

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
NOV 1 2002
ALAN SLATER, Clerk of the Court
Rosann Rhodes
BY ROSANN RHODES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

Foundstone, Inc.

Plaintiff

vs

NT Objectives

Defendant

CASE NO. 02CC15350

NOTICE OF RULING

RE: SUBMITTED MATTER

OF 10-30-02

In the matter of *Foundstone, Inc v NT Objectives, Inc.*, etc et al:

Foundstone is a purveyor of computer/network security products. In recent years Mr. Glaser, Mr. Morton, and Mr. Kuykendall, experienced programmers all, were employed by Foundstone in that capacity. Recently, these four individuals departed to join NT Objectives, of which Glaser is a principal.

Foundstone brings this action for unfair competition, claiming the defendants have utilized its trade secrets in formulating a computer/network security program known as "Fire and Water." Foundstone seeks to enjoin the defendants from marketing or

1 otherwise publishing said program.

2
3 The application for Preliminary Injunction is denied for the following reasons:

4 1) First, the trade secret allegedly being used by the defendant(s) is not identified
5 with sufficient particularity. *Whyte v Schlage Lock Co.* 101 Cal.App.4th 1443 (2002.)
6 Nor with *any* particularity.

7 2) Second, the only evidence of trade secret misappropriation is the assumption
8 by Mr. McClure that the program being marketed by defendant *had* to contain trade
9 secrets of Foundstone learned by the four former employees during their tenure there.
10 However these four individuals have flatly stated "Fire and Water" neither includes nor
11 is derived from any information source beyond that which is public knowledge or the
12 result of their own extensive experience as programmers.

13
14 Based on these considerations, the court concludes, based on the information now before
15 it, the moving party has not proved "...the likelihood the moving party ultimately will
16 prevail on the merits..." *Whyte* at p. 1449.