Dispute Serves Up Lessons for Restaurateurs in Employee Defection and Trade Secrets

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A case pending in New York federal court, BLT Restaurant Group LLC v. Laurent Tourondel, Michael Cinque and LT Burger, Inc., provides a reminder of important lessons for professionals in the food services and restaurant industry regarding employee defection and trade secrets issues. The case arose out of a dispute between BLT Restaurant Group and its accomplished executive chef, Laurent Tourondel. BLT was formed in 2004 and operated eighteen restaurants across in the United States and internationally. BLT hired Tourondel as its Executive Chef. As part of the agreement between BLT and Tourondel, BLT incorporated Tourondel's name and initials into the branding of the BLT restaurants, hence the acronym: Bistro Lourent Tourondel. One of the restaurants in the BLT family was BLT Burger.

After Tourondel left BLT, he opened a new restaurant named "LT Burger". BLT sued Tourondel, a colleague who left with him, and LT Burger, and alleged that the LT Burger menu copied the BLT menu "almost exactly" and was based on BLT's confidential and proprietary information.   BLT also claimed that LT Burger and Tourondel used the same proprietary recipes at LT Burger as were used at BLT Burger. BLT further alleged that LT Burger misappropriated elements of BLT's marketing strategy by promoting Tourondel through similar media as were used by BLT. In addition to violating Tourondel's contractual confidentiality and non-disclosure obligations, BLT alleged that LT Burger and Tourondel breached Tourondel's duty of loyalty to BLT and that Tourondel and LT Burger engaged in unfair competition.

In support of its claims that Tourondel breached his contract by using and disclosing confidential information, BLT alleged that this information consisted of its proprietary business models, financial and contractual information, "know-how," the development of the BLT Burger Menu, the use of BLT Burger's proprietary recipes, and the promotion of Tourondel and LT Burger through a magazine used by BLT Burger to promote itself. Tourondel argued that these claims should be dismissed because all of the information – except for the recipes – cannot be a trade secret as a matter of law. Notably, Tourondel conceded that the proprietary recipes could serve as the basis of a breach of contract claim.

There are some important lessons to note from this dispute for restaurateurs and those investing in or launching restaurants:

• Make sure that agreements address confidentiality and non-disclosure obligations of key talent in the kitchen. These individuals can constitute a competitive threat if they leave, which makes it important that they agree at the outset to not disclose the restaurant's confidential and proprietary information. Such agreements can also help to support claims for special or emergency injunctive relief, such as a temporary restraining order, in the event a case requires some speedier action by a Court.

• Use employee policies that also define confidential and proprietary information and the ethical and permissible uses of such information. While the Court in Tourondel did not discuss the existence of an employee manual, it can be an important tool to establish an employee's knowledge and understanding of what types of information are confidential and proprietary. This, in turn, can support claims for breach of contract and fiduciary duty.

• Ensure the proper protection of confidential information by limiting access to that information and securing it on the premises. To the extent a restaurant has confidential or proprietary recipes or unique business methods and strategies, it should be sure to disclose them only on a "need to know" basis, and it should implement and enforce policies that strictly prohibit employees from copying or distributing the information or physically or electronically removing it from the restaurant for any reason.