

*ADDENDUM to "Design for (a) Living"
typeset in Grad*

Trade Secrets and Landmark Lawsuit Illegalities

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Unexpectedly at a typographers' convention in Washington DC, there sat Mergenthaler's Mike Parker behind the nameplate of his assistant Steve Byers. Byers had been scheduled to speak, had taken ill, his boss Mike was speaking in his place.

Parker completed his pitch for Merg's equipment and typefaces. As he sat down, every typographer in the large room lined up in front of him, eager to say something him. Say something, say anything, even just giggle a little, to actually speak to the legendary Merg's Mike? Once in a lifetime event, or likely not that often.

My hurting right foot kept me in my chair, so Parker came to me last of all.

"Pleasure to finally meet you, Phil Martin."

"Pleasure to meet you, Mike. I hear you're suing Leonard Storch."

"Indeed we are, Phil. It will cost us a million dollars. And it will cost him a million dollars too."

"Mike, I find myself in a position to close down Storch's Dallas office, where all the pirate scheming is hatched, right in the middle of your lawsuit. And I've damn near decided to do it."

"Did you notice how fast you captured my attention, Phil, and are you willing to fly with me to the Merg plant soon as we can get out of here?"

"My foot hurts too bad to do it today, Mike. But very

soon. And I'll be bringing George Thomas, Storch's pirate brain, with me. We will fly and arrive under assumed names, of course."

This event did transpire. George Thomas was introduced as George Smith all around the Merg properties. I used my real name. Head of the Merg's New York drawing office Cherie Cone was later to refer to George as the tightest-ass person she had ever met.

When Parker checked the two of us into the nearest hotel, the assumed name bit blew sky-high, because George Thomas used his credit card to pay for his room, which card did not have the name Smith anywhere on it.

Now back to Dallas where all this began.

"Well, as usual I don't know what I want to do."

George Thomas opened with that, standing just inside the closed front door to my AI-TSI offices, looking to left and right, as if trying to decide if it were safe to take another step forward.

It was twilight, and my people had gone for the day.

George had been doing this same routine once every several months for maybe two years or so, with no result coming from his uncertainty.

This time I sold him on the idea of leaving Storch and coming to work for me at a future date yet to be determined. Therefore, this was the first of several secret meetings with George. Beginning with the next meeting, included would be my clever, young attorney Tom Whittenbraker. I was to learn that putting together a deal like this was Tom's favorite thing to do in the legal field.

In having worked for Storch, George had developed trade secrets for Storch, trade secrets now the property of Storch. This presented a serious problem in the event George Thomas would actually quit his job with Storch and come to work for me. Texas lawyer Tom Whittenbraker had much to teach George and me about trade

secrets.

At this point I must leave my narrative and detail what Tom taught us. I consider this basic knowledge that any typeface designer needs. So fellow designers, give me your full attention please.

There are patents and there are trade secrets. Both have their problems, and it is your problem to decide which avenue you want to travel.

A patent becomes public knowledge, therefore can be designed around. A trade secret, by being and remaining a secret, does not suffer this risk.

For reasons soon to become clear, I will be dealing with the Texas trade secrets law. Please assume the federal law is the same, just lacking the dumb goofs of the Texas State Legislature.

Tom put a good scare in both George and me, when he explained the Texas law had come out stronger than the legislature had intended, and Texas lawyers were licking their lips, because of all the litigation this was going to cause.

In Texas a worker could not leave a job carrying all that was in his/her head without danger of a lawsuit by the former employer.

Now just what is a trade secret which receives the legal benefits of being a trade secret? It is just about anything that anyone claims is a trade secret, with limitations to be described here.

Could ten billion companies all have the same trade secret? Because it is a secret, there is no way to know how many individuals or companies don't realize their secret is no secret at all to all the others who secretly share it.

Can you lose your rights to your trade secret? Very easily. Should you claim you have a trade secret, it is your obligation to treat it as a trade secret, which means no one in your organization is allowed to know it, if there is

not a need to know.

Bring your not-involved wife into the plant on a Sunday afternoon, and say, "Honey, look at this secret my guys figured out."

Blippo!

You just lost your trade secret by not respecting it! Well, that is, if anyone can find out you did this. Maybe your wife has a brother who hates your guts because you are so much more successful than he.

Now back to Texas where you cannot leave your job with what is in your head, exactly what George was planning to do.

Our secret flight from Dallas to the Merg facilities in New York, Thomas trying to get comfortable with the name Smith, was a "Mike & Martin" scheme, as follows: Mike would fill the Thomas head with all of the Merg trade secrets to the point all Storch trade secrets would be washed out of said Thomas's head, or so we would claim if Storch threatened to sue us on trade secret grounds, while we were blowing all Merg's cash trying to destroy Storch on piracy grounds.

During our flight my mind was occupied with the physical setup in my offices. George Brian's office was next to mine. He had become as good a designer as I, though sometimes lacking in judgment. I would keep him right where he was and put George Thomas in the next office on the far side of Brian.

Two Georges I would soon have. I napped a bit, thinking of George Carlin's joke about the name George. He said you don't know when to stop spelling Georgegeorgeorgeorg to infinity.

