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ATTORNEYS FOR APPELLANT:

ATTORNEY FOR APPELLEE:

KENNETH B. ELWOOD
Rhame & Elwood
Portage, Indiana

JOHN E. HUGHES
Hoepfner Wagner & Evans LLP
Merrillville, Indiana

HOLLY A. BRADY
Haller & Colvin P.C.
Fort Wayne, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

THOMAS ALDRICH,)
)
Appellant-Defendant,)
)
vs.)
)
ADVANCED IMAGING SOLUTIONS, INC.,)
)
Appellee-Plaintiff.)

No. 64A04-0802-CV-105

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Roger V. Bradford, Judge
Cause No. 64D01-0712-PL-11464

June 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Thomas Aldrich appeals the trial court's grant of a preliminary injunction in favor of appellee-plaintiff Advanced Imaging Solutions, Inc. (Advanced), regarding the parties' covenant not to compete. Specifically, Aldrich argues that the trial court abused its discretion in granting the preliminary injunction because Advanced failed to show that its customer lists and product leasing information qualified as confidential information and trade secrets. Aldrich further contends that the non-compete clause was overly broad and that Advanced failed to show that it had no adequate remedy at law. Finally, Aldrich claims that the trial court erred when it made no ruling on Advanced's claims that Aldrich misappropriated or otherwise had access to trade secrets.

Because Advanced failed to show that it had a legitimate protectable interest in its customer lists and leasing agreements, we conclude that the trial court erred in finding that Advanced had a reasonable likelihood of success at trial on the merits of its claim. Thus, we reverse the trial court's grant of the preliminary injunction.

FACTS

Advanced is an Indiana corporation that sells and services copy machines and printing devices to small businesses. Advanced has approximately twenty sales representatives who service nearly 1,000 customers in northern Indiana and western Michigan. Advanced also has offices in Merrillville, South Bend, Fort Wayne, and Grand Rapids.

Edge Office Solutions (Edge)—a competitor of Advanced—also provides copying and printing services and products to the same area in which Advanced operates. Advanced and Edge typically purchase prospective customer list databases from various entities such as

Dun & Bradstreet. Company sales representatives obtain the list and either visit or make unsolicited calls to the potential customer in an attempt to make a sale. In most cases, a sales representative must make approximately fifty unsolicited calls to gain one customer. If a customer is satisfied with its sales representative, that particular sales representative is likely to acquire renewal contracts and future business with the customer.

Advanced's profits are mainly generated from proceeds received from the service and supply income it earns after the equipment sale is initially made. Thus, employment agreements in the industry typically contain provisions prohibiting the disclosure of trade secrets, including pricing policies, cost of goods sold or leased, customer names, expiration dates, and marketing strategies and practices.

Aldrich has been involved in office equipment sales since October 1997 and he joined Advanced as a sales representative on May 20, 1999. At that time, Aldrich signed an "Agreement Regarding Trade Secrets and Competition" (1999 Agreement). Thereafter, in May 2000, Aldrich left Advanced to work for a competitor, but he returned to Advanced on February 12, 2001. During his employment with Advanced, Aldrich sold or leased copying equipment and accessories along with service or maintenance agreements for that equipment. When Aldrich commenced employment with Advanced, he signed the following agreement (2001 Agreement), which was nearly identical to the 1999 Agreement:

1. Acknowledgment. I acknowledge that (i) all the information, knowledge and data, including but not limited to customer and account lists and any information relating thereto, which I acquire from the Company concerning any confidential information, are highly confidential and constitute Trade Secrets of the Company within the meaning of the Indiana Uniform Trade Secrets Act (the "Trade Secrets"); (ii) the Company has a proprietary interest in the Trade Secrets; (iii) the

Company will invest substantial amounts of time and money to maintain the Trade Secrets; (iv) the Company has implemented procedures to maintain the confidentiality of the Trade Secrets; (v) the Company's competitors would obtain unfair economic and competitive advantages if the Trade Secrets were divulged; (vi) the Company would suffer irreparable and continuing injury if the Trade Secrets were disclosed; and (vii) the Trade Secrets form an integral part of the Company's business.

