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IN THE

COURT OF APPEALS OF INDIANA

Westwood One Radio Networks, LLC, f/k/a Westwood One Radio Networks, Inc.,

Appellant/Plaintiff,

v.

The National Collegiate Athletic Association and NIT, LLC,

Appellees/Defendants.

May 26, 2021

Court of Appeals Case No. 20A-CT-1965

Appeal from the Marion Superior Court

The Hon. Heather A. Welch, Judge

Trial Court Cause No. 49D01-2009-CT-33968

Bradford, Chief Judge.

Case Summary[1]

[1] In 2011, the predecessor to Westwood One Radio Networks, LLC ("Westwood One"), entered into a multi-year contract ("the Radio Agreement") with the National Collegiate Athletic Association and NIT, LLC (collectively, "the NCAA"), to be the exclusive radio home of collegiate athletic championships, including the men's NCAA Division I basketball tournament ("the Tournament"). After the NCAA canceled the 2020 Tournament, Westwood One did not satisfy its financial obligation pursuant to the Radio Agreement. Both sides filed suit, and Westwood One moved to enjoin the NCAA from voiding the parties' contract. The trial court denied Westwood One's request for injunctive relief. Westwood One contends that the trial court clearly erred in improperly limiting the circumstances under which goodwill may be protected by injunctive relief and in concluding that any immediate harm to Westwood One could be cured by a legal remedy later. The NCAA argues that the trial court correctly denied injunctive relief on the basis that Westwood One has an adequate remedy at law should it prevail in the underlying litigation. Because we agree with the NCAA, we affirm.

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[1] Oral argument was held in this case on April 15, 2021, at the Krannert Center for Executive Education on the campus of Purdue University in West Lafayette, Indiana. We would like to commend counsel for the quality of their oral presentations and written submissions and thank the administration, faculty, staff, and students of Purdue University and the Krannert School of Management for their hospitality.

Facts and Procedural History

[2] Westwood One has been affiliated with the NCAA since 1982 and has had the exclusive right to radio broadcast the Tournament since 2003. On January 13, 2011, the parties entered into the Radio Agreement, which created "the 'NCAA Radio Network on Westwood One'" and granted Westwood One the exclusive right to produce and distribute radio broadcasts of certain NCAA championship events, including the Tournament. In exchange, Westwood One agreed to pay the NCAA an annual rights fee ("the Rights Fee"). Each year's Rights Fee is due in two installments, with the first thirty-three percent due by January 15 of the contract year (which runs from September 1 to August 31) and the balance due by April 10. Failure to make either or both payments constitutes a material breach of the Radio Agreement.

[3] In 2020, due to the spread of COVID-19, many major events were cancelled, including the Tournament, and Westwood One did not pay the second installment of the Rights Fee for the 2019–20 contract year. As it happens, the parties had anticipated the general possibility that sporting events covered by the contract might have to be cancelled for reasons beyond their control. Section 11 of the Radio Agreement provides, in part, as follows:

> 11. FORCE MAJEURE.
>
> 11.1 Effect of Force Majeure. In the event and to the extent that any Game or the distribution of any Radio Broadcast of any [Westwood One] Radio Game is interrupted, delayed, prevented or canceled at the scheduled time due to act of God, inevitable accident, war, terrorist act, national emergency, government action or decree, strike or other labor dispute, fire, riot or civil

> commotion, extreme and unusual inclement weather, preemption of a Radio Broadcast for coverage of a news event of overwhelming public importance, in each case to the extent not within the reasonable control of the NCAA or [Westwood One], or for any other reason beyond the control of the NCAA, the NIT or [Westwood One] (a "Force Majeure Event"), then, except as set forth in Section 11.2, each party shall be excused from performance hereunder only with respect to such event and only with respect to the Game affected thereby, and all other rights and obligations of the parties hereunder shall not be affected in any manner. Notwithstanding the foregoing, the occurrence of a Force Majeure Event shall not excuse the performance by a party unless that party promptly notifies the other party of the Force Majeure Event and promptly takes all reasonable steps to circumvent or mitigate the underlying cause.

