

2021 National Legal Research Teach-In Kit

Research Instruction & Patron Services Special Interest Section
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The Carlixian Saga

George Pike and Lisa Winkler
Master of Science in Law program
Northwestern University Pritzker School of Law
Pritzker Legal Research Center
Chicago, Illinois
ghpike@law.northwestern.edu and lisa.winkler@law.northwestern.edu

This is the final project for our Research in Law, Business and Technology course in the school's Master of Science in Law (MSL) program. It is structured as a group project but wouldn't have to be. The work product includes a written memorandum, a presentation session with three components—a prepared presentation, an “on the fly” rebuttal, and a “free-for-all” negotiation session, then a peer evaluation focusing on the group interactions. While it was written for the MSL program, it could easily work for a JD program as well. In our course, it represents 50% of the course grade.

To view the entire kit, please visit <URL for this year's kit: TBD>

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Note from author:

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**MSL: Research in Law, Business and Technology
Case Study Group Research Project and Presentation**

Hypothetically speaking...

The Parties:

Carlixian Data Services provides marketing data, information, analytics, and logistics services to large consumer marketing companies, such as Lowe's and Bank of America. Carlixian was founded in 2005 and incorporated in Illinois in 2007. Its headquarters are in Oak Brook Terrace, Illinois, and it also has technical support offices in India and China. It is privately held.

Chris Carlix has been at all times the President and CEO of Carlixian and the primary shareholder, holding a 91.2% stake in the company.

Red Flame Marketing runs an advertising agency and marketing business that includes database and website marketing. Its current CEO is Sterling Cooper, who was brought in to the company by one of the investors in 2018. Red Flame is headquartered in Chicago and has expanded its business, the result of which is that it is now a more direct competitor of Carlixian and also has an office in China. It is privately held with multiple initial investors and officers as shareholders. No one person or entity holds more than a 10% stake in the business.

Benjamin Yang is the Managing Director and Chief Technology Officer of Red Flame Marketing. Prior to his employment by Red Flame, Yang was Vice President of Technology and Security for Carlixian. Mr. Yang also founded and managed Carlixian's Shenzhen, China, office until he abruptly resigned to join Red Flame in January 2019.

The Background:

Chris Carlix founded Carlirian Data Services in 2005 and at all times has been its primary shareholder and CEO. The company specializes in providing marketing data, information analytics, and logistics services to consumer marketing and retail services, including IBM, Bank of America, Lowes, Comcast Cable, and others.

One particular niche that the company specializes in is identifying consumers who are considering, have considered, or are in the process of relocating to a new residence. It uses highly specialized software to scrape data from various open source (public) data sources to identify consumers in this category. This information has value to Carlirian's marketing clients who can in turn use this data to reach out proactively to connect various retail sellers and service companies to potential buyers. Carlirian is not the only company with the ability to identify and utilize this type of information, but is a market leader in this niche.

Carlirian does not share the source code for its software or the specific methodology used to identify the consumers when it provides information to its marketing customers.

Since 2015, Carlirian has had an office in Shenzhen, China, in order to tap into the Asian market for similar services. The office has a small number of local employees, but is largely managed out of Carlirian's Oak Brook Headquarters.

In 2010, Benjamin Yang was personally hired by Chris Carlix to work as a senior systems and analytics developer at Carlirian. Yang is an American citizen whose parents emigrated from Guangdong, China, before Yang was born. (Guangdong is adjacent to Shenzhen.) Yang graduated from Northwestern University with a degree in Computer Science, received a Master's Degree in Technical Processing from Shenzhen University in Shenzhen, and a PhD in statistics from Carnegie Mellon University. Prior to working at Carlirian, Yang had knowledge and experience in data processing and analysis, information technology, website construction and other technology related fields.