2. Non-Disclosure of Trade Secrets. In recognition of the acknowledged importance and sensitivity of the Trade Secrets to which I have access, during the term of my employment with the Company and for a period of four (4) years following the termination of my employment with the Company for any reason with or without cause, I shall (i) hold the Trade Secrets in trust solely for the benefit and use of the Company; (ii) not directly or indirectly sell, alienate, transfer, assign, disclose or divulge the Trade Secrets to any person or entity without the Company's prior written permission; (iii) not permit any individual who is not in the Company's employment to have access to the Trade Secrets; (iv) limit access to the Trade Secrets to those of the Company's employees with a specific need to know or use the Trade Secrets; and (v) not directly or indirectly use the Trade Secrets or any information relating to the Trade Secrets in or for the benefit of any individual, business profession, partnership, corporation, joint venture of other endeavor, other than as the Company specifically authorizes in writing.

3. Non Competition. I agree for a period of two (2) years immediately following the termination of my employment with the Company for any reason whatsoever and whether such termination was voluntary or involuntary, I will not do any of the following:

- a. Directly or indirectly, either for myself or for any other person, firm, corporation or other entity, call upon, solicit, divert, or take away or attempt to solicit, divert or take away any of the Company's customers (as hereinafter defined), for the purpose of servicing or attempting to service, or selling or attempting to sell, directly or indirectly, any products or services the same as or, competitive with, those sold or serviced by the Company. For the purposes of this agreement, "the Company's customers" shall mean the customers to whom the Company has sold products or services at any time during the two (2) year period preceding the date of the termination of my employment.

- b. Solicit, endeavor to procure or accept orders for any products or services the same as, or competitive with, those sold or serviced by the Company from any person, firm, corporation or other entity with whom, to my knowledge and during the last year of my employment, the Company has made arrangements (which arrangements may not have yet been concluded) to sell its products or services or with whom it has carried on negotiations respecting the sale of its products or services.

Appellant's App. p. 151-57.

During the course of Aldrich's employment, Advance conducted regular sales meetings at each branch with the general manager and its sales representatives. At those meetings, the representatives disclosed the names of their customers, their sales methodologies, and their marketing strategies and practices. Advanced sends weekly emails to its sales representatives regarding successful accounts and delivery schedules that allow the sales representatives to coordinate equipment deliveries. The sales meetings are intended to remain confidential.

Advanced maintains its customer files in a drawer, and when a sales representative needs a copy of a document in the course of a sale, he or she asks the sales coordinator for a copy of the document from the file. At that time, the sales coordinator provides the sales representative with a copy of the document to assist the sales representative in the sale proposal. The sales representative is also required to sign an agreement stating that the files are confidential and must not be disclosed to third parties. Aldrich worked primarily in Lake, Porter, LaPorte, and Jasper counties and was responsible for approximately fifty customers. Aldrich's accounts included the Jasper County government, the Porter County Assessor, the Valparaiso Water Works, the North Township Trustee, and the Griffith Police Department.

Aldrich learned the identity of other Advanced customers through sales meetings and company e-mails. Aldrich also received reports of equipment delivery and lease expiration dates of other Advanced customers with whom he never had contact. The identity of some of Advanced's customers could be identified by visiting the company website. Additionally, the identity of Advanced's customers and information regarding contracts between Advanced and its customers could easily be duplicated, and it is common practice in the office equipment industry to place a sticker on each piece of equipment identifying the entity that supplied the equipment. Customers oftentimes provide a copy of their existing contract to sales representatives. Moreover, Lanier, the manufacturer of the equipment sold by Edge and Advanced, provides a list to dealers of the entities that have Lanier equipment.

Aldrich's employment with Advanced terminated on September 19, 2006. At that time, Aldrich was permitted to sort through a box in the presence of another Advanced employee to ensure that he only removed his personal effects. Indeed, the evidence established that Aldrich did not take any customer information with him when he left Advanced.

