

Linked in but lost out

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Company information uploaded to employees' social networking sites may be protectable. However, where a company gives away its 'crown jewels' on its own website, the courts may be less sympathetic. Two recent and contrasting cases highlight what may be classified as 'confidential' information and therefore protectable when an employee leaves employment.

In *Hayes v Ions*, an ex-employee was ordered by the High Court to disclose details of his profile on the social networking site - 'Linked In'. Mark Ions worked for Hayes Specialist Recruitment for 6½ years. He left to run his own agency, which he set up nearly 3 weeks before resigning from Hayes.

Hayes alleged that whilst still an employee, Mr Ions copied confidential information about Hayes' key clients and contacts, which he intended to use for his own venture. Hayes issued a High Court application seeking pre-action disclosure of information from Mr Ions and his new firm, to try and use this information as the basis of a lawsuit against Hayes for breach of contract.

Mr Ions tried to argue that the information put on the Linked In site was done with Hayes' consent and that once he had uploaded it, and once the invitation to join his network had been accepted by other clients, the information ceased to be confidential because it was accessible to a wide audience through the network. The Judge dismissed Mr Ions' arguments, partly because the evidence showed Mr Ions had uploaded the information onto the website not for Hayes' benefit but for the benefit of his new business. The Judge commented that even if Mr Ions had uploaded various email addresses with the authority of Hayes, the authority was limited to using the email addresses in the performance of his duties as an employee of Hayes, and not otherwise.

In another recent case *WRN Limited v Awris*, the Court considered whether customers' business cards and addresses amounted to confidential information, even when such information was advertised on the employer's website. The website contained a comprehensive list of customers but some entries did not have contact names. However, the Court concluded that an internet search of only about 3½ hours would have provided the relevant contact details for those customers, and concluded that the information in the business cards and addresses was not confidential because of the ease with which such information could be reproduced. Furthermore, by displaying information on its website, the company in question did not treat the information as confidential.

As employees seek ever more novel ways to export the information they want to retain after exit, employers need to remain vigilant and ensure that they treat their confidential information with the care with which they wish it to be treated by others.

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