That day at the Merg plant Thomas had his head filled with the various Merg trade secrets. Then Mike Parker took us to the airport that night, intending to chat with us while we waited to board our return flight to Dallas.

The chatting took a strange turn.

“We need to go back to your plant,” said Thomas. “I have decided there is something I have to reveal.”

We missed our flight and returned to Parker’s office at Merg. Once we had set whatever items we were carrying on the table in Mike’s office, he and I both had to go the men’s room down the hall, leaving Thomas to compose himself, sitting at Mike’s table.

Mike and I were side by side at two urinals. He looked into my face with a puzzled look on his face and asked, “What is George getting ready to reveal, Phil? Somehow you must know.”

“Not a clue, not a smidgen of a clue have I, Mike. I guess you can find us a hotel tonight.”

When the three of us were back sitting at Mike’s table, George Thomas said, “Phil, George Brian is quitting you. He has planned it for months. He has his first typeface almost ready. He is betting he can pick up most of your franchisees quickly and easily. Every time Brian and I have lunch he tells me, ‘you don’t want to go to work for that crazy Martin family.’ ”

I opened my briefcase to pull out its little bottle of Scotch. Mike swung away from his table to his desk to get his own bottle of Scotch.

We three sat and talked until 3:00 AM. I did most of the talking, also most of the drinking, as I orally laid out revised plans for my company’s future, wording everything to the slant that what we were aiming to do to Storch would still work.

At a later time Thomas told me he had watched me talk and drink while wondering how soon I would fall under Mike’s table in a stupor.

When Parker got us booked into a hotel around 3:30 AM, he tried to say goodnight and leave. But first I challenged Thomas and him to a run around the block. Each

declined, Thomas speaking of a splitting headache. I was glad they had turned me down, fully realizing I was physically near exhaustion.

As it was to turn out, George Brian never got his first face to market (Souvenir Formal, so named because its rounded serifs had been squared), nor did he sign a single one of my franchisees.

Nor, according to George Thomas, did he ever speak to Thomas again, after Thomas came to work for me.

So that I remain accurate with all my facts, and so that my reasons for my actions are clearly understandable, I must now leave the narrative again.

I am the founder of both Alphabet Innovations and TypeSpectra. When I chose to found the second corporation, I undertook a study of the IRS codes regarding U.S. corporations. As I have written elsewhere, I am a more crafty Legal Eagle than I am a designer or entertainer.

I found a cleanly legal way to set TypeSpectra up so that, although I owned and controlled both corps, should the IRS ever decide to put my two corps to their “brother and sister” test, *they would have no choice other than to conclude my two corps were related to each other in no way at all.*

This IRS-defeating scheme required that someone—anyone but me—have a little bit of TypeSpectra common stock in his/her name.

I had been using George Brian for this and had actually made him president of TypeSpectra. Now there would be a period before George Thomas came to work for me that George Brian would still be working for me, unaware that I knew what his future plans were.

I am certain he suspected something was afoot the day I paid him for the TypeSpectra stock he had owned, lent my secretary Debra Nugent the money to buy this same stock, and informed Brian that Debbie, not he, was

now president of TypeSpectra, Inc.

Looking back on this, I regret the IRS never put my corps to their test. Can you imagine the delight I would have found, had the day come for me to prove that I had been able to write my own law, completely avoiding the best law that the IRS attorneys could write, thereby defeating their intended purposes!

PAUSE for an aside not a part of this story. Nevertheless, it is worth noting that ten years later I really altered the IRS code.

There was a nationwide TV debate between an IRS Appeals Officer and me. Successfully I sold the notion that a typeface is an invention deserving the favorable tax treatment accorded no U.S. citizen other than an inventor, the idea being to provide incentive for more inventions to improve life for all U.S. citizens.

I still have a video tape of this March 23, 1984 event, which I play for visitors who so request.

Now my narrative moves forward to the discovery portion of the Merg vs Storch trial.

Discovery is that first portion designed to save court room time. Anybody who may be expected to testify is assaulted by discovery. Lawyers for both sides aim to discover the worst.

Whichever side you are going to testify for will have the lawyer for the other side grilling you. working with utmost fervor to establish for the record that you are strictly a blithering idiot that only another blithering idiot would believe, whatever asinine drivel you may utter, once you are on the stand.

After each day of discovery I would receive my nightly phone call from Mike Parker in New York, telling me how he and his lawyer felt they had done that day.

Around that same time of night would be a New York call from Leonard Storch to George Thomas at the

Storch Dallas office, telling George how Storch and his lawyer thought they had done for the day. You see, Storch thought George was still his close buddy, having no idea George would soon be coming to work for me in my Dallas offices.

Then George would call me and repeat what Storch had said. A Dallas to Dallas call. Then I would call Parker in New York and repeat what George had said that Storch had said.

If this is not the most illegal activity, and in a landmark case yet, that has ever disported itself upon the legal scene, such could only be because no American law writer at that time had ever fantasized that these farcical doings might actually come about. And therefore could not foresee a need for a law discouraging same.