

A quick, temporary solution

Halt irreparable damage to your business by filing for emergency injunctive relief. **Interviewed by Leslie Stevens-Huffman**

A salesperson quits, goes to a competing firm with your customer list and begins soliciting your customers. A competitor falsely advertises that your product causes injury to children. Must you sit back and wait months for your day in court while your company suffers irreparable harm? The answer to that question is a resounding “no,” according to Spencer Skeen, litigation partner for Procopio, Cory, Hargreaves & Savitch LLP. Skeen says that under these types of circumstances, executives should contact their attorneys about the potential for emergency injunctive relief.

“Injunctive relief is sometimes the only way to prevent irreparable injury to your business,” Skeen says. “It’s an effective option when a claim for monetary damages just won’t be good enough and when you need to stop someone from infringing on your rights pending trial.”

Smart Business spoke with Skeen about when CEOs should seek injunctive relief.

What is preliminary injunctive relief, and why is it beneficial?

Preliminary injunctive relief is frequently referred to as extraordinary relief because it is sudden and powerful. Traditionally, a preliminary injunction is a court order that preserves the status quo and requires one of the parties to refrain from doing certain acts pending trial. An injunction is extremely useful when there’s really no way to calculate or recover the full value of the damages suffered by your business at trial. Also, preliminary injunctions often save companies litigation costs by encouraging settlement talks. To get a preliminary injunction, the moving party must show it is likely to prevail at trial. As a result, injunction motions provide the parties with a preview of the court’s thinking. A party may want to avoid the expense of a full-blown trial if it knows the court is leaning in favor of the other party.

When should CEOs seek preliminary injunctive relief?

It’s commonly requested in cases of unfair competition, trademark, copyright



Spencer Skeen
Litigation partner
Procopio, Cory, Hargreaves & Savitch LLP

or patent infringement. It is also requested in real estate and certain employment law cases. For example, if an ex-employee starts a competing firm using your company’s trade secrets, such as a customer list, it may be impossible to determine the revenue loss your company has suffered due to misappropriation of the trade secret. Preliminary injunctive relief would be appropriate in that case. You should seek an order from the court to stop the former employee from using the customer list. You can also seek an order requiring the former employee to return or destroy all copies of the list. You will have to prove the customer list was confidential and that the list had economic value due to its secret nature. In other words, you must show the list is not ordinary, publicly available information, but rather information that gives you a competitive advantage over others who do not have it.

Alternatively, let’s say a competitor falsely advertises that taste tests show its product is definitely superior to your company’s product. Obviously, this would hurt your company’s brand and trademark value, but it would be hard to quantify the

amount of harm. Preliminary injunctive relief would be appropriate here as well.

Is preliminary injunctive relief an option in real estate disputes?

Absolutely. Suppose your company receives a foreclosure notice, and the trustee is alleging that your company defaulted on its mortgage payments. It may be that the lender’s payment history is incorrect, or perhaps the underlying loan agreement is subject to legal challenge. You can seek an immediate injunction to halt the foreclosure process and preserve your company’s rights in the property.

Even if your business *is* in fact behind on its mortgage payments, injunctive relief may still be appropriate if the trustee did not follow all procedures for a foreclosure sale. Getting the injunction to prevent the foreclosure sale may allow your company time to refinance the loan or negotiate a settlement with the lender.

What steps should CEOs take to seek preliminary injunctive relief?

First, determine the pros and cons of seeking injunctive relief. If you decide to move forward with a request for preliminary injunction, an attorney will need to file a lawsuit on your behalf. Next, the attorney will file either an application for a temporary restraining order or a motion for a preliminary injunction. A preliminary injunction can only be issued after notice to the other side and a full hearing. A temporary restraining order may be issued more quickly and without notice to the other side in some instances. However, a temporary restraining order only lasts for a brief time. Courts will often deny a request for injunctive relief if there is excessive delay in bringing the motion. So, if you think your company may need injunctive relief, you should act now. <<

SPENCER SKEEN is a litigation partner for Procopio, Cory, Hargreaves & Savitch LLP. Reach him at SCS@procopio.com or (619) 525-3844.