

No Shortcuts – SJC Rejects Presumption of Irreparable Harm in Trade Secret Injunction Cases

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In the recent Supreme Judicial Court decision, *Daikin Applied Americas Inc. v. Russo* (SJC-13881, Mass. October 14, 2026), the SJC unanimously held that a plaintiff who demonstrates a likelihood of success on a trade secret misappropriation claim is not entitled to a presumption of irreparable harm. Daikin, an HVAC provider, alleged that two former employees – who formed a competing company while still employed by Daikin – forwarded confidential pricing, bids, and customer information to the former employees' personal e-mail accounts and used that information to pursue Daikin's customers. Before the hearing, the defendants agreed to return and stop using any Daikin confidential information. Daikin nonetheless pressed on and sought a one-year bar on soliciting seventy-five of its customers. The Superior Court denied the request, and the SJC, having transferred the appeal on its own motion, affirmed.

Reaffirming the Traditional Standard

Writing for the Court, Chief Justice Budd reaffirmed the familiar *Packaging Industries* test, pursuant to which, the movant must show: (1) a likelihood of success on the merits, (2) irreparable harm absent relief, and (3) that, in light of the movant's likelihood of success, its risk of irreparable harm outweighs the harm to the nonmovant. Daikin urged the Court to follow federal district court decisions, such as *DraftKings Inc. v. Hermaly*, that presume irreparable harm in trade secret cases. The Court declined, reasoning that a presumption would eliminate the irreparable harm inquiry altogether and conflict with the Massachusetts Uniform Trade Secrets Act, which authorizes injunctions "upon principles of equity." G. L. c. 93, § 42A(a). Drawing on *eBay Inc. v. MercExchange* and decisions of the Seventh and Tenth Circuits, the Court held that ordinary, case-by-case



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equitable principles govern. The Court also noted that the federal cases Daikin cited generally found irreparable harm anyway.

On the facts, Daikin failed to show irreparable harm. The Court reasoned that lost HVAC sales and service contracts are quantifiable economic losses that can be estimated from historical data, and it reconfirmed the well-established principle that purely economic harm is irreparable only if it threatens “the very existence of the movant’s business.” Daikin offered only attorney argument concerning Daikin’s alleged lost goodwill, and its single affidavit did not claim a threat to goodwill or that the losses could not be measured. The Court also noted, as the motion judge had, that Daikin had no noncompetition or nonsolicitation agreements with the two former employees.

Impact of the Daikin Decision

Daikin makes clear that in Massachusetts state court, trade secret plaintiffs must prove irreparable harm with evidence. Because state law now diverges to an extent from some Massachusetts federal court decisions, this could more heavily influence forum selection strategy. The decision also signals that Massachusetts state courts will not use a trade secret injunction to give an employer the equivalent of a restrictive covenant it never bargained or paid for, particularly where the defendants have already agreed not to use the information.

Takeaways from the Daikin Decision

Daikin serves as a reminder that businesses should consult counsel and take steps to secure contractual protections with their employees up front, utilizing well-drafted nonsolicitation, confidentiality, noncompetition and forum selection clauses (keeping in mind Massachusetts’ strict requirements for same). Businesses should also take pains to protect information they deem to be confidential and employ access controls and data-loss monitoring.

When seeking injunctive relief, practitioners representing businesses should put a premium on building an evidentiary record to support the motion for injunctive relief with affidavits showing concrete, non-quantifiable harm, such as specific loss of goodwill, customer confusion, or ongoing disclosure – not just lost sales. It’s equally important to tailor

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the relief sought and link each requested restraint to a specific irreparable harm. Where defendants agree to certain of the relief sought, as the two former employees did here, practitioners should expect the court to require specific reasons why further relief is still needed.

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