Yang was very successful in his role at Carlirian and by 2013 was promoted to Senior Director of Software Development and Coding Operations. In 2015, Yang was promoted to Vice President of Technology and Security for Carlirian, after which the company developed its data scraping software and market niche. In this capacity, Yang was responsible for developing and implementing security protocols and had hiring responsibility for the department that did virtually all of the development of Carlirian's scraping platform. He was also responsible for initiation, development and management of the Shenzhen, China, operation and made regular visits to Shenzhen, and as a result, Mr. Yang personally hired most of the Shenzhen employees.

By 2018, Yang became unhappy with certain aspects of his role at Carlirian. He felt that he was underpaid and underappreciated. He addressed these concerns to Carlix, including a specific request for an ownership interest in Carlirian. Carlix refused this request, although he did promise to "consider" a bonus at the end of the year.

Benjamin Yang and Red Flame’s CEO Sterling Cooper were acquaintances through their membership at the Butterfield Country Club in Oak Brook. Through this relationship, Cooper became aware of Yang’s role at Carlxian, and Yang’s dissatisfaction.

Up until 2019, Red Flame Marketing was primarily an advertising agency with mostly mid-sized and some larger regional clients in the Chicago area. It considered itself a “full-service” agency with experience in television, print, radio, in home, online marketing—including search engine optimization, search engine marketing, and other forms of digital marketing—market analytics and web development. It was aware of Carlxian’s (and others) ability to mine and scrape data and its ability to identify specific categories of consumers, such as those planning or expecting to move. Up until 2019 it did not have the technological infrastructure to develop its own particular market niche, but a February 2018 capital investment by West Northern Ventures allowed it to begin that process, although its intention would be to make the process more affordable and accessible to smaller businesses than were typically served by Carlxian.

It just needed to find the right person...

The Parties Agree About:

The parties generally agree about the background information outlined above.

Yang and Cooper were acquainted through the Butterfield Country Club. In the spring of 2018, they played golf together and during that round there was a discussion of Yang's dissatisfaction with Carlixian and Red Flame's interest in developing the ability to mine and scrape data.

Benjamin Yang notified Carlixian of his intention to resign on January 4, 2019 and resigned on January 5, 2019. He started his position with Red Flame within a week.

Benjamin Yang had knowledge of and was involved in Carlixian's market scraping software and related systems. His company laptop had files and other information related to the process and was returned to Carlixian one day after his resignation on January 6, 2019.

Several, but not all, of the employees of Carlixian's Shenzhen staff also resigned their positions on or about January 4, 2019.

Red Flame opened up an office in Shenzhen on January 14, 2019, which included a number of former Carlixian employees.

The parties agree that neither Benjamin Yang nor the Shenzhen employees were subject to a non-competition agreement at the time of their respective departures.

By December 2019, Red Flame was able to directly compete with Carlixian in the use of market scraping, including in the area of consumers who were considering relocating. Red Flame has won several contracts that may have otherwise gone to Carlixian, although neither company can be certain due to the proprietary nature of the contracts. Carlixian has seen a flattening in its business that can reasonably be attributed to the increased competition with Red Flame and other companies in the marketplace.

Business for both companies has actually increased since the COVID-19 outbreak, as clients seek out data scraping and other marketing services to continue to attract customers in challenging times. Between January 2020 and July 2020, Carlixian has seen growth of 5% (compared with the 3rd and 4th quarters of 2019) and Red Flame has seen growth of 16% (compared with the 4th quarter of 2019), with much of Red Flame's growth coming in the data scraping arena, although some could be attributed to its traditional broad-based marketing services. The broader industry for data scraping marketing has seen growth of approximately 7.6% in the U.S. and is flat to negative in other global regions.

Carlixian’s Claims and Assertions:

Through his employment and role at Carlixian, Yang developed or supervised the development of much of the data scraping process and software that was critical to Carlixian’s success. Yang was also responsible for developing internal structures for securing and protecting Carlixian’s internal information.

