the noncompetition period to five months as evidence that it only needed five months of protection is noteworthy.

Finally, the case serves as a reminder that payment of salary during a noncompetition period can increase the likelihood of enforcement.

Although the *Estee Lauder* court granted the preliminary injunction, it remains to be seen whether a California court will recognize the judgment and enforce the injunction given California's public policy.

Carla J. Rozycki and David K. Haase are partners in Jenner & Block's Chicago office and co-chairs of the labor and employment practice group. Rozycki also serves as co-chair of the firm's Positive Work Environment Committee. *The authors wish to thank Darren M. Mungerson for his assistance for assistance on this column.*

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