



IFA ANNUAL CONVENTION



20
22



Risk to Trade Secrets During the Age of Zoom

Franchise Development Track

Risk to Trade Secrets During the Age of Zoom



Lee Plave

Partner
Plave Koch PLC
lplave@plavekoch.com



Michael Seid

Managing Director
MSA Worldwide
mseid@msaworldwide.com

JOIN THE CONVERSATION

- Live tweet and share quotes
- Tweet top takeaways – please include your Twitter handle
- Tweet questions and share statistics/data
- Before, during, and after the session, please use:
 - **Twitter:** #IFA2022 and tag @Franchising411
 - **Instagram:** #IFA2022 and tag @Franchising411
 - **Facebook:** @IFA.DC

How to protect your trade secrets and intellectual property when using Zoom and other electronic platforms during franchise recruitment

Pandemic communication

- Face-to-face obviously impeded
- Switch to digital platforms



Google
Hangouts



GoToMeeting

How to protect your trade secrets and intellectual property when using Zoom and electronic platforms during franchise recruitment

Pandemic communication: digital platforms

• Pros

- Easy
- Cheap
- Remote actually works!

• Cons

- Security?
- Confidentiality?
- Who's lurking?



Are these platforms sensible? Secure?



- Internal security tools
- Use built-in tools - new bridge numbers and links for each call
- Don't re-use bridge numbers or links – “party line”
- What is the danger of allowing unknown parties to “listen in?”
 - Loss of Trade Secrets!

Courts assess

Smash Franchise Partners v. Kanda Holdings, 2020 WL 4692287 (Del. Ch. Aug. 13, 2020)



"Assuming ... Smash **had** protectable trade secrets, Smash **did not take reasonable steps to protect their secrecy**. Smash **freely gave out the Zoom information** ... to anyone who had expressed interest in a franchise and completed the introductory call. Smash used the **same Zoom meeting code for all of its meetings**. Smash **did not require that participants to enter a password** and **did not use the waiting room feature** to screen participants. Anyone who had expressed interest ... could join the calls, and **participants could readily share the code with others.**"

Courts assess

Smash Franchise Partners



“Smash and Fastlane also did not follow their own procedures. Bode was supposed to take roll at the beginning of each call and remove anyone who did not belong, but she did not. The record establishes that **twenty participants who cannot be identified** [listened] to the meetings. There is **no evidence that these individuals signed NDAs.**”

Because Smash **did not take reasonable steps to protect its trade secrets,** Smash has not established a reasonable likelihood of success”

Courts assess

Proudfoot Consulting v. Gordon, 576 F.3d 1223 (11th Cir. 2009).

Company **provided valuable business information** to Gordon ... and a competitor sought to hire Gordon; the court found that **“the confidentiality of that ... information is at risk so long as [Gordon] is employed by Proudfoot's direct competitor.”**

Veterinary Orthopedic Implants v. Haas, 2020 WL 5369087 (M.D. Fla. Sept. 8, 2020)

[T]o enforce a restrictive covenant under Florida law, a **business must show** that it has a **legitimate business interest** justifying the restriction, which includes, as relevant here, **confidential business information.**

Confidentiality



- **Treat confidential information properly**
- **Protect secrets**
 - **Do you need an NDA for a discovery day call?**
 - **Would an NDA even be defensible?**
- **Consider:**
 - **Is the info you convey **actually confidential** ?**
 - **How much detail **should be given** at prelim stage?**
 - **Should you **pare back details**?**

Using Platforms Effectively

- **Discovery Day**
- **FDD Item-by-Item Review**
- **Platforms give you chance to **pre-cord presentations****
 - **Carefully prepared**
 - **Scripted - elim. "ad libbing" and going off message**
 - **Can be reviewed to confirm that message is right, legal, and that confid info not revealed**

3. Discovery sales call

Discovery calls are meant to learn more about your prospect and their company in order to better qualify them as a potential customer. The key to a great discovery call is asking the right questions. If you've done some research on your prospect try to ask questions that are very specific. You'll also want to steer clear of simple yes or no questions because those answers are so brief. The goal is to get your prospect comfortable and talking so you can have detailed notes and ideally qualify them. Check out [this blog post](#) for a list of questions to ask during discovery calls.

Template:

Hi [prospect's name], this is [your name] from [your company name].

I've been doing some research on [prospect's company name] and I just wanted to ask you a few questions about [common buyer persona challenges].

Example Discovery Questions:

- Are you experiencing any specific challenges with [common buyer persona challenges] and if so what are they exactly?
- What have you been trying to work around these challenges?
- Are you the best point of contact to discuss this with, or do you think other team members would need to be involved?
- What roadblocks have kept you from finding a better solution to [common buyer persona challenges]?
- What would your ideal solution look like?

Option 1: You get a lot of information from the prospect.

Thanks so much for answering these questions. I'd love to continue the conversation because I think [your company name] would be able to help you figure out a solution. [This where you're going to ask them to attend a demo, or continue the conversation with an Account Executive, or take whatever next steps are part of your sales process.]

Option 2: Objection

I understand. Is it ok if I send you a follow up email to review at your convenience? Then I can follow up with you tomorrow. [If yes, send the email and set a reminder to follow up. If no, thank them for their time and ask if there's another point of contact they can connect you with.]

Option 3: Hang up

[Follow up with an email. This may be a better way to connect. Make sure to include resources that clearly explain what your company does and ask to continue the conversation].

Thank you – questions?



Lee Plave
Partner
Plave Koch PLC
lplove@plavekoch.com



Michael Seid
Managing Director
MSA Worldwide
mseid@msaworldwide.com