

Striking the Balance Between Detailed Description and Unnecessary Disclosure of the “Secret” in Trade Secret Litigation Pleadings

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When filing a claim for trade secret misappropriation under the Defend Trade Secrets Act (DTSA) or a state’s Uniform Trade Secrets Act (UTSA), it is essential to strike the proper balance between sufficiently describing an underlying trade secret and avoiding disclosure of any details that would destroy its secrecy. A federal court decision issued earlier this month in the Northern District of California, MBS Engineering Inc., et al. v. Black Hemp Box, LLC, et al., No. 20-cv-02825-JD, 2021 WL 2458370 (N.D. Cal. June 16, 2021), highlights this “obvious tension between the right of public access to court proceedings and the ‘secret’ part of a trade secret” and provides a useful example of the factors used by courts to assess an appropriately alleged trade secret claim.

In MBS Engineering, Plaintiffs filed suit against a competitor company, its owner, and Plaintiffs’ former employee, alleging in part that the owner induced the former employee to breach his nondisclosure agreement with the Plaintiffs and share confidential trade secret information with him regarding Plaintiffs’ products. Defendants moved to dismiss Plaintiffs’ complaint, arguing in part that certain claims made by Plaintiffs could not survive because their complaint failed to establish the existence of any trade secret at issue.

The Court agreed that Plaintiffs’ original complaint “did not plausibly identify an actionable trade secret,” and dismissed it with leave to amend. The Court explained that “sensitive details need not be alleged [in the complaint]...so long as the pleadings give adequate notice of the subject matter of the particular trade secret at issue.”

After Plaintiffs filed an amended complaint, the Court held that Plaintiffs’ second attempt had remedied their prior shortfall. In particular, the Court ruled that Plaintiffs’ amended complaint had succeeded in meeting the standard for pleading a trade secret by “provid[ing] concrete information about the design and development of Plaintiffs’ [products] as the subject matter of the trade secret,” including descriptions of “specific design features.”

The Court further held that the amended complaint had done “enough to put defendants on notice of the nature of the trade secrets at issue” when it alleged that the “design, analysis, use, application, and generation of these innovative and customized [products] are derived from the confidential data developed by Plaintiffs during the design, engineering and manufacturing phases, including trials,

testing and troubleshooting processes conducted throughout the fabrication of the [products], all of which is confidential information.”

In light of the added details in Plaintiffs’ amended complaint, the Court held that Plaintiffs’ DTSA claim was “adequately pleaded” and allowed that claim, as well as a number of additional claims relying on the complaint’s proper pleading of a trade secret, to proceed forward in the case.

While companies pursuing trade secret litigation must always act carefully to avoid unnecessary disclosure of their confidential information, the Court’s decision in MBS Engineering serves as a good reminder of the importance of pleading such claims with as much specificity as possible to sufficiently establish the trade secrets at issue in the case.

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