Following the termination of his employment with Advanced, Aldrich joined Edge as a sales representative on October 2, 2006. Aldrich provided Edge with a copy of his employment agreement with Advanced, and Edge representatives sought to prohibit Aldrich from violating any terms of the agreement. Edge also required Aldrich to enter into a new non-competition agreement that was similar to the one that he had executed with Advanced. Specifically, the agreement with Edge prohibited competition for two years with regard to its

customers, prohibited the solicitation of Edge customers, and prohibited the disclosure of Edge's trade secrets.

When Aldrich was working for Edge, he could sell equipment throughout the entire territory in which Edge sold or serviced business equipment. Aldrich's compensation was based on a salary with a performance bonus, which meant that Aldrich received credit for any sales or leases made by any Edge sales representative within Aldrich's territory.

On December 14, 2006, Advanced's counsel sent Aldrich a letter, alleging that Aldrich had made contact with customers or potential customers of Advanced while working for Edge in violation of the non-competition agreement. The letter advised Aldrich that if he failed to cease and desist from violating the terms of the 2001 Agreement, Advanced would initiate legal proceedings to enforce the terms of the contract. The letter was sent in response to Aldrich's attempted solicitation of business from the Duneland School Corporation and the Michigan City library, both of which were customers that Aldrich had served while working for Advanced. Although Aldrich had contacted both customers and informed them that he now worked for Edge, neither of these contacts resulted in a sale on Edge's behalf.

Edge also received a copy of this correspondence from Advanced's counsel. Thereafter, Edge representatives met with Aldrich and instructed him to turn over any Advanced customers to another employee at Edge. At some point after receiving the letter, Aldrich took another Edge employee, Charles Cota, to the North Township Trustee's office to introduce him to Aldrich's contact responsible for leasing or purchasing office equipment. Prior to that time, Edge had no accounts with North Township. Cota knew that Aldrich had

previously entered into lease and service agreements with the North Township Trustee's office on behalf of Advanced. Moreover, Cota was aware that Advanced had a three-year service contract with the North Township Trustee.

As part of Edge's sales pitch to the North Township Trustee, it agreed to lease equipment to the North Township Trustee to replace the Advanced equipment that was already leased. Thereafter, Edge entered into a sales agreement with the North Township Trustee's office and acquired the service contract on the equipment that it leased to North Township. As part of the deal, representatives from Edge orally agreed to assume the remaining lease payments for the equipment that Advanced had leased to the North Township Trustee. Thereafter, Edge took possession of the Advanced equipment, and Aldrich received credit for the sale at the North Township Trustee when his bonus was calculated.

Aldrich introduced another Edge employee, William Connaway, to a contact at the Jasper County government complex. Aldrich had been the Advanced sales representative responsible for the Jasper County government account on Advanced's behalf. At the time, Advanced had an existing service contract for much of the equipment in the Jasper County government complex. Aldrich had been the Advanced sales representative who was responsible for that account. Connaway was aware of the existing service contract between Advanced and the Jasper County government complex. However, as a result of the meeting between Connaway and Aldrich's contact, Edge entered into a service contract with Jasper County and Advanced lost its service contract there.

Aldrich also introduced Connaway to a representative of the Griffith Police Department. Aldrich had serviced that account as a sales representative while working for Advanced. At that time, Advanced had a forty-eight-month equipment lease agreement with the Griffith Police Department that commenced in May 2004. Although Advanced still had more than eighteen months remaining on its contract with the Griffith Police Department, Edge entered into a sales and service agreement with the Griffith Police Department on September 27, 2007. Connaway was the Edge sales representative that made the final sale, and Aldrich was present when that agreement was executed. Aldrich received credit for that transaction in determining his performance bonus. Moreover, Edge entered into a written contract with the Griffith Chief of Police to make the payments on the lease agreement for the equipment that was leased by Advanced, and Edge employees eventually removed Advanced's equipment from the police department's premises.

At some point, Aldrich personally entered into a service agreement on Edge's behalf with the Porter County Assessor's (Assessor) office. That agreement replaced the service contract that Advanced had with the Assessor.

