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## PERSPECTIVE

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If you have not seen the now-concluded Apple TV series “Ted Lasso” here is what you need to know about the show for this article: Ted was an American football coach who took a job as the head coach of Richmond United, an English football club, or as Ted would call it, a soccer team. Ted is no soccer expert, but he knows how to build a winning culture. “The Lasso Way,” or “The Richmond Way,” as the forthcoming (fictional) book about the team is to be titled, is one where his assistant coaches (as well as his players) were encouraged to contribute and support each other. One shining example of that culture of mutual trust and support was evident in the career development of an assistant coach named Nate Shelley, who rose from equipment manager (“kit man,” as the British footballers call it) to assistant coach.



Photo illustration by Emilio Aldea / Daily Journal; Photo courtesy of New York Times News Service

It turns out that Ted and Nate can teach us a lot about how trade secret law works in the United States, especially in the context of an employee defection. (Spoiler alert: This article discusses some of the major plot lines in the streaming series “Ted Lasso.”)

Ted’s successes as a coach are rooted in his personal interest and investment in every player, coach, and staff member on his team. In an early episode, Ted finds himself playing a game of pub darts against Rupert Mannion (the arrogant owner of a rival team, who also happens to be the ex-husband of Richmond United’s owner, Rebecca, who re-

ceived the Richmond club in the divorce). Rupert, an experienced darts player who carries his own set of darts with him, watches Ted throw (and not too well) and suggests that they place a significant bet on the outcome of their game. To the astonishment of everyone, Ted takes the bet. Rupert goes first and scores big, calling Ted a “hill-billy” and insulting Rebecca, who had hired Ted when she took over the football club from Rupert. Needing a seemingly impossible score to beat Rupert, Ted explains his philosophy with a Walt Whitman quote: “Be curious, not judgmental.” He suggests that the people (like

Rupert) who had judged Ted all of his life were judgmental, but not curious - and that, had Rupert been at all curious, he might have asked questions like “Have you played a lot of darts, Ted?” And he would have learned that Ted played darts with his father every week from the age of ten until he was sixteen when his father passed away. Ted then proceeded to make three perfect throws to win the game.

Ted’s curiosity was an essential part of “The Richmond Way.” Ted was curious about everyone involved with his team, even the kit man, Nate Shelley. Nate was initially shy and introverted, but Ted

took the time to get to know him, and Ted was the first person to listen to Nate’s advice regarding soccer. Ted eventually promoted Nate to assistant coach, and Nate was beginning to flourish in that role, even being called “The Wonder Kid” by the soccer press. But Nate could not overcome his own insecurities. Nate grew jealous because he thought the press was crediting Ted for Nate’s ideas. Nate leaked a story that Ted had a nervous breakdown. He tore the team’s “Believe” sign in half. And he told Ted to “fu\*\* off.” He left the team and became the head coach of a rival team - Rupert Mannion’s

West Ham United F.C.

Nate's departure left Ted's team in the exact situation that many companies find themselves in at the beginning of a trade secret dispute. When an employee leaves for a competitor, he might use information obtained from his former employer for the benefit of the competitor.

Would trade secret law prohibit Nate from bringing any particular

then that list could also be a trade secret. Lists and databases are often trade secrets if the owner has made reasonable efforts to maintain secrecy.

Let's assume that Ted's staff did develop a valuation algorithm that might qualify for trade secret protection. Could Nate and his new boss, Rupert Mannion, change the algorithm and then continue to use it? No. First, it is misappropriation

trade secrets. When a team wins more games, the team may become more valuable, or at least sell more tickets and earn more advertising revenue. These could be proxies for unjust enrichment damages.

But what if Nate and Rupert lose more games after using the algorithm? Should they escape liability? No. If damages are calculated as unjust enrichment, then the costs of developing the trade secret might

## Nate Shelley left Ted Lasso and Richmond United to work for a competitor. What can Nate's betrayal of Ted and Richmond teach us about American trade secret law?

type of information to his new job with Rupert Mannion? Potentially, yes. Information must meet three criteria to be a trade secret: 1) the information must derive value from not being generally known; 2) the information must be valuable to others if it is disclosed or used; and 3) the owner of the information must have taken reasonable measures to keep it secret.

