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## Maintaining the Magic: Disney's Use of Confidentiality Restrictions to Promote Character Integrity

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**When your business depends on a carefully-crafted public image, you do not want the public to know how hard you work to maintain that image. These days, that includes preventing your employees from revealing too much via Twitter and Instagram. At Walt Disney World, for example, Mickey and Minnie Mouse clock in and out of work each day and Cinderella does not end her shift by retiring to her castle. Because Disney prefers its guests not think about that, Disney recently issued a written policy prohibiting its 1,200 character actors from revealing which character they portray in any media, including social media.**

While the actors' union frames the issue as an unjustified restriction on the actors' conduct outside the workplace and on their own time, Disney describes the policy simply as the formalization of what was an unofficial but "longstanding expectation" of its actors. Yet the issuing of the written policy, and potential for disciplinary consequences, has exposed the parties' different views of the confidentiality required for "character integrity."

Disney's dispute is in its initial stages, but already it provides some important reminders about protecting an employer's sensitive information.

A non-disclosure agreement in the employment agreement is the ideal place for Disney to have clarified the scope of its expectations of confidentiality, particularly if Disney intends for its actors not to disclose their role to family, friends, or future employers. A provision requiring sensitive information not to be disclosed (also known as an "NDA," confidentiality agreement, or restrictive covenant) can be found within all sorts of agreements and are commonplace in employment agreements. Employers traditionally seek to protect valuable information about their business operations, such as product formulas, manufacturing designs, company expenditures, customer information, and vendor contract terms. For employers like Disney, who wish to protect information "outside the box" of customary operational secrets, a non-disclosure covenant can raise some dilemmas.

Disney believes the identification of an actor with a particular character is "proprietary information." It may sound like a Disney fantasy, but in fact, a business' sensitive information does not have to rise to the level of a "trade secret" to garner protection from the courts. Many states, in addition to adopting some form of the Uniform Trade Secrets Act, have enacted laws that explicitly protect other types of sensitive information or allow the parties to agree among themselves what information is protected. State law usually determines what information may be subject to a non-disclosure agreement and what steps are required to enforce such an agreement. Generally, courts will enforce agreements that prevent the disclosure of information where the information (1) has economic value from not being publicly-disclosed and (2) belongs to a person or entity who has taken steps to protect the information from disclosure.

Depending on your business' needs, there are several approaches to identifying the scope of a non-disclosure agreement. A boilerplate non-disclosure provision – one that prevents the disclosure of unspecified "confidential information," "proprietary information" and "trade secrets" – may not reasonably put employees on notice of what the employer believes is covered. As with social media policies, clarity and specificity about the

scope of confidentiality can be critical. Clearly articulating to the employee which information is considered private and valuable may save an employee from unintentionally or carelessly disclosing the information, such as through casual posting in social media. At that point, regardless whether an employee may be held accountable or terminated for spilling secrets, the "cat is out of the bag."

What unique and valuable information does your business have to protect? Do your employees know what information you consider confidential and proprietary? How do they know? What steps, formal or informal, are you taking to protect it? Do you think those steps are reasonable to keep your unique information confidential?

If any of these questions cannot be answered with certainty, consider consulting an attorney for guidance on how to better protect your business' sensitive information and how the courts protect confidential information in your state. After all, if social media policies and confusion over confidentiality are upsetting the workplace at Disney, The Happiest Place on Earth, it can happen anywhere.