

Employers' Social Media "Friends" May Be Trade Secrets

By Jessica Summers

For the first time, a federal court has concluded that an employer's MySpace "friends" list meets the initial requirements to be considered a trade secret. The Colorado District Court's decision in *Christou v. Beatport, LLC* (full opinion here), adds another consideration for employers attempting to navigate the rapidly expanding intersection of employment law and social networking. This case is of particular local relevance because the Colorado statute at issue is nearly identical to its counterparts in Maryland, Virginia and the District of Columbia since all four jurisdictions have adopted the same Uniform Trade Secrets Act.

In deciding whether to grant the employee's motion to dismiss in *Christou*, the Colorado court was faced with making a preliminary determination as to whether to characterize the MySpace "friends" list as simply a publically accessible list of names or a privately held database of contact information. The court ultimately concluded that the list met the initial qualifications of a trade secret on the theory that it was more akin to a database of contact information, including not just names but ancillary information such as email addresses and the ability to contact the parties directly through MySpace.

The court found that the log-in information used by the employer to access the MySpace profile was sufficient to meet the requirement that "proper and reasonable steps" be taken to protect the secrecy of an alleged trade secret. The court did not discuss, however, how the log-in actually protected the allegedly secret contact information and permission to contact the friends as opposed to the mere protection of access to the MySpace account.

It's important to remember that the court did not ultimately decide that the MySpace friends list was actually a trade secret. The court concluded only that the plaintiffs alleged sufficient facts to maintain their trade secret claim and survive the motion to dismiss. Other courts, including Maryland, will undoubtedly have to struggle with these issues in the future. While there may be serious questions whether social networking "friends" lists can be protected as trade secrets, for now, employers would do well to secure social networking profiles and limit access to those profiles.