

Mother of all noncompete agreement lawsuits: Microsoft vs. Google

It is cases like this, where companies with a lot of capital fight over noncompete agreements, that are the source of case law/court decisions. A law suit does not mean there will be an appellate court opinion. The case could settle or the loser at the trial court simply decides not to appeal. Case law rarely comes from cases involving extremely small companies and individuals whose income is low. This case is starting in July 2005. Students might want to follow the case by checking later as to result of suit. Due to notoriety of the parties, there will probably be reporting by news media, which, in turn, makes its way to the Internet. The education use exception in the copyright law permits republicaiton of this article. Attribution is at the end. Rob Robertson

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Microsoft Sues to Keep Aide From Google

By ROBERT A. GUTH

Staff Reporter of THE WALL STREET JOURNAL

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Microsoft Corp., hoping to block one of its own from joining a main rival, yesterday filed suit against Google Inc. and a former Microsoft vice president, Kai-Fu Lee, an expert in search technology and one of the architects of its China strategy.

The suit, filed in King County Superior Court, in Seattle, is the latest sign of how seriously Microsoft views its rivalry with the Mountain View, Calif., search-engine company. Google announced yesterday that it had hired Dr. Lee and named him president of its China operations, putting him in charge of establishing a research-and-development center there.

Kai-Fu Lee

Microsoft says Google and Dr. Lee violated his employment contract with Microsoft, where he has worked for seven years, five of them as a vice president.

Google's highly profitable business of tying Web-search results with advertising has drawn attention away from Microsoft as a premier technology company. Google also has moved into email and other services to compete directly in areas that Microsoft now dominates. Microsoft, for its part, launched an Internet search engine last year to compete with Google's.

Dr. Lee is the highest ranking executive to join a small but growing number of Microsoft employees to leave the Redmond, Wash., company, for Google, which last year opened a small unit in nearby Kirkland. The 43-year-old computer scientist is credited with establishing Microsoft's research and development center in Beijing, which houses about 380 researchers.

In Dr. Lee, Google stands to gain an executive with first-hand knowledge of Microsoft's strategies and technologies. Search technologies were a "primary focus" of Dr. Lee's work at Microsoft, according to the suit, which cites as examples his role leading the development of MSN's Internet-search service and Microsoft's technology for searching for information on personal computers.

Microsoft is seeking unspecified monetary damages and an injunction to stop Dr. Lee and Google "from all actions in violation of Lee's employment agreement," according to a copy of the filing.

The suit alleges that by accepting the Google job, Dr. Lee is violating a noncompetition agreement with Microsoft dictating that he not work at a Microsoft competitor for a year after leaving the software company. It also says that by joining Google, Dr. Lee "threatens to disclose" Microsoft trade secrets to Google.

"Dr. Lee has knowledge of trade and confidential information about our search technology and our search competitive strategy," Tom Burt, a deputy general counsel at Microsoft, said in an interview. "With that knowledge, Google has hired him into a position that is directly competitive not just with Microsoft, but directly competitive with the work he was doing at Microsoft."

"We have reviewed Microsoft's claims and they are completely without merit," a Google spokesman said. "We will defend vigorously against these meritless claims and will fully support Dr. Lee."

Dr. Lee couldn't be reached immediately for comment.

The suit follows a long history of technology companies using so-called noncompete agreements to try to stop rivals from poaching employees. The agreements were particularly tested during the technology boom of the late 1990s, when companies lost many employees to start-ups.

Microsoft itself used the agreements against a start-up called CrossGain, which ultimately laid off some 20 Microsoft defectors until their noncompete agreements expired.

Noncompete agreements are enforceable in the state of Washington if the terms are reasonable and if the employer provides some benefit to the employee. In a landmark case last November the Washington Supreme Court declared that a noncompete agreement in the case of Labriola v. Pollard Group Inc. wasn't enforceable because the employer, a commercial printer, added a geographical limitation to an existing employee's noncompete agreement but didn't give the employee sufficient benefit, such as a bonus or promotion.

Mr. Burt said it is rare for Microsoft go to court to enforce a noncompete clause. But the company feels the hiring of Dr. Lee into a position that directly competes with Microsoft is an "egregious violation" of his contract, the lawyer said.

Dr. Lee holds a doctorate of computer science from Carnegie Mellon University, Pittsburgh, where he worked as an assistant professor before joining Apple Computer Inc. He spent six years at Apple and worked at Silicon Graphics Inc. before joining Microsoft. His most recent position at Microsoft was vice president of a division overseeing technologies for speech recognition, search and language processing.

According to the court filing, Dr. Lee informed the head of Microsoft's server unit on July 5 that he wouldn't be returning from a short sabbatical from Microsoft and that he "had contacted Google" before the sabbatical.

Dr. Lee's assignment at Google will be to set up the China research center, which Google said yesterday is slated to open in the third quarter.

Write to Robert A. Guth at rob.guth@wsj.com