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Can’t Overturn Jury Verdicts Based on Reasonable Inferences, but Broad Injunction Is Nonstarter Even for Willfully Misappropriated Trade Secrets

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In a rare appellate trade secret opinion, the US Court of Appeals for the Eleventh Circuit affirmed a district court’s denial of a defendant’s request for a new trial on liability and its refusal of the plaintiff’s requested injunction. It also reversed in part the district court’s denial of judgment as a matter of law (JMOL) on damages for clear error because the plaintiff failed to deduct marginal costs when calculating lost profits. *Financial Information Technologies v. iControl Systems*, Case No. 20-13368 (11th Cir. Dec. 22, 2021) (Jordan, **Newsom**, JJ., and Burke, Distr J.).

Competitors Financial Information Technologies (Fintech) and iControl Systems both sell software that processes alcohol sales invoices within 24 hours. Fintech was a lone operator for several years until iControl started servicing the alcohol industry and began selling a very similar product at a lower price point. After Fintech lost its vice president of operations (who was very involved in designing Fintech’s software), a sales representative and several customers to iControl, Fintech filed suit alleging misappropriation of trade secrets. The jury ruled in Fintech’s favor and awarded compensatory and punitive damages. iControl sought a new trial on liability, contending that Fintech’s alleged trade secrets were readily ascertainable and not “secret,” and JMOL on damages since Fintech hadn’t proved lost profits because it hadn’t deducted fixed and marginal costs from its lost revenue calculations. Fintech sought a permanent injunction prohibiting iControl from using either company’s software. The district court denied all three motions, and both parties appealed.

As to the jury verdict, the Eleventh Circuit noted that jury liability findings are generally difficult to overturn, and that the verdict was general and nonspecific regarding which of the seven alleged trade secrets iControl had misappropriated, so Fintech only needed to show evidence under the Florida Uniform Trade Secrets Act (FUTSA) of misappropriation as to one. iControl also did not move for JMOL on liability, and therefore, under the abuse-of-discretion standard of review, the Court could only overturn if “there is an absolute absence of evidence to support the verdict.” However, the Court found that Fintech and its witness presented sufficient evidence at trial to permit a reasonable jury to find that Fintech possessed at least one of the seven alleged trade secrets and that it was misappropriated. The evidence included emails indicating that its former vice president helped iControl discover Fintech’s internal processes to aid software developments, assisted iControl’s chief technology officer in troubleshooting issues in a manner similar to Fintech, shared screenshots of Fintech’s user portal and prompted customers to switch to iControl.

Similarly, the Eleventh Circuit found that the jury reasonably could have inferred from the evidence that iControl schemed to hire Fintech employees to misappropriate Fintech's software features—an act that demonstrated willfulness.

After assessing the meanings of fixed and marginal costs and the properly fact-intensive revenue and profits figures of the businesses, the Eleventh Circuit agreed that the jury was not required to deduct Fintech's fixed costs from its revenues to arrive at a proper "actual loss" measure but found no evidence from which the jury could have reasonably found that Fintech's marginal costs were zero. Thus, on remand the district court should require an accounting of marginal costs for a proper lost-profits calculation.

As for the requested injunction, Fintech argued that its proposed remedy was reasonably tailored to restrain iControl's misappropriation, but the Eleventh Circuit disagreed. Fintech had sought a blanket injunction prohibiting iControl from doing business in the regulated commerce industry, which the district court correctly denied since FUTSA only "authorizes the injunction of specific, identifiable trade secrets," not "blanket restraint of competition" or injunction "as a vehicle to restrict competition." Fintech's revised proposal was to prohibit iControl from using Fintech's proprietary regulated commerce software and iControl's Harmony software and Next Gen Reconciliation software, which Fintech argued misappropriated its proprietary method and process for developing and including information in its case and reporting features. The Court agreed that even this scope was an impermissible restraint that "swe[pt] too broadly and promoted confusion about the nature of Fintech's trade secrets," particularly when the jury verdict was not specific regarding which trade secret had been violated.

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