Aldrich also contacted the Water Department in Valparaiso to solicit a maintenance, sale, or lease agreement on Edge's behalf. At that time, Advanced had both a purchase agreement and a separate service agreement with the Water Department. The agreement automatically renewed on an annual basis unless cancellation occurred. Aldrich had been responsible for the Water Department account while working as a sales representative for Advanced, and Aldrich had entered into a service agreement with the Water Department on

Edge's behalf. At some point, the Water Department advised Advanced that it was canceling its service agreement. Although there was a financial incentive at Edge for a sales representative to sell a service agreement that resulted in the cancellation of a competitor's service contract, there was no such financial incentive at Advanced.

Notwithstanding the above transactions, it was not uncommon for a customer to have more than one office equipment vendor providing goods and services to its business. For instance, Living Hope Church obtained a folding machine from Advanced, yet its copiers and printers were from Edge. Edge has over 100 machines in the Portage Schools, and Advanced has a duplicator in the print shop. Duneland Schools had equipment from Advanced, Image Tech, Edge, and one other company. Edge's relationship with Living Hope Church and Portage Schools existed before Aldrich joined the company.

During the summer or fall of 2007, Advanced first learned that Aldrich's customers were transferring service and lease agreements to Edge. At that time, the president of Advanced, Stephen Klatt, interviewed the managers on those accounts and directed them to determine why the customers had cancelled their contracts. Klatt also sought to determine whether Advanced could recover the accounts that had been transferred to Edge. After Klatt consulted with both local and corporate counsel, he was able to identify some of Advanced's customers that switched their business to Edge, but it was impossible to determine how many customers had done so and when the transfers had occurred.

On December 11, 2007, Advanced filed a verified complaint against Aldrich for breach of the covenant not to compete and misappropriation of trade secrets. Advanced also

filed a motion for a preliminary injunction requesting the trial court to restrain and enjoin Aldrich from violating the terms of the Agreement regarding the trade secrets and competition and from disclosing Advanced's trade secrets and other confidential information. Thereafter, Aldrich filed a pre-hearing memorandum, claiming that the Agreement was unenforceable as a matter of law, that there was no evidence indicating that he had misappropriated any trade secrets, and that injunctive relief was inappropriate.

On January 18, 2008, the trial court conducted a hearing on Advanced's motion for preliminary injunction. At the hearing, Klatt testified that he "couldn't get the full amount [of the economic loss], but [he] could get a number that would, attributing what the remaining stream of revenue and profit would be, I could get to that" Appellant's App. p. 130. Klatt further testified that money damages would compensate Advanced for what it has lost "at some point." Id. Following the hearing, the trial court granted Advanced's request for relief, and issued the following findings of fact and order:

FINDINGS OF FACT

4. Aldrich's employment with Advanced ended on September 19, 2006.
5. On October 2, 2006, Aldrich began employment with Edge . . . a direct competitor of Advanced.
6. At the time Aldrich left his employment at Advanced, Advanced had approximately 1000 customers.
7. Aldrich knew, by memory, the names of the customers he serviced on behalf of Advance.
8. Aldrich, in less than one hour's time could name 50 other customers of Advanced not serviced by him.

9. Advanced, as well as other companies in the document management business, do not try to hide who its customers are as the document management company servicing a customer is identified prominently on copy machines and other related items supplied by the document management company.
10. After obtaining employment at Edge, Aldrich directly contacted both the Duneland Schools and the Michigan City Library which were both customers of Advanced.
11. After obtaining employment with Edge, Aldrich introduced other Edge employees to the information technologies director in Jasper County and the North Township Trustee, both of whom were customers of Advanced.
12. While Advanced can identify some of their customers who have switched their business to Edge, it is impossible to determine how many customers have done so and when the switch occurred.
13. The number of potential customers in the geographical area serviced by Edge who are not customers of Advanced is many times the number of those who are customers of Advanced.
14. The Agreement Regarding Trade Secrets and Competition signed by Aldrich on February 12, 2001 provides that Aldrich expressly waives the defense that there is no adequate remedy at law or that a bond is necessary.

ORDER

Aldrich, by his own admission, had violated the non-competition clause of the agreement he signed with Advanced. While Aldrich argues that the definition of customer is vague and it is difficult for Aldrich to tell who is an Advanced customer, the testimony of virtually every witness belies that assertion. Companies like Advanced want it known that they are providing document management for customers by prominently placing their advertising on the machines placed with the customers. In addition, Aldrich said that he could, in less than an hour, identify at least 50 Advanced customers that were not his customers while he was at Advanced and he certainly had memory of many, if not all of the Advanced customers who were serviced by him. Therefore, the Court concludes that it is not difficult for Aldrich to determine who is and who is not a customer of Advanced.

