

Hypothetical Three: Non-Competition Agreement (Nathan Midolo)

Table 6 vs. Table 7

Non-compete Ales is a popular brewery in New Hampshire owned by John and Paul.

After a vacation out west sampling different beers, John and Paul returned to New Hampshire and tried experimenting with different brewing techniques to copy what they tasted on vacation. However, nothing impressed either John or Paul as much as beer they tested in Oregon made by an at-home brewer named Will. Will had told John and Paul some details about his recipe, but they could not reproduce it.

John and Paul decided to convince Will to move to New Hampshire and work for them as their head brew-master. Upon Will's arrival, John and John and Paul had Will's secret ingredients, recipe, and unique fermentation process laminated and placed in an "employees only" section of the brewery. Any employee who wanted to could go and read the recipe. The information was never marked confidential.

When Will was hired he signed an employment contract that included a privacy policy. The privacy policy indicated employee information was private and confidential and should not be disclosed to third parties. The contract did not reference Will's recipe or brewing process.

John and Paul wanted all employees to be familiar with the recipe and encouraged employees take copies of the recipe home to practice brewing the beer. Employees needed permission to take the recipe, but any employee involved in the brewing process was always granted permission.

After Non-compete Ales began brewing Will's beer, its popularity soared. Will's beer won numerous state and regional awards. John and Paul were asked numerous times to give details regarding their new beer, but they refused to give any information to competitors, stating it was a protected trade secret.

6 months ago, Will was approached by Confidential Labs, a Boston-based national brewery with distribution across North America and offered a position as one of its brew-masters.

Will agreed and subsequently told John and Paul he was leaving Non-compete Ales—along with his secret recipe. You are contacted by John and Paul to provide legal advice as to whether Will's recipe and secret fermentation process are protected trade secrets under the New Hampshire Uniform Trade Secrets Act (RSA 350-B:1, IV).

Question:

What facts demonstrate Will's recipe, fermentation process, and barrel-ageing details are **not** protected trade secrets?

Answers:

1. **Not created by Non-Compete Ales:** Not something Non-Compete Ales created, Will brought it to Non-compete Ales.
2. **Disclosed during initial meeting:** Will told John and Paul about the barrel-aging aspect of his process when they first meet.
3. Information was **not labeled “confidential” or “trade secret.”** It was laminated in placed for all employees to see.
4. **Available to all e’ees:** Any employee could read recipe and process and request copy to take home. Any brewery employee could request to take a copy of the recipe home to practice
5. Employment **contract did not mention trade secrets** or confidential information.
6. **Employees could take the recipe home.**

Notes:

Mortgage Specialists, Inc. v. Davey, 153 N.H. 764, 776 (2006)

RSA 350-B:1, IV->

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.