The applicability of the force majeure clause would seem to be at the heart of the litigation moving forward.

[4] Pursuant to Section 15.1 of the Radio Agreement, the NCAA may terminate the agreement "upon written notice to [Westwood One] at any time after the failure by [Westwood One] to perform any material obligation […] which is not cured within 30 days after written notice[.]" Appellant's App. Vol. II p. 120. Section 15.1 further provides that the NCAA may terminate the Radio Agreement if Westwood One "fail[s] to pay when due (after giving effect to any grace period) any indebtedness having an aggregate principal amount outstanding in excess of $2,000,000[.]" Appellant's App. Vol. II p. 120. There is no dispute that Westwood One's unpaid balance for the 2019–20 contract year exceeds two million dollars.

[5] On September 28, 2020, the NCAA terminated the Radio Agreement, and Westwood One filed suit and moved to enjoin the NCAA from cancelling the Radio Agreement the same day. On October 14, 2020, the trial court held a hearing on Westwood One's motion for a preliminary injunction and denied it on October 23, 2020. The trial court's order provides, in part, as follows:

> ***i. Whether Westwood One's damages would be nearly impossible to calculate***
>
> 45. With respect to the first claim, Westwood One has argued that it would be virtually impossible to determine or accurately estimate the losses Westwood One would incur over the next four years if the NCAA were to terminate the Radio Agreement. Westwood One has cited the difficulty in being able to project its losses given how intertwined the exclusive rights to broadcast NCAA games are with Westwood One's revenue streams, including advertising and radio programing revenue, business development, and Westwood One's branding and goodwill in the marketplace. Calculating damages for the future is made even more difficult due to the likely ongoing effects of the COVID-19 pandemic and technological changes that have altered the broadcasting industry.
>
> 46. In response, [the NCAA] argue[s] that the evidence shows that Westwood One has the means to calculate any damages arising from an improper termination of the Radio Agreement and thus cannot obtain an injunction preventing the [the NCAA] from terminating the Radio Agreement. [Bruce] Gilbert, Westwood One's head of sports programming, testified that Westwood One tracks the advertising, licensing, and rights fee revenue generated through broadcasting NCAA events under the Radio Agreement, along with the costs of production (and its annual rights fee), to evaluate Westwood One's financial performance. Westwood One has all of this cost, revenue, and [earnings before interest, taxes, depreciation, and appreciation] information for each year under the Radio Agreement. NCAA

further noted that Westwood One actually quantified its losses in actual and projected revenue from the canceled 2020 NCAA Basketball Championship. In sum, NCAA maintains that any damages from the purportedly wrongful termination of the Radio Agreement are readily calculable and could be satisfied with a monetary judgment if Westwood One prevails at trial.

47. Upon review, the Court agrees with [the NCAA] and finds that Westwood One has not met its burden to establish irreparable harm based on the alleged difficulty in calculating legal damages arising from any improper termination of the Radio Agreement under Indiana law.

48. The Court understands Westwood One's point that the exclusive radio broadcasting rights under the Radio Agreement, particularly the March Madness tournament, are extremely important to Westwood One's revenue streams. While the financial impact of losing any broadcasting rights under the Radio Agreement with [the NCAA] may be difficult to determine in exact dollar amounts, the evidence shows that Westwood One has sufficient mechanisms to track and calculate any losses attributable to the termination of the Radio Agreement, including lost advertising and licensing fees, such that Westwood One could be made whole through a legal remedy.

49. Case law further supports not finding irreparable harm in this matter. In *Gleeson* [*v. Preferred Sourcing, LLC*, 883 N.E.2d 164 (Ind. Ct. App. 2008)], the Court of Appeals found irreparable harm where a former employee subject to a restrictive covenant in her employment agreement had attempted to divert customers to a competitor because it was uncertain how many of those customers would have remained had the defendant not violated the terms of her restrictive covenant. 883 N.E.2d at 178. Furthermore, the threat of the *Gleeson* defendant committing future violations of her restrictive covenant warranted injunctive relief. *Id*.

