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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 21  
Ashland Management Incorporated,  
Respondent,  
v.  
Altair Investments NA, LLC,  
et al.  
Appellants.

David E. Gordon, for appellants.  
Eric D. Grayson, for respondent.

MEMORANDUM:

The order of the Appellate Division should be modified, without costs, by dismissing the first, second, third, fourth and seventh causes of action to the extent they seek injunctive relief or damages for defendants' misappropriation of client lists or trade secrets prior to their resignation, and otherwise

affirmed. The certified question should be answered in the negative.

The confidentiality agreements executed by defendants did not prohibit them from soliciting plaintiff's clients or contacting its business referrers after their termination of employment. Moreover, plaintiff failed to raise a triable issue of fact as to whether its customer lists constituted a trade secret (see Leo Silfen, Inc. v Cream, 29 NY2d 387 [1972]) and whether defendants improperly used plaintiff's performance data or took any confidential customer information before leaving plaintiff's employ. But plaintiff did raise questions of fact regarding whether defendants breached their fiduciary duties by using plaintiff's time and resources to form a new business and promote themselves while still working for plaintiff. An issue of fact also exists as to whether defendants improperly accessed plaintiff's Federal Express account to discover client information after their employment with plaintiff had ceased.

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Order modified, without costs, in accordance with the memorandum herein and, as so modified, affirmed. Certified question answered in the negative. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided March 25, 2010