

Hush! Hush! On the English Muffin Know-How

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It may not be rocket science, but it is what consumers like: the nooks and crannies in English muffins, particular those of Thomas'® English Muffins (TEM). TEM has marketed the distinctive physical nature and taste of the English muffin in such a way so as to gain wide market acceptance. In fact, the distinctive nature of the product is a point of focus in the television promotional efforts for the product. TEM is owned by a company, started in 1945, known as Grupo Bimbo, a Mexican baking company which produces more than 7,000 products and more than 150 brands sold in many parts of the world, including the U.S., Latin America, and Asia. Control of TEM by Grupo Bimbo was made possible by the acquisition of George Weston Bakeries during the latter part of the first decade of the 21st century. TEM generates about US\$500 million in yearly sales for the company.

Underlying the creation of a product, which is “crunchy on the outside and soft in the middle” (“English muffin,” 2010, p. B9), is a secret recipe known only to seven people. One of the *group of seven*, a vice-president of operations, is trying to assume a position with another company, Hostess Brands®, but the change of employment is being objected to by Grupo Bimbo. Hostess Brands is owned by Interstate Bakeries Corporation (IBC), a US-based wholesale baker and distributor of baked bread and sweet goods, including Wonder® bread. In 1995, IBC acquired Hostess Brands, the company that produces the world famous Hostess Twinkies®, a brand that has been around since 1930. Hostess currently does not produce English muffins.

A recent appeals-court ruling in Philadelphia, PA, U.S.A., has, at least temporarily, blocked the move of the member of the *group of seven* from taking a position with Hostess. The concern of Grupo Bimbo is that Hostess could learn the recipe and the specific baking details related to the product from the individual so as to duplicate the unique taste, texture, and flavour of the product (“English muffin,” 2010) in a product of its own making. A lower court made a similar ruling earlier in the year, with unanimous agreement coming forth from the three-judge panel (“English muffin,” 2010). The concern of the lower court is that IBC could suffer a loss of market share and harm from which it could not recover (“English muffin,” 2010), if permission for such employment is granted. The interesting point of such a ruling is that it was made even though the employee had an agreement of confidentiality with Grupo Bimbo (cf. “English muffin,” 2010).

The case has been returned back to the lower court (English Muffin, 2010).

Focus: Trade secrets, industrial espionage, agreement of confidentiality, conflict, intra-type conflict, power, types of power (reward, coercion/punishment, referent, expert, legitimate); generic demand, selective demand, non-compete clause., patent.

Questions:

1. Define each of the concepts listed above.
2. Explain how the concepts of generic demand and selective demand apply to Thomas' English Muffins.
3. How does the concept of conflict apply to this case?
4. How does the concept of power apply to this case? What type(s) of power is(are) being used? Explain.
5. What is the trade secret that is of concern in the case? Why should it be of concern to Grupo Bimbo?
6. Coca Cola and KFC also have trade secrets related to their products. What other companies can you think of that have similar trade secrets? Why does a company keep such information a "secret," rather than obtaining a patent for the "secret"?
7. Why do you think Grupo Bimbo is seeking a court injunction to prevent the employee from working for another food company? What if the company of interest was an automobile manufacturer or furniture manufacturer, do you think that Grupo Bimbo would have taken such action and do you think the company would prevail? Explain. Of what relevance would the agreement of confidentiality have in such a situation compared to the current situation with Hostess? Explain.
8. How does the concept of intra-type (rather than inter-type and vertical) conflict apply in the current case situation?
9. What are the different ways that a company can take to protect trade secrets, including when employees that had access to such information decide to leave the company?
10. Quite often, when company is sold to someone else, the original owner is prevented from starting up a company that would compete with the original firm. To accomplish this, a "non-compete" clause, with a defined period of time, is included as part of the original contract of sale of the firm. Why would a seller want to include such a requirement?
11. What do you think will be the outcome of the court case? Explain.

Sources: [1] English muffin secret prevents jump to Hostess. (2010, July 29). *The Globe and Mail*, p. B9; [2] Hostess Brands website: <http://www.hostesscakes.com>, [3] Grupo Bimbo website: <http://www.grupobimbo.com.mx>