Carlixian also maintains a database of marketing information, some of which was licensed from a third party, but Carlixian “analyzes, edits and adds” to the licensed data. The Carlixian database requires a username and password and are accessible only to a limited number of Carlixian employees, including Benjamin Yang. This information has value in identifying potential customers and their needs.

At some time prior to January 4, 2019, Yang and Red Flame’s Cooper conspired with a third party—an employee of a potential customer of Carlixian—to win a contract for Red Flame using information provided by the third party and services and know-how that Yang took with him when he left Carlixian

A forensic investigation conducted by Carlixian has shown that Yang directed the Shenzhen operation toward Red Flame prior to January 4, 2019.

The investigation showed that “thousands of files” and e-mails were deleted from Yang’s laptop between January 4, 2019 and January 6, 2019, when it was returned to Carlixian.

The investigation further showed that Shenzhen employees transferred a “vast amount of proprietary data and trade secrets” between January 2, 2019 and January 7, 2019.

Carlixian asserts that the following are trade secrets: its know-how and software; proprietary information about customer needs and industry trends; proprietary information about specific customers; the relationship between the US and China operation; and non-public information about Carlixian employees and clients.

Carlixian asserts that there was no legitimate need for Yang or the Shenzhen employees to retain or copy these files and e-mails, particularly after January 5, 2019.

Using the information gained via Yang, the third party employee, and the Shenzhen employees, Red Flame has been able to establish itself as a competitor to Carlixian and win customers that Carlixian reasonably believes that it would have likely won.

Carlixian disputes all of Red Flame and Yang’s specific assertions and claims.

Red Flame's Claims and Assertions:

Red Flame asserts that because both Carlirian and Red Flame were Chicago metro based advertising and marketing companies, it is not uncommon for them to compete for similar customers. Even as competitors, however, their respective officers and employers would occasionally meet socially or to exchange non-proprietary information.

After receiving the 2018 funding, Cooper and Carlirix did actually meet and have a general conversation about the concepts and opportunities afforded by data analytics. As a result of that meeting, Carlirix was aware of Red Flame's intention to expand into that area.

Similarly, it would not be uncommon for employees of one company to leave for the other company and vice versa.

Red Flame asserts while Carlirian was a market leader in data scraping and had a particular niche with identifying consumers who were relocating or considering relocating, such information is not proprietary to Carlirian as this information is generally known within the industry or readily ascertainable through reverse engineering.

Red Flame asserts that Carlirian did not take reasonable steps to maintain the secrecy of any alleged trade secrets, or voluntarily disclosed them to third parties.

Red Flame was and is well within the acceptable bounds of business practice to enter into competition with and/or a similar business market niche as Carlirian including the recruitment of former Carlirian employees with certain professional skills, reaching out to known and suspected Carlirian customers, and building on information that is generally known in the industry. At no time did Red Flame obtain or utilize Carlirian trade secrets, or hire Carlirian employees subject to non-compete agreements.

Red Flame asserts that its business has been directly harmed by Carlirix's statements alleging that Red Flame and Yang "stole trade secrets," and has been using its influence to steer customers—even those that Carlirian does not do business with—away from Red Flame.

Red Flame disputes all of Carlirian and Carlirix's assertions and claims.

Carlix's Claims and Assertions:

Carlix acknowledges that he knew of Yang's dissatisfaction with his employment, but had always made it clear that he would not offer an ownership interested to any employee, and Yang knew that.

Carlix asserts that beginning in 2018, Yang took steps to deliberately minimize the security around the scraping software development. These steps included: failing to use non-disclosure and non-competition agreements for the coders and other employees he hired; failing to use multi-factor authentication or other generally accepted security protocols for password access; retaining sensitive files on his personal computer without redundant password protection or other security; minimizing server security protocols; sharing of URLs, IP addresses, email information and other private information with third parties; and other acts of commission and omission that left the company's and Carlix's information vulnerable.

Carlix asserts that these actions were deliberately intended to hurt Carlix personally by reducing the value of his ownership in the company by impacting its trade secret protections and causing staff to work for competitors and former client companies who later took their business elsewhere.