50. Here, Westwood One does not have the same issue. First, there is a certainty surrounding Westwood One's losses due to the termination of the Radio Agreement. Westwood One

would lose the rights to be the exclusive radio broadcaster of the championships as outlined in the Radio Agreement, providing a clear source of Westwood One's damages. Second, there is evidence that Westwood One has the means to calculate any loss of the revenue that would result from losing the right to be the exclusive radio broadcaster of these championships. Given the long-term relationship between the parties, there is substantial historical data to rely upon as well when calculating losses.

51. The Court finds that any damages to Westwood One through [the NCAA's] termination of the Radio Agreement may be reasonably calculated and thus can be addressed through a legal remedy.

ii. Whether Westwood One has shown irreparable harm through damage to goodwill or reputation

52. Westwood One has also argued that there is a risk of irreparable harm to its reputation and goodwill if [the NCAA is] permitted to terminate the Radio Agreement.

53. Harm to a business' goodwill and reputation has been an adequate basis to show irreparable harm for the purposes of issuing a preliminary injunction. [*Barlow v. Sipes*, 744 N.E.2d 1, 8 (Ind. Ct. App. 2001), *trans. denied*].

54. Goodwill has been defined as "'the probability that old customers of the firm will resort to the old place of business where it is well-established, well-known, and enjoys the fixed and favorable consideration of its customers' or 'the expectation of continued public patronage.'" *Rice v. Hulsey*, 829 N.E.2d 87, 90 (Ind. Ct. App. 2005) (citations omitted). Furthermore, goodwill "is an intangible asset which may be transferred from seller to purchaser, and it becomes the buyer's right to expect the firm's established customers will continue to patronize the purchased business." *Id*. (citations omitted).

55. Westwood One believes that its long-term association with NCAA and the March Madness tournament in particular has granted Westwood One such a goodwill interest in those partnerships. Westwood One has had an association with NCAA

since 1983 and has been the exclusive provider of the March Madness tournament on the radio since 2003. Westwood One argues that there would be no adequate remedy at law that could replace the goodwill and reputation Westwood One derives from this unique relationship, with March Madness and NCAA, if it were lost.

56. In response, [the NCAA] argue[s] that Westwood One's claims for irreparable harm arising out of any damage to goodwill are inapplicable because Westwood One largely relies on opinions involving employment non-compete issues or trade secrets, which are factually distinct from the present case. *See, e.g.*, *Gleeson*, [883] N.E.2d at 164; *AGS Capital Corp. v. Prod. Action Int'l, LLC*, 884 N.E.2d 294 (Ind. Ct. App. 2008); *Norlund v. Faust*, 675 N.E.2d 1142 (Ind. Ct. App. 1997).

57. [The NCAA] note[s] that while harm to goodwill is a cognizable injury, Indiana courts have acknowledged that "damages to a person's reputation in the form of economic loss is properly remedied by money damages." *Mercho-Roushdi-Shoemaker-Dilley Thoraco-Vascular Corp. v. Blatchford*, 742 N.E.2d 519 (Ind. Ct. App. 2001) (citing *Daugherty v. Allen*, 729 N.E.2d 228 (Ind. Ct. App. 2000)).

58. [The NCAA] contend[s] that Westwood One has monetized its reputation and goodwill from the association with [the NCAA] through advertising, licensing, and rights fee agreements, thus any damage to that reputation can be addressed by remedy in the form of lost profits. Moreover, Westwood One assigns a monetary value to goodwill when evaluating the business sense of sports licensing agreements, further suggesting that harm to its goodwill could be compensated through a damages remedy.

59. Upon review, the Court again agrees with [the NCAA] and finds that Westwood One has not shown irreparable harm through any potential damage to its goodwill or reputation by [the NCAA's] termination of the Radio Agreement.