In order to grant a preliminary injunction, the Court must find facts supporting four conclusions. First, that the party seeking the injunction has no adequate remedy at law. While the non-competition clause of the agreement between Aldrich and Advanced attempted to have Aldrich waive that issue, the Court is convinced that that issue is not waivable in advance. However, the evidence presented supports that Advanced has no adequate remedy at law. While Advanced can determine some of the customers lost to Edge because of contact from Aldrich, it cannot determine all of them nor can it determine when Advanced started losing income from those customers. Therefore, the Court concludes that Advanced does not have an adequate remedy at law.

Not enforcing a contract freely entered into by the parties would be a disservice to the public interest. In weighing the injury to Advanced by not granting the injunction against the harm to Aldrich in granting the injunction, the Court concludes that there are many more potential customers in the geographic area served by Aldrich than merely the customers of Advanced. Additionally, since Advanced has chosen not to seek this injunction until this point in time, the injunction will last for less than 8 months. Further, Aldrich need not go very far to find customers who are out of the geographical area served by Advanced. The Court concludes that the harm to Aldrich is minimal, given his blatant disregard for the contract he signed as compared to the injury to be suffered by Advanced.

The fourth issue the Court must address is whether Advanced has a reasonable likelihood of success at trial. Since the Court is granting Advanced its preliminary injunction, the Court concludes that Advanced has a reasonable likelihood of success at trial.

...

Defendant, Thomas Aldrich, is ordered to have no contact, directly or indirectly on behalf of himself or any entity dealing in document management with customers of Advanced . . . who have been customers of Advanced . . . and to whom Advanced has sold products or services at any time from September 19, 2004 to present, provided that said customer is still a customer of Advanced. If the customer has left Advanced for reasons other than contact, directly or indirectly, by Aldrich, this restriction does not apply. This restriction shall remain in effect until September 19, 2008.

Appellant's App. p. 286-88. Aldrich now appeals.

DISCUSSION AND DECISION

A. Standard of Review

We review the trial court's grant of a motion for a preliminary injunction regarding the enforcement of a non-compete agreement as follows:

The decision whether to grant or deny a preliminary injunction rests within the discretion of the trial court, and the scope of appellate review is limited to deciding whether the trial court has clearly abused its discretion. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances or if the trial court misinterprets the law. When determining whether or not to grant a preliminary injunction, the trial court is required to make special findings of fact and conclusions of law. When findings and conclusions of law are made, the reviewing court must determine if the trial court's findings support the judgment. We will reverse the trial court's judgment only when it is clearly erroneous. Findings of fact are clearly erroneous when the record lacks evidence or reasonable inferences from the evidence to support them. We will consider the evidence only in the light most favorable to the judgment and construe findings together liberally in favor of the judgment.

The trial court's discretion to grant or deny a preliminary injunction is measured by several factors: (1) whether the plaintiff's remedies at law are inadequate, thus causing irreparable harm pending the resolution of the substantive action if the injunction does not issue; (2) whether the plaintiff has demonstrated at least a reasonable likelihood of success at trial by establishing a prima facie case; (3) whether the threatened injury to the plaintiff outweighs the threatened harm the grant of the injunction may inflict on the defendant; and (4) whether, by the grant of the preliminary injunction, the public interest would be disserved.

The moving party has the burden of showing, by a preponderance of the evidence, that the facts and circumstances entitle him or her to injunctive relief. The power to issue a preliminary injunction should be used sparingly, and such relief should not be granted except in rare instances where the law and facts are clearly in the moving party's favor.

Aberdeen Apartments v. Cary Campbell Realty Alliance, Inc., 820 N.E.2d 158, 163 (Ind. Ct.

App. 2005).