Carlix acknowledges that he was not angry about Yang's departure, but was angered by the actions that he claims Yang took after leaving Carlixian for Red Flame.

Carlix denies Yang's claims about allegations of theft and deception, asserting instead that Yang was "going around town bad-mouthing (Carlix) as a bully and a "Scrooge" who deserves whatever (Yang) can dish out."

Carlix disputes all of Yang and Red Flames claims and assertions.

Yang's Claims and Assertions:

Yang asserts that Chris Carlix had a very domineering work management style that resulted in relatively high turnover among lower and mid-level employees. However, as Carlix was mainly focused on finding new customers for Carlixian, he did not take or direct specific actions regarding Carlixian's day to day operations.

Yang asserts that he had approached Carlix about a raise and an ownership stake in Carlixian in the spring of 2018 and was told that he would not receive an ownership stake and that Carlix put him off with vague statements about a possible "bonus," which never materialized. Yang affirms that he shared his dissatisfaction with Carlix, to which Carlix replied, "You're always free to see if you can find something better."

Yang's resignation on January 4, was quickly agreed to by Carlix.

No one at Carlixian specifically requested the return of the laptop. Yang did so voluntarily after deleting various outdated and archival files, and transferring what Yang considered to be his personal and professional development files. Yang specifically denies that any copied or deleted information was proprietary to Carlixian, but rather was information related to his personal knowledge and skill in the industry.

Yang asserts that Carlix was upset about Yang's leaving for Red Flame not because he left, but because Carlix was aware of Red Flame's capital funding and intention to move into the data analytics field.

Yang asserts that Carlix has made multiple public statements accusing Yang of theft and deception. These statements were made to others in the advertising and marketing community, and to mutual acquaintances. As a result of these accusations, Yang's acquaintances have avoided him. In one instance, Yang's daughter was denied admission to a private school due to defamatory statements made to the school's officials by Mr. Carlix, who is believed to be a donor to the school.

Yang also asserts that Carlix made threats to Yang via his former Carlixian colleagues, asserting that Carlix threatened to cause Yang a "sea of pain", and had "all the money in the world to cause you (Yang) pain". Yang asserts that these colleagues were coerced or intimidated by Carlix into making these threats.

Yang disputes all of the claims and assertions made by Carlix and Carlixian

What's Happening Now?

In all areas, litigation has been threatened but not yet begun. The parties in all respects are willing discuss a business solution or negotiated settlement to the various claims, but reserve the right to pursue litigation. The parties have scheduled a mediated negotiation session before a “neutral mediator” to try to work out a settlement.

The Assignment:

There are multiple components of this project.

The first component is a 7 to 9 page written memorandum outlining the legal claims and defenses and any business impact raised by the various claims and assertions. As you review the hypothetical, understand that some of the assertions and claims may be in dispute and consider whether and how the outcome of a disputed claim or assertion would impact your conclusions. Focus on the legal and business issues raised by the claims and assertions, and consider and address any alternate—including unfavorable—conclusions that you encounter from your research and how you would respond.

Provide in-text citations to any resources that you use. Be sure to clearly identify any quoted materials by using quotation marks or indented paragraphs.

Because everyone asks: 7 to 9 pages double-spaced with Microsoft Word default font size and margins. Going short or long will not be penalized, but may raise issues of whether necessary information is being omitted or unnecessary information is being included. The written memorandum will be worth 33 points (or 66% of the Project total score.)

The second component is the “mediation” session that will be conducted via Zoom on Wednesday, October 7th. During this session, each group will make two presentations to the “mediators” (the instructors). The first is a presentation of the legal and business claims that you will be making against one or more of the other parties. The presentation format can be of your choosing and can include PowerPoint or another slide deck, video, or other media platform if you wish. All of the members of the group should participate in some meaningful way during this portion of the presentation. Each presentation should be no more than 10 minutes.

