



Case study: Former scientific director violates non-compete, Kentucky court rules

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Categories:

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Problem

Our client, a Lexington, Kentucky-based company that sponsored continuing medical education (CME) programs at seminars throughout the country, hired a Ph.D. with a specialty in cancer research to serve as its scientific director (the “Employee”). In this capacity, the Employee was introduced by our client to its contacts at the grant offices of the major pharmaceutical companies which provided the bulk of our client’s funding. Because of these contacts, and as is customary for CME-sponsoring companies, the Employee was required to sign certain restrictive covenants with our client as a condition of his employment, including a one-year non-compete provision precluding him from working in in any business that competed with our client in the United States.

After working with our client for a little over 18 months, the Employee resigned and went to work for another CME sponsor (the “Competitor”); however, according to the Employee and the Competitor, the new employment was not prohibited because the Competitor only developed CME programs in Europe, whereas the non-compete only prohibited competition in the United States. The Employee also argued that the non-compete was overbroad and unnecessary because he merely developed CME programs and did not solicit funding.

Solution

Frost Brown Todd’s (FBT) trial team, led by [Barry Hunter](#), filed suit seeking preliminary injunction in federal court in Lexington, Kentucky, to prevent the Employee from working for the Competitor for the remainder of the term of the non-compete. Prior to the preliminary injunction hearing, in discovery and through testimony at the hearing, FBT was able to demonstrate that the Competitor’s

CME programs, while physically occurring in Europe, were marketed, via videotape, throughout the United States — thus, a violation of the terms of the non-compete (competition in the United States) was established. Moreover, FBT demonstrated that proof of the Employee's solicited funding was not necessary in order for the court to enforce the non-compete covenant.

Client Benefit

After a two-day preliminary injunction hearing, the court enjoined the Employee from working for the Competitor or from taking any other new employment with a company in competition with our client's CME services.

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