Given these criteria, Nate could access various types of trade secrets that were properly owned by Ted's team. For example, if Ted's team had a book of scripted soccer plays, the book could contain trade secrets. Specifically, the book could contain plays that had not yet been run publicly, and Ted's team could have made efforts to keep the book a secret, such as having players and assistant coaches sign non-disclosure agreements.

As another example, a team could develop trade secrets in the way it values players. Maybe the team could create an algorithm that assigns value to things like goals scored, speed, and passing efficiency. The output of the algorithm could reflect an expected contract value for players. The team could then maximize its budget by signing players who are undervalued by the market according to the algorithm. (As an example, fans of Michael Lewis's *Moneyball* will recall that the Oakland Athletics developed a new method of valuing players, using it to win more games than expected in the early 2000's given the team's limited budget.) Such an algorithm could certainly be a trade secret. Indeed, if the output of the algorithm was a list of players with assigned values,

to improperly acquire, use, or disclose a trade secret, even if (in this case) the algorithm is later changed to something different from the misappropriated secret. If Nate gave the algorithm to Rupert or West Ham, despite an obligation to keep it confidential to Ted's Richmond United, then Nate has improperly disclosed the trade secret, and Rupert has improperly acquired it.

Second, and crucially, it is improper "use" of a trade secret to create a new product that is "substantially derived" from the trade secret. If Nate and Rupert modified that algorithm such that it was different from Ted's, it could still be misappropriation for Nate and Rupert to use their new algorithm.

How would a court calculate monetary damages for the theft of something like a player valuation algorithm? Lost sales are a common measure of damages, but that metric would not work for a player valuation algorithm. Ted's team is unlikely to see lost sales caused by an improvement in Nate and Rupert's ability to value players.

In such cases, the trade secret laws provide for two other measures of damages. The first is a reasonable royalty. Expert testimony would determine what fee the parties would have agreed to if they willingly negotiated a royalty for the stolen trade secrets. To calculate royalties for misappropriated trade secrets, experts often use a modified version of the Georgia-Pacific factors that are used in patent cases.

The other type of relief is unjust enrichment. The misappropriator must pay the creator the value that the misappropriator obtained via the

be a reasonable proxy for the value of what was stolen. For example, Ted's team might have hired two people to develop the algorithm over a two-year period. Unjust enrichment damages could be calculated as to the value of that labor. This can be an important measure of damages when a company has spent years and significant resources developing a product.

In the "Ted Lasso" series, a remorseful Nate ultimately left Rupert Mannion and West Ham. Nate apologized to Ted, and Ted welcomed him back, re-hiring Nate as an assistant coach. Such feel-good endings do not happen as often in real life, unfortunately, and it is rare that companies can solve their problems so easily. To protect themselves against the things that do happen in real life, companies need to implement measures to protect their trade secrets before they are stolen. And if a lawsuit becomes necessary, it behooves the company to be curious. The company should ask questions about things like substantial derivation and unjust enrichment in order to ensure that the company's counsel understands the ins and outs of trade secret law - to make sure that they hire a curious "Ted Lasso," not the arrogant Rupert Mannion.

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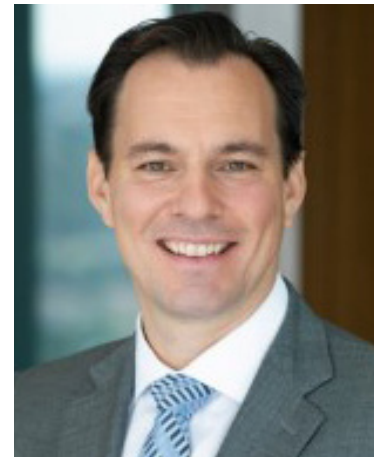
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