II. Aldrich's Claims—Scope of Covenants and Protectable Interest

Aldrich claims that the trial court abused its discretion in granting the preliminary injunction because the scope of the activity that the covenants prohibited Aldrich from engaging in was not reasonable. More specifically, Aldrich argues that the evidence failed to show that Advanced had a legitimate protectable interest in its customer lists and leasing agreements as trade secrets and confidential information. Thus, Aldrich argues that the order granting the preliminary injunction must be set aside because the trial court erred in concluding that Advanced had a reasonable likelihood of success on the merits at trial.

In resolving this issue, we note that although covenants not to compete are considered a restraint of trade and are not favored, parties have the freedom to contract and courts will enforce noncompetition clauses if they are reasonable. Robert's Hair Designers v. Pearson, 780 N.E.2d 858, 869 (Ind. Ct. App. 2002). That is, a restrictive covenant restraining an employee from competing with his or her former employer is upheld if the agreement is reasonable in scope as to the time, activity, and geographic area restricted. Titus v. Rheitone, Inc., 758 N.E.2d 85, 92 (Ind. Ct. App. 2001). To determine the reasonableness of the covenant, a court should consider whether: (1) the employer asserted a legitimate protectable interest; and (2) whether the scope of the agreement is reasonable in terms of time, geography, and types of activity prohibited. Id. The employer bears the burden of showing that the covenant is both reasonable and necessary in light of the circumstances. Burk v. Heritage Food Serv. Equip., Inc., 737 N.E.2d 803, 811 (Ind. Ct. App. 2000). In other words,

the employer must demonstrate that the former employee has gained a unique competitive advantage or ability to harm the employer before the employer is entitled to the protection of a non-competition covenant. Smart Corp. v. Grider, 650 N.E.2d 80, 83 (Ind. Ct. App. 1995).

A party that seeks to enforce a covenant not to compete must first show that an injunction is necessary to protect a legitimate business interest. Id. The employee should only be enjoined if he has gained some advantage at the employer's expense that would not be available to the general public. Duneland Emergency Physicians v. Brunk, 723 N.E.2d 963, 966 (Ind. Ct. App. 2000).

Covenants not to compete that seek to protect trade secrets as defined by Indiana law are valid because they seek to protect a legitimate interest. Jenkins v. King, 224 Ind. 164, 65 N.E.2d 121 (1946). In general, a trade secret is information that derives independent economic value from not being generally known, cannot be easily duplicated, and is the subject of efforts to maintain its secrecy. Ind. Code § 24-2-3-2. What constitutes proprietary or trade secret information is a determination for the court to make as a matter of law. Franke v. Honeywell, Inc., 516 N.E.2d 1090, 1093 (Ind. Ct. App. 1997). Moreover, whether customer information constitutes a trade secret or confidential information depends upon the facts of each individual case. Woodward Ins., Inc. v. White, 437 N.E.2d 59, 67 (Ind. 1982).

An employer may protect the "good will" of its business, including "secret or confidential information" such as the "names and addresses and requirements of customers and advantage acquired through representative contact." Donahue v. Permacel Tape Corp.,

234 Ind. 398, 127 N.E.2d 235, 240 (1955). More specifically, covenants have been held enforceable:

[w]hen they protect an employer's interest in trade secrets or other confidential information, when they protect the good will generated between a customer and a business. Elements of this good will include secret or confidential information, such as the names and addresses and requirement of customers and the advantage acquired through representative contact with the trade in the area of their application.

Titus, 758 N.E.2d at 92. Notwithstanding the above, covenants not to compete that seek to merely protect an employer's customer lists that can be easily duplicated are not valid. Am. Shippers Supply Co. v. Campbell, 456 N.E.2d 1040, 1044 (Ind. Ct. App. 1998). Additionally, where the information sought to be protected can be obtained from the customer, from an agreement with the customers, or from other materials provided to the customer by the company, the information is not a trade secret. Woodward Ins., Inc. 437 N.E.2d at 68. Finally, a covenant not to compete must be sufficiently specific in scope to coincide with the legitimate interest of the employer and to allow the employee a clear understanding of what conduct is prohibited. Field v. Alexander & Alexander of Ind., Inc., 503 N.E.2d 627, 635 (Ind. Ct. App. 1987).

