

BLOGS

Post-Termination Injunctions: Noncompetes

California Federal Court Enforces Noncompete Against Former Franchisee

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A federal court in California granted a franchisor's motion for a preliminary injunction against a former franchisee alleged to have misappropriated trade secrets and breached a noncompetition provision related to the continued operation of a formerly franchised restaurant. *Bambu Franchising, LLC v. Nguyen*, 2021 WL 1839664 (N.D. Cal. May 7, 2021). Bambu licenses the operation of restaurants that sell Vietnamese beverages utilizing confidential recipes. After the sale of Bambu to the current owner, the original owner, Jenny Nguyen and her company Bambu Delight Hostetter, Inc., continued to operate a Bambu location under the terms of a franchise agreement. Nguyen ultimately, without the approval of Bambu, transferred management of her franchise to Phu Tien Vu. After Bambu decided not to renew the Hostetter franchise agreement, Vu's company, Lyche, Inc., began operating the location as a competing store. Bambu filed suit and sought an injunction against Nguyen, Hostetter, Vu, and Lyche, alleging trade secret misappropriation and violations of the noncompetition provision in the franchise agreement.

In opposing the preliminary injunction, the defendants contended that (1) Bambu's recipes did not constitute protectible trade secrets as Bambu failed to take reasonable efforts to maintain their secrecy; (2) Bambu lacked direct evidence of Lyche's use of the recipes; (3) neither Vu nor Lyche were bound by the noncompete provision in the franchise agreement; and (4) Lyche and Vu, not Nguyen, were operating the location. The court disagreed. First, the court found strong evidence of the recipes' status as trade secrets in the terms of the franchise agreement and the confidentiality provisions entered into by Bambu's franchisees and their employees. Second, the court found strong circumstantial evidence of misappropriation in Vu's unauthorized management of the location and Lyche's subsequent ownership and ongoing operation of the location. Third, the court found that Lyche and Vu contractually assumed the obligations of Hostetter under the noncompetition provision through Lyche's purchase of Hostetter. Finally, the court found that as a result of Vu's position at Hostetter, Vu's activities were attributable to Hostetter; therefore, although Nguyen had not violated the noncompetition provision, Hostetter had. Although the court recognized that California statute 16600 restricts enforcement of some types of noncompetition provisions, it noted that statute created exceptions meant to prevent unfair

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competition, which permitted the noncompete in this case. As a result, the court granted the preliminary injunction.