

What Exactly Are You Soliciting On Facebook, Anyway?

By: Jack Greiner on November 26, 2012 on graydon.law

A Massachusetts hairdresser's [dispute](#) with her former employer raises an interesting question about whether a Facebook post constitutes "customer solicitation." Maren DiFonzo (to the best of my knowledge, she was not a character on "Happy Days") was a hairdresser employed by a salon called Invidia. She left Invidia and took a job down the road for David Paul Salons, and that's what started the hair raising tale (like I wasn't going to use that pun at some point). Apparently, Ms. DiFonzo had signed a non-compete/non-solicitation agreement with Invidia, that prohibited her from competing and/or soliciting customers for two years after she left Invidia. Invidia sued her and asked the court for a preliminary injunction preventing her from continuing to violate the agreement. Among Invidia's claims was the fact that Ms. DiFonzo posted on her Facebook account the details of her new job. That prompted at least 8 Invidia clients to become Facebook friends with Ms. DiFonzo. Invidia also pointed out that 90 Invidia clients cancelled appointments after Ms. DiFonzo left. Invidia claimed the post in itself violated the agreement. The court disagreed. According to the court, "[i]f these 90 clients are accustomed to communicating with Invidia through Facebook, they are probably Facebook-savvy enough to locate Ms. DiFonzo's Facebook page after she left Invidia. So long as they reached out to Ms. DiFonzo and not vice versa, there is no violation of the non-solicitation provision of the Agreement." That is a sage observation. While the law on non-compete/non-solicitation agreements varies from state to state, there are two general rules: 1. courts will enforce them; but 2. only reluctantly. So if an employer really wants to limit a former employee's use of Facebook, at the very least the agreement should spell out that term specifically. That may not make it enforceable, but it's a start. What do you think? Should an employer have that kind of control?