

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

THE EDLONG CORPORATION,	:	APPEAL NO. C-080176
	:	TRIAL NO. A-0611031
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
SUDARSHAN NADATHUR	:	
	:	
and	:	
	:	
GIVAUDAN FLAVORS	:	
CORPORATION,	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Plaintiff-appellant The Edlong Corporation (“Edlong”) provides dairy flavors like cheese, butter, and caramel to food manufacturers. As a dairy flavorist employed by Edlong, defendant-appellee Sudarshan Nadathur had access to Edlong’s trade secrets, including its dairy-flavoring formulas, enhancement techniques and delivery processes, primary bases, fermentation process, Capsulong process, and esterification process. Nadathur had signed a confidentiality agreement with Edlong that stated, “Edlong does not prohibit you from working for a competitor after termination of your employment with Edlong, unless your position with a competitor corresponds to your

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Edlong position to the extent that disclosure of Edlong confidential information will be inevitable.”

Nadathur left Edlong and began working for defendant-appellee Givaudan Flavors Corporation (“Givaudan”). Givaudan is Edlong’s competitor in the dairy- and cheese-flavor market. Nadathur signed an agreement with Givaudan stating that he agreed “not to disclose to Givaudan any secret or confidential idea or information of a prior employer.”

Edlong filed suit based upon its concern that, as a result of Nadathur’s position with Givaudan, he would inevitably disclose Edlong’s trade secrets regarding dairy-flavor formulas, enhancement techniques, and delivery processes. Edlong claimed violations of the Ohio Trade Secrets Act and breach of the confidentiality agreement, and requested injunctive relief. Givaudan and Nadathur counterclaimed for tortious interference with a business relationship and tortious interference with employment relations. An agreed interim order was entered that permitted Nadathur to add chemicals to existing Givaudan bases to create new flavors and to comment to Givaudan’s research and development department, but that prohibited him from performing certain duties in his Givaudan job description, including altering, modifying, or creating proprietary bases and processes. After a bench trial, the court refused Edlong’s request for an injunction, finding that although Nadathur’s Givaudan position was substantially similar to his Edlong position there was no evidence that Nadathur or Givaudan had misappropriated any of Edlong’s trade secrets, and that there was insufficient evidence that Nadathur would inevitably disclose Edlong’s trade secrets. The interim order was terminated. The trial court denied the counterclaims. Edlong has appealed.

Edlong's sole assignment of error alleges that the trial court erred in failing to grant injunctive relief and in terminating the interim order. Edlong argues that the evidence showed that Nadathur would have inevitably disclosed to Givaudan Edlong's trade secrets.

Under R.C. 1333.62, actual or threatened "misappropriation" of trade secrets may be enjoined. This court recognized the "inevitable disclosure" rule in *Procter & Gamble Co. v. Stoneham*,<sup>2</sup> holding that in a case involving claims for breach of a noncompete agreement and misappropriation of trade secrets "a threat of harm is a sufficient basis on which to grant injunctive relief."<sup>3</sup> Edlong argues that our holding in *Stoneham* required the issuance of an injunction in this case.

In *Stoneham*, Procter & Gamble ("P&G") appealed the trial court's Civ.R. 41(B)(2) dismissal of its request for injunctive relief to enforce a covenant not to compete, as well as its claims for breach of contract and misappropriation of trade secrets. P&G had filed suit against its former employee Stoneham, who had begun working for a direct competitor in a position substantially similar to the position he had held with P&G. Following the presentation of P&G's case in chief, the trial court had granted Stoneham's Civ.R. 41(B)(2) motion to dismiss P&G's claims on the basis that P&G had not established entitlement to relief under the facts and law applicable to its claims.

We held that the trial court had erred in dismissing P&G's claims because "P&G had presented clear and convincing evidence that Stoneham had an intimate knowledge of P&G's confidential information and trade secrets, and that Stoneham's position with Alberto-Culver resulted in direct competition between the products that

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<sup>2</sup> (2000), 140 Ohio App.3d 260, 747 N.E.2d 268.

<sup>3</sup> Id.

Stoneham had formerly supported and the new products for which he had responsibility. Under these circumstances, Stoneham's use of P&G's information and secrets was a very real threat. P&G presented other evidence that Stoneham's use or disclosure of P&G's information was not just a threat, it was a substantial probability"<sup>4</sup> We noted that Stoneham had directly targeted the products he had worked on when employed by P&G for increased competition from Alberto-Culver, had set up "global teams" at Alberto-Culver like those used by P&G to implement marketing, and had specifically discussed P&G's advertising campaigns. We reversed the trial court's dismissal of P&G's claims and remanded the case for the presentation of Stoneham's case in defense and for further consideration of whether an injunction should issue.

*Stoneham* is distinguishable from this case. There is no evidence in this record that Nadathur had disclosed any trade secrets. The evidence showed that Nadathur had taken and was continuing to take great care not to disclose any of Edlong's trade secrets, and that Givaudan did not want any of Edlong's trade secrets disclosed. Givaudan had required Nadathur to sign an agreement stating that he would not disclose any trade secrets of his prior employer. The work that Nadathur was performing for Givaudan did not implicate Edlong's trade secrets. Nadathur was not creating bases, which was Edlong's primary concern; he was adding chemicals to Givaudan's existing bases to make flavors. The record supports the trial court's determination that Edlong had not clearly and convincingly showed that Nadathur would inevitably reveal its trade secrets. Therefore, the trial court did not abuse its discretion in refusing to issue an injunction. We point out that Nadathur is still subject

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<sup>4</sup> See *id.*

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to contractual and statutory obligations not to disclose any of Edlong's trade secrets. The assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., HENDON and WINKLER, JJ.**

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

*To the Clerk:*

Enter upon the Journal of the Court on December 10, 2008

per order of the Court \_\_\_\_\_.  
Presiding Judge