60. First, there appears to be no suggestion that [the NCAA is] attempting to compete with Westwood One through the

termination of the Radio Agreement. Goodwill has been recognized in part as the continued expectation that customers will patronize the business. There has been no showing that [the NCAA's] termination of the Radio Agreement was part of a broader artifice to undermine customers continuing to patronize Westwood One by directing them to a competing firm as is typical in cases where courts have found irreparable harm based on damage to goodwill. *Compare Gleeson*, 883 N.E.2d at 178; *AGS Capital*, 884 N.E.2d at 312–13.

61. Second, the Court finds that Westwood One has not shown it possesses a protectible goodwill interest in its relationship with March Madness and NCAA that could support a finding of irreparable harm if damaged. Westwood One deriving an advantageous market position due to its positive association with [the NCAA] and the March Madness tournament in particular differs from the kind of goodwill that appellate courts have previously recognized could be subject to irreparable harm, which typically involves a former employee misappropriating his or her previous employer's internal processes and using knowledge of customer relationships to compete against that employer. *See* [*AGS Capital*, 884 N.E.2d at 312–13]; *See also Hannum Wagle & Cline Eng'g, Inc. v. Am. Consulting, Inc.*, 64 N.E.3d 863, 876 (Ind. Ct. App. 2016). Instead, Westwood One's association with March Madness and NCAA arises from an external, set-term contractual agreement with [the NCAA] rather than result of an internally-developed process which Westwood One could reasonably seek protection against misappropriation. Westwood One's right to the [] current association would only last until 2024, which is when the present Radio Agreement was scheduled to end. Given that Westwood One's purported goodwill interest is reliant on what [the NCAA] provide[s] and is subject to defined temporal limitations, the Court does not find that Westwood One possesses a requisite goodwill interest in its relationship with March Madness or any championship subject to the Radio Agreement to warrant issuing injunctive relief.

62. Finally, the Court agrees with [the NCAA] and finds that any damage to Westwood One's goodwill could be made whole through a legal remedy because Westwood One can calculate the monetary value of its association with March Madness and the other championships that are subject to the Radio Agreement.

63. With respect to any irreparable damage to reputation, there has been no allegation that [the NCAA has] engaged in affirmative conduct that would negatively affect Westwood One's reputation outside of the termination of the Radio Agreement, such as making defamatory or derogatory statements to the public. *Compare Barlow*, 744 N.E.2d at 8. The alleged reputation damages then concern only the potential negative perception of Westwood One's credibility within the industry, resulting from no longer being the exclusive radio broadcaster of NCAA championships subject to the Radio Agreement. Appellate courts have found that such damages can be quantitatively determined and made whole through a legal remedy. *See Ind. Family & Soc. Servs. Admin. v. Ace Foster Care & Pediatric Home Nursing Agency Corp.*, 823 N.E.2d 1199, 1204, 1204 n.4 (Ind. Ct. App. 2005) (finding that injuries to business reputation and credibility can be addressed through adequate legal remedies). The Court similarly finds that Westwood One has not shown irreparable harm through any damage to its reputation.

64. In sum, the Court ultimately finds that Westwood One has not shown by a preponderance of the evidence at this point that it would suffer irreparable harm unless the Court were to issue an injunction preventing [the NCAA] from terminating the Radio Agreement. Westwood One's purported damages from termination of the Radio Agreement are "mere economic injury" for which an injunction cannot issue. *See Ind. Family & Soc. Servs. Admin. v. Walgreen Co.*, 769 N.E.2d 158, 162 (Ind. 2002).

C. Remaining Preliminary Injunction Factors

> 65. Having found that Westwood One has not established the irreparable harm factor, the Court need not address the remaining preliminary injunction factors.

Appellant's App. Vol. II pp. 12–18.

