

Digital Transactions: Part Three: Assignment 23

Cincom Systems, Inc. v. Novelis Corp (6th Cir. 2009)

- Alcan Ohio as initial software licensee
- Mergers and name changes transforming it to Novelis
- Cincom claims the mergers effect a transfer of the licensee's interest under Ohio law
- Sources of law for a default rule that licenses are not transferrable by the licensee
 - Prevent the license from coming into a competitor's possession
- Application in this situation
 - District Court
 - On appeal
- Transformation of the failure to abide by the contract terms (prior approval before transfer) to a copyright claim

Cincom products

- MANTIS
- SUPRA Server PCM

Now

- Original installation in the 1970s (POSTAL)
- MANTIS installation in the 1980s
- Upgrade to SUPRA PCM early 1990s

Recent

- Timken's Shop Floor, Order Entry, Order Management and Shipping systems

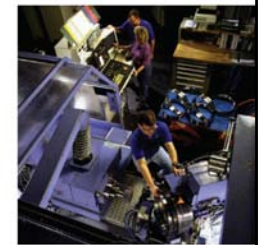
Future

- Will continue using Cincom's development tools and integration capabilities where they fit with Timken's existing architecture.



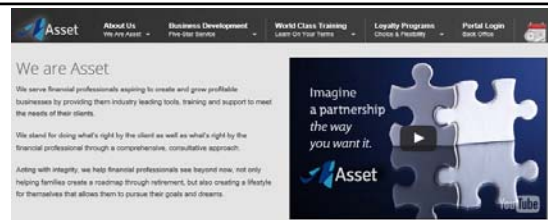
Profile in success: Timken

Timken and Cincom:
sharing many decades of
success



Asset Marketing Systems, Inc. v. Gagnon (9th Cir. 2008)

- Multi-year relationship with Gagnon as independent contractor for AMS
 - Writings:
 - Technical Services Agreement
 - Alleged NDA
 - Proposed Outside Vendor Agreement (OVA), Gagnon letter in response to redlined version of OVA from AMS
 - At time of Gagnon's exit as a vendor to AMS, several of his employees depart for AMS
 - District court:
 - "found that Gagnon had granted AMS an implied, nonexclusive license to use, modify, and retain the source code of the programs. Consequently, Gagnon's trade secret misappropriation claim was also defeated, and because no trade secret existed as between Gagnon and AMS with respect to the source code, Gagnon's noncompetition agreements were deemed invalid under California law. For the same reasons, Gagnon's remaining state law claims failed"
 - Copyright claim
 - Three-part test for implied license
 - Trade secret misappropriation claim



Other License Terms

- Confidential Information
- Warranties and Other Obligations of the Seller
- Termination and Remedies
 - Source code escrow
 - Electronic "self-help"

Assignment Twenty-Three Problems

- 23.1 to 23.4
- 23.6