In this case, Advanced labeled its customer lists and the leasing information with regard to its copying equipment as confidential information and a trade secret. As a result, Advanced was obligated to establish that such information could not have been easily duplicated by alternate means. Licocci v. Cardinal Assoc., Inc., 445 N.E.2d 556, 561 (Ind. 1983).

Notwithstanding Advanced's contention that it had a legally protectible interest in its customer lists and leasing agreements, the evidence established at the hearing that a list of entities that would potentially be in need of office equipment could be easily duplicated and the appropriate contacts could be easily identified. More specifically, it was demonstrated that most entities in the office equipment industry, including Advanced and Edge, purchase prospect lists from various entities and receive reports from manufacturers identifying companies in the area that have particular office equipment. Appellant's App. p. 91. And although Advanced contends that Aldrich was privy to confidential information, the evidence showed that a customer will produce a lease agreement for office equipment if asked to do so by the sales representative. Id. at 77. As a result, the contracts and other customer information for Advanced were freely accessible and could be copied by Advanced's sales representatives. Id. at 94-95.

Paper files were maintained in a filing cabinet near the front entrance of the office at Advanced's Merrillville branch where Aldrich worked. The files were accessible to all employees, including the sales representatives, service technicians, and the employee who answered the telephones. The file cabinet was not locked, and employees were free to copy the files and take the copies with them on sales and/or service calls once they requested the same from the sales coordinator. Moreover, the sales representatives could maintain their own files. Finally, there was no evidence to indicate that Aldrich took any alleged confidential information with him when his employment at Advanced was terminated. Id. at 93-94.

As set forth above, Advanced—like most office equipment companies—places a placard on the office equipment with Advanced’s name indicating that Advanced has supplied the equipment. Id. at 44. Advanced’s logo is on its delivery trucks and other vehicles that the service technicians drive. Id. at 95-96. Thus, if someone sought to prepare a list of Advanced’s customers, the trucks and customers could be easily identified. Additionally, the evidence established that Advanced did not take any significant steps to maintain the confidentiality of the customer information, including the identity of its contacts, or the terms of leases with particular customers.

The evidence also demonstrated that many of Advanced’s customers did business with its competitors. As discussed above, the Portage School system has approximately 100 pieces of equipment from Edge and one piece of Advantage equipment. Id. at 45. Before Aldrich became employed at Edge, Edge had sold copy machines and printers to Living Hope Church. Id. at 43. Living Hope Church also purchased a folding machine from Advanced. Id. Although Edge already had an existing relationship with Portage Schools and Living Hope Church, the 2001 Agreement sought to prohibit Aldrich from contacting these entities on Edge’s behalf. Therefore, if the Agreement was enforced, Aldrich would be prohibited from contacting those other entities that do business with Advanced and with Edge, despite Edge’s pre-existing relationship with the customers.

In examining these circumstances, the evidence failed to establish that Advanced had a legitimate protectable interest in its customers when those customers were already doing business with Advanced’s competitors. Moreover, Advanced made no showing that

Aldrich took any documents with him following his termination of employment or that Aldrich provided any information to Edge.

In sum, the evidence established that Advanced is involved in the sale of a non-unique product—office equipment—and information regarding its customers can be easily duplicated through legitimate means. The pricing information regarding office equipment sales and leasing are freely available in that the sales representative can inquire about the individual responsible for making decisions regarding the purchase of office equipment and the terms of the lease agreement. Thus, an individual could easily duplicate the customer information for Advanced. Moreover, as discussed above, Advanced does not take any significant steps to maintain confidentiality of the information contained in its client files, and it does not attempt to keep the identity of its clients secret from the general public. Therefore, any information that Aldrich allegedly acquired during his employment with Advanced did not provide him with any unique competitive advantage when he worked for Edge. Hence, Advanced has failed to show that it had a legitimate protectable interest in its customer lists and leasing agreements, and the trial court erred in finding that Advanced had a reasonable likelihood of success at trial on the merits of its claim. Therefore, the preliminary injunction entered for Advantage must be set aside.

The judgment of the trial court is reversed.

KIRSCH, J., and BAILEY, J., concur.