Discussion

[6] "The grant or denial of a preliminary injunction rests within the sound discretion of the trial court, and our review is limited to whether there was a clear abuse of that discretion." *Walgreen*, 769 N.E.2d at 161 (citing *Harvest Ins. Agency, Inc. v. Inter-Ocean Ins. Co.*, 492 N.E.2d 686, 688 (Ind. 1986)). "Furthermore, due to the provisional nature of a preliminary injunction, […] a review of a grant or denial of a preliminary injunction should be confined to the law applied by the trial court, and this Court should evaluate only the merits of arguments reached by the trial court." *State v. Econ. Freedom Fund*, 959 N.E.2d 794, 801 (Ind. 2011).

> When determining whether or not to grant a preliminary injunction, the trial court is required to make special findings of fact and state its conclusions thereon. Ind. Trial Rule 52(A). When findings and conclusions are made, the reviewing court must determine if the trial court's findings support the judgment. [*Norlund*, 675 N.E.2d at 1149]. The trial court's judgment will be reversed only when clearly erroneous. *Id.* Findings of fact are clearly erroneous when the record lacks evidence or reasonable inferences from the evidence to support them. *Id.* We consider the evidence only in the light most favorable to the judgment and construe findings together liberally in favor of the judgment. *Id.*

Barlow, 744 N.E.2d at 5.

[7] Because Westwood One appeals from a negative judgment, it must also

> "demonstrate that the trial court's judgment is contrary to law. A judgment is contrary to law only if the evidence in the record, along with all reasonable inferences, is without conflict and leads unerringly to a conclusion opposite that reached by the trial court. In conducting our review, we cannot reweigh the evidence or judge the credibility of any witness, and must affirm the trial court's decision if the record contains any supporting evidence or inferences."

Infinity Prods., Inc. v. Quandt, 810 N.E.2d 1028, 1032 (Ind. 2004) (quoting *DiMizio v. Romo*, 756 N.E.2d 1018, 1021 (Ind. Ct. App. 2001), *trans. denied*).

[8] > The trial court's discretion to grant or deny preliminary injunctive relief is measured by several factors: 1) whether the plaintiff's remedies at law are inadequate, thus causing irreparable harm pending the resolution of the substantive action if the injunction does not issue; 2) whether the plaintiff has demonstrated at least a reasonable likelihood of success at trial by establishing a prima facie case; 3) whether the threatened injury to the plaintiff outweighs the threatened harm the grant of the injunction may inflict on the defendant; and 4) whether, by the grant of the preliminary injunction, the public interest would be disserved.

Barlow, 744 N.E.2d at 5. "[T]he moving party has the burden of showing, by a preponderance of the evidence, that the facts and circumstances entitle him to injunctive relief." *Id.* "The power to issue a preliminary injunction should be used sparingly, and such relief should not be granted except in rare instances in which the law and facts are clearly within the moving party's favor." *Id.*; *see also Econ. Freedom Fund*, 959 N.E.2d at 801 ("A preliminary injunction is not a final judgment but rather 'an extraordinary equitable remedy' that should be granted 'in rare instances.'") (citation omitted).

[9] Westwood One contends that the trial court erred in concluding that it had an adequate remedy at law should it ultimately prevail in its suit against the NCAA, because (1) the trial court allegedly improperly limited the circumstances for protectible goodwill to noncompete contracts and (2) its damages would be impossible to ascertain. The NCAA counters that the trial court correctly concluded that any potential damages from an alleged breach of contract are readily ascertainable and that any future damage to goodwill is purely speculative. "[O]nly harm which a court cannot remedy following a final determination on the merits may be deemed to constitute irreparable injury warranting issuance of a preliminary injunction." *Wells v. Auberry*, 429 N.E.2d 679, 683 (Ind. Ct. App. 1982). If an adequate legal remedy exists, injunctive relief should not be granted. *Walgreen*, 769 N.E.2d at 162. "A party suffering mere economic injury is not entitled to injunctive relief because damages are sufficient to make the party whole." *Id*. In determining whether an adequate legal remedy exists, a trial court must assess whether the legal remedy is as full and adequate as the equitable remedy. *Blatchford*, 742 N.E.2d at 524. Finally, Indiana courts have acknowledged that "damages to a person's reputation in the form of economic loss is properly remedied by money damages." *Id.* (citing *Daugherty*, 729 N.E.2d at 235).

