

Non-Competition Agreements: When Are They Useful And Enforceable?



Stacy Stine

Michigan law permits the enforcement of non-competition agreements so long as the restrictions are reasonable as to (1) duration, (2) geographic scope, and (3) the line of business restricted. This article will provide general guidelines in determining when a non-compete is appropriate and how to limit its terms to increase the likelihood of enforcement.

Prudently drafted non-competition agreements can be a useful business asset. Regarding the protectable business interest analysis, one should consider the industry or business and the position being made subject to the restrictive

covenant. The industry must be one dependent upon the fostering of relationships with clients or one that involves the use or development of highly confidential and proprietary information including patented formulas, recipes, software programs, or specialized machinery or devices. The position subject to the restriction must be one that has the ability to unfairly impact the company's business by using knowledge or relationships developed through employment with the company to the unfair advantage of a competitor. Entry level or unskilled positions do not warrant the imposition of a non-competition restriction. Positions where the employee does not have direct responsibility for cultivating relationships with customers, or does not have knowledge of proprietary company information would not meet the protectable business

interest requirement. A departing employee cannot be prevented from using general skills or knowledge following termination, but he or she can be prohibited from gaining an "unfair" advantage.

When determining duration, the company should ask itself: what is the minimum period of time necessary to keep the departing employee out of "the market" so the company can re-establish its relationships with its customers independent of that departing employee. The most typical duration is one year.

When evaluating an appropriate geographic scope, consider the actual geographic reach of the business. It would be inappropriate to include the entire United States if the company only does business in Michigan. If the geographic scope provides a certain mile radius from any of the company's offices, it should apply only to

offices or locations where the departing employee performed work.

Any non-competition agreement must be signed by the company and the employee. It should include a provision permitting injunctive relief, i.e., the ability to ask the court to enter an order prohibiting specific conduct of the employee. It is advisable to include a liquidated damages provision, providing a specific money recovery by the company. Further, it is useful to include a prohibition against the solicitation of customers and fellow employees, and a confidentiality provision.

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Advance Packaging: Moving Forward Cover Story

Grand Rapids - Some entrepreneurs start a business out of their basement. Others see opportunity in an existing company to grow the business, change it, and move it forward. Business partners Carol Hoyt, CEO and Don Crossley, President completed a long-term buyout of Advance Packaging from their employer in 1999. They've repositioned and differentiated

their company, answering the changing packaging needs for a diverse customer base. Last month, they reached another major milestone—moving to their new 425,000 square foot plant in Kentwood, MI, equipped with the latest corrugating, packaging design, printing, and converting technology.

Advance Packaging was founded in

1966 and in the first 30 of the firm's 40-year history, they focused on doing one thing and doing it well - making corrugated board and turning it into boxes for West Michigan's large manufacturing base. Early success as a commodity provider of standard corrugated packaging led to the opening of a second plant in Jackson, MI, in the 70s and the addition of an in-house corrugator to manufacture and supply their own board. Three-color box printing capabilities were added in the 80s.

With the rapidly changing manufacturing climate, Hoyt and Crossley knew when they bought the company that they would need to evolve the company. They armed staff with the information they needed to better understand the changing marketplace, the company, and the mission. They recognized a growing need for value-added products and services. They also knew that the secret to driving costs out of customers' packaging was through innovative design and added the largest in-house packaging design staff in the region and a sophisticated laboratory to test and analyze package design performance. The strategy was pivotal to diversifying their customer base and creating momentum to grow in a competitive marketplace. Today, they are at the forefront

providing not just packaging, but packaging solutions. When Advance Packaging analyzes a customer's packaging needs, they not only look for design efficiencies, they can factor customers' processes into the equation to include solutions that reduce customers' labor, handling, shipping, and other costs.

With the new facility, Advance Packaging expands its capabilities to serve even more diverse customer needs. New technologies give them the speed, flexibility, and agility to run short run orders for customers as easily and efficiently as they do high-volume quantities. With high-end graphics reproduction and sophisticated die cutting, Advance Packaging adds capabilities to also produce packaging for new markets including branded packaging and displays for consumer package goods, food packaging, retail, and other industries. And because it is an all-new structure from the ground up and not a retrofit, it is a truly lean operation.

While the move to the new plant is literally about 800 yards directly south from the old 36th Street to the new 40th Street location, it's a move that puts Advance Packaging to the forefront of corrugated packaging with unduplicated capabilities in the region.

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