After all of the initial presentations, there will be an opportunity for a 5 to 6 minute response to or rebuttal of any claims made against your group by another of the parties. While some of these responses should be planned for and covered in your written memorandum, you may need to be prepared to respond “on the fly” to unexpected claims made against your group. The mediators will understand that some facts are in dispute, but your responses should focus on the strengths of your position notwithstanding any disputed facts or claims.

Finally, there will be a 10-minute negotiation session between the four parties to see if a solution can be agreed to. While a settlement is not specifically required, the parties should negotiate in good faith and with a full understanding of the costs and risks of litigation. The presentations collectively are worth 12 points (or 24% of the Project total score.)

After the presentations, students will complete a peer assessment in which they score both themselves and the other members of their team. The peer assessment will be worth 5 points (or 10% of the Project’s total score.)

INSTRUCTORS' NOTES:

A hypothetical such as this is non-exclusive. Do not assume any facts or information not presented, but think about it as “information you do not know” and consider what differences it might make—if any—in your conclusions. Base your conclusions on the most logical inferences from the facts.

The hypothetical will be released for your initial review after the remote session on Wednesday, September 9 and the group assignments will be released and discussed during the following week's remote session on Wednesday, September 16. The written memorandum will be due at the end of the 6th week, on Sunday, October 4. The presentations will be held during the remote session on Wednesday, October 7.

This is a team project and as such you will be expected to work as a team of 5 or 6 to complete the written memo and mediation session presentations. The teams will be assigned randomly using Canvas and will be available on the Canvas Page at the beginning of week 4. (See “People” module, “Case Study Teams”).

Some thoughts about working in teams. In an ideal world, all members of the team will be dedicated, professional, diligent, equal to the challenge, and in all respects perfect people. Occasionally, things may fall short and working as a team may present challenges of many kinds, ranging from personal and personality conflicts, to workload balancing and participation, to communication. The primary advice that we can give you is that someone (mediator, employer, professor, boss) expects the best product out of the team as possible and that every member of the team should participate to the best of their ability to achieve that output.

SPECIAL NOTE: In this remote teaching environment, we have students in time zones throughout the world. Please be both cognizant and respectful of the challenges that this may present in communication.

GRADING:

The Case Study Project will be worth a total of 50 points toward the final course grade. The written memorandum will be worth 33 points (66% of the total) which will be assigned to all members of the group. E.g., if the team of Bob, Carol, Ted, Alice and Arlo receives a score of 27/33 on the memo, then Bob, Carol, Ted, Alice and Arlo will each receive a 27/33 as an individual score. The presentation and peer evaluation will be worth 12 points (24%) and 5 points (10%) respectively, and both components will be individually scored. E.g., Bob might get an 11 on the presentation and a 4 on the peer evaluation, while Carol could get a 9 on the presentation and a 4.5 on the peer evaluation. The final score posted to Canvas will reflect each student's TOTAL score, and not the individual components. E.g. Bob would receive a 42 as a TOTAL score, Carol would receive a 40.5 as a TOTAL score.

GRADING CRITERIA FOR MEMO AND PRESENTATION:

Legal Research, 50%: Locates and identifies appropriate resources and authority, authorities are used correctly, provides appropriate citations to resources used (*Bluebook* "perfection" is not required, but you must provide enough citation information to clearly identify the resource being used).

Analysis, 30%: Makes relevant arguments or position statements supported with appropriate authority, positions are organized in a logical way, and reasoning is employed to reach and support a logical conclusion, etc.

Professionalism, 20%: Formatting, grammar, punctuation, typos, compliance with instructions, communication during presentation, etc.

DEADLINES: The written Memorandum work product will be due at 11:59pm on Sunday, October 4 by uploading it to Canvas. The presentations will be on Wednesday, October 7. The Peer Assessment will be available after the presentations on the 7th and should be submitted no later than 5:00pm on Friday, October 9.