[10] Westwood One does not dispute that its loss of advertising, licensing, and rights-fees revenue (the three sources of income from its broadcasting rights) are readily ascertainable, but instead argues that the trial court improperly failed to account for damages due to loss of goodwill and reputation. Westwood One

contends that it will incur losses in its dealings with other organizations, such as the National Football League ("the NFL"), due to the termination of its agreement with the NCAA, perhaps causing them to follow the NCAA to a new broadcasting partner or making it more difficult to enter into new agreements. Westwood One also argues that its dealings with affiliates, licensees, and other clients could be negatively affected if it were no longer able to package the Tournament with other events or entertain guests at the Tournament venues.

[11] The NCAA argues that the evidence before the trial court does not clearly and unerringly lead to a conclusion opposite to the one reached by the trial court.[2] We agree. Gilbert indicated that while goodwill was an "intangible" factor, Westwood One nonetheless took it into account, assigning a monetary value to it at least some of the time when assessing whether a particular licensing agreement is profitable. Appellant's App. Vol. II p. 227. Although Gilbert testified that he was not aware of a "general formula" for monetizing goodwill in use at Westwood One, the fact that it did it some of the time supports an

[2] Westwood One also argues that the definition of goodwill cited by the trial court essentially (and incorrectly) limits recovery to cases which involve covenants not to compete in the sale of a business and restrictive covenants in employment contracts. In its order, the trial court noted that goodwill may be defined as "the probability that old customers of the firm will resort to the old place of business where it is well-established, well-known, and enjoys the fixed and favorable consideration of its customers or the expectation of continued public patronage." *Rice*, 829 N.E.2d at 90 (citations omitted). Goodwill "is an intangible asset which may be transferred from seller to purchaser, and it becomes the buyer's right to expect the firm's established customers will continue to patronize the purchased business." *Id*. (citations omitted). A fair reading of the trial court's order, however, indicates that it simply recognized that the cited definition does not fit the facts of this case, which is not the same thing as concluding that protectible goodwill can only exist in cases like *Rice*.

inference that it can do it in the case of the Radio Agreement. Gilbert also indicated that Westwood One's goodwill helped it to sell advertising and when it was negotiating licensing agreements with companies like SiriusXM. Appellant's App. Vol. II p. 228. Taken as a whole, Gilbert's testimony supports a reasonable inference that Westwood One is capable of ascertaining damages due to loss of goodwill with reasonable accuracy, even if it has not already done so in this particular circumstance. This, along with Westwood One's over ten years of data on which it can rely to estimate its losses for 2020 and/or in the future, supports the trial court's finding that preparing a reasonable estimate of its losses should be possible.

[12] Westwood One, however, focuses most of its attention on claims of future losses based on loss of reputation, contending that the termination of its agreement with the NCAA will damage it by causing other broadcast partners to terminate their agreements, make it more difficult for it to negotiate new agreements without the lure of being able to offer rights to broadcast the Tournament, and prevent it from entertaining business guests at Tournament venues, further damaging its ability to generate new business, damages it argues would be impossible to quantify. Westwood One also argues that the uncertainty of the evolving marketplace (particularly the emergence of streaming) and ongoing uncertainty regarding COVID-19 render accurate estimates of losses impossible. Although the NCAA argues in its brief that any claim of future damages is based on mere speculation, it maintained at oral argument that any future damages would be quantifiable, a position that it

conceded would estop it from continuing to argue that any future damages were merely speculative. The NCAA therefore argues that these types of future damages cited by the Westwood One can also be quantified with reasonable accuracy.

[13] We agree with the NCAA that Westwood One has failed to establish that any future damages due to loss of goodwill could not be quantified to a reasonable degree of certainty. We have already concluded that the record supports a conclusion that any short-term or present damages due to loss of goodwill can be quantified, and we see no reason that same evidence does not support a conclusion that any future damages would be similarly quantifiable. If Westwood One is capable of determining damages to loss of goodwill related to the Tournament, it follows that it is equally capable of calculating similar losses should it lose a client such as the NFL. As for Westwood One's claim that changes in the marketplace will make future damages difficult to ascertain, internet streaming (as the NCAA points out) is not a new phenomenon, and Westwood One has had since at least 2011 (when the Radio Agreement was executed) to evaluate its impact on its business. Finally, although Westwood One claims that the continuing effect of COVID-19 may cause future Tournaments to be played in a "bubble" or in front of empty stands, it does not explain exactly how this would affect radio broadcasts. Indeed, it may be that ratings will go up if COVID-19 continues to restrict other entertainment options. In short, Westwood One has failed to establish that the evidence unerringly leads to a conclusion opposite to the one reached by the trial court.

[14] Westwood One cites to several cases to support its various arguments, none of which we find to be dispositive. First, Westwood One cites to *Barlow* for the proposition that "a business's goodwill is a property right and normally subject to equitable protection." Appellant's Br. p. 16. *Barlow*, however, merely notes that "[w]e have upheld the grant of a preliminary injunction to protect a business' reputation and goodwill[,]" not that it is "normally" subject to equitable protection. *Barlow*, 744 N.E.2d at 8 (citing *McGlothen v. Heritage Envtl. Servs., L.L.C.*, 705 N.E.2d 1069, 1075 (Ind. Ct. App. 1999)). Westwood One also cites to several foreign cases that it claims stand for the proposition that breach of an exclusivity clause (such as the one that existed in this case) almost always warrants the award of injunctive relief. As the NCAA points out, however, in addition to none of these cases being binding, many of them involved uncontested evidence that that plaintiff's customers would in fact take their business elsewhere if the contract at issue were cancelled, evidence that is not present in this case. *See Reuters Ltd. v. United Press Int'l, Inc.*, 903 F.2d 904, 908 (2d Cir. 1990) ("Two of UPI's executives testified at depositions that some customers will cancel their subscriptions if it is unable to provide Reuters photographs[.] This evidence was further bolstered by a survey made by UPI of 36 out of its approximately 150 subscribers, in which some of those surveyed indicated that they would immediately drop their subscription if UPI became unable to provide Reuters photographs."); *Green Stripe, Inc. v. Berny's Internacionale*, 159 F. Supp. 2d 51, 55 (E.D. Pa. 2001) ("As a result of Green Stripe's inability to obtain the Berny's grapes, Costco has advised that it will no longer take grapes from Green Stripe for this year, and Green Stripe's business

relationship with Costco is in jeopardy. In addition, the present situation imminently threatens Green Stripe's current agreement and business relationship with Erms UK, which has suspended all of its agreements to purchase produce marketed by Green Stripe pending the resolution of the dispute involving the Berny's grapes."); *J.C. Penney Co. v. Giant Eagle, Inc.*, 813 F. Supp. 360, 370 (W.D. Pa. 1992), *aff'd by* 995 F.2d 217 (3d Cir. 1993) ("As of August 27, 1992, Giant Eagle could identify 16 customers that had switched from J.C. Penney to fill their prescriptions.").

[15] Westwood One also cites to *Ace Foster Care*, 823 N.E.2d at 1204, for the proposition that while an injunction to protect goodwill is not appropriate in the case of a start-up company that has not been in business long enough to generate much goodwill, Westwood is not a new company and has had decades to generate goodwill. It stands to reason, though, that such long-standing goodwill should, if anything, be easier to quantify, as opposed to more difficult. As for Westwood One's other authority, suffice it to say that it cites to other cases in which it was determined that a preliminary injunction was warranted under the circumstances of those cases. The standard of review, however, requires the court to determine whether the trial court abused its discretion in *this* case and, because each case has different facts, Westwood One's cases are of limited persuasive value.

[16] The judgment of the trial court is affirmed.

Robb, J., and Vaidik, J., concur.