

Jordan Grotzinger:

Welcome to the trade secret law evolution podcast, where we give you comprehensive summaries and takeaways on the latest developments and trends in trade secret law. We want you to stay current and ahead of the curve when it comes to protecting your company's most valuable assets. I'm your host Jordan Grotzinger.

New Speaker:

Good morning, Ashley. Good morning. How are you doing? I'm fine. How are you? Kind of a, a, an eerily quiet rainy day here in, Um, March 20, 20 strange times, but podcasting continues. So this week we are going to discuss a case that we've, um, it's been winding its way through litigation, and we've discussed it before, and it's a pretty good summary of the proof necessary for the elements of an injunction in a trade secret misappropriation case. So we're going to discuss that one. And we're also going to discuss, uh, development in trade secret protection for cannabis businesses. So to the first case, uh, this is a case in the Southern district of California. Uh, the decision came down in February, 2020. We have addressed this case before. I think it was in connection with a motion to dismiss, but this is that case over a coffee extract company. And, uh, the coffee extract company was the plaintiff. It sued its former co-founder and his new company for allegedly disclosing the plaintiff's trade secret information in provisional patent applications for his new business, the plaintiff, uh, company had survived the defendant's motion to dismiss, which we discussed before I believe. And, and now it moves for a preliminary injunction.

Ashley Farrell Pickett:

Exactly. So plaintiff had researched and developed a proprietary process for manufacturing, coffee and tea extracts. And he alleged in this preliminary injunction matter that the patent applications that were filed by the defendant had several included several patents that he had obtained, um, disclosing plaintiff's trade secrets in violation of the defendant's contractual obligation to plaintiff, not to disclose the trade secrets and instead to transfer all of the interests to plaintiff.

Jordan Grotzinger:

So in analyzing the motion for preliminary injunction, the court noted that it's quote an extraordinary remedy, never awarded as of right close quote and for the non-lawyers out there. You know, there's a difference between, uh, an initial temporary restraining order where if the evidence is strong enough, you might have better luck getting it because it's a shorter that the order is usually has a shorter duration, but a preliminary injunction is a court order that, uh, stays in place, ostensibly, at least through the entire case, which can usually last a year or more, uh, absent a settlement. So the court's noting that this is an extraordinary remedy. And so proving, uh, the plaintiff's right to this order is quote, the court said a difficult task. And as we've discussed, uh, for injunctive relief, the plaintiff must show a likelihood of success on the merits irreparable harm that the balance of equities tips in the plaintiff's favor and that the preliminary injunction is in the public interest and courts weigh these factors on a sliding scale. So in other words, the stronger, the showing of one requirement, the less might be required for another requirement.

Ashley Farrell Pickett:

Yes. And so here as to the likelihood of success, the court focused on the misappropriation and of course, misappropriation is the acquisition use or disclosure by improper means under the California uniform trade secret act and the defend trade secret act. So plaintiff alleged that defendants misappropriated by taking the trade secret, publicly disclosing it and claiming it as their own via the

patent applications at issue. And then quote, plotting to unfairly compete. Defendants argued that plaintiff's allegations of disclosure in the actual patent applications were quote, sweeping and conclusory, and that plaintiff had failed to substantiate its claims. Ultimately, the court agreed with defendants.

Jordan Grotzinger:

It said that a comparison of the defendant's disclosures in the patent applications and the asserted proprietary information that allegedly was misappropriated didn't persuade the court that the trade secrets that trade secrets were in fact disclosed. The court said, quote, for example, the specific ratio aspect of the plaintiff's extraction vessels is not disclosed in the patent applications, close quote, and certain other, uh, configurations the court said were distinctly different. Thus, the plaintiff couldn't establish likelihood of success on the misappropriation requirement.

Ashley Farrell Pickett:

The court also found that plaintiff did not meet the likelihood of success on irreparable harm because quote, monetary injury is not irreparable harm. It's reparable. It's something that can be quantified. So the court held that, um, that as well as the delay in seeking relief weighed against irreparable harm here, and specifically plaintiff had waited six months before learning of the disclosure of the trade secret in the patents and actually moving for a preliminary injunction.

Jordan Grotzinger:

And finally, on the balance of equities element, the court found that it weighed in the defendant's favor because in this case, uh, an injunction, the court said would effectively shut down the defendant's that's always going to weigh against the issuance of an injunction.

Ashley Farrell Pickett:

Yeah. And so this was again, another slower week in regards to cases, but we do have an interesting development coming out of Maine that we're going to be speaking to. And that specifically trade secret protection for cannabis companies or potential trade secret protection, I should say. So Maine is one of the many states in which voters have approved legalization of cannabis. And it may be implementing an exemption in his public records act for cannabis related trade secrets. So taking a step back Maine's office of marijuana policy, which oversees the cannabis industry in that state has drafted a bill that would exempt certain information in cannabis business license applications from the states freedom of access act. So in other words, the purpose of this and the result of this bill is that would protect trade secrets like recipes, soil mixtures, and cultivation methods, classic trade secrets that we talk about here. So it's, it's interesting that Maine is specifically drafting a law that it looks like is likely to pass that relates as to cannabis companies individually,

Jordan Grotzinger:

And we'll follow the debate and, and see where this pops up elsewhere in the country. But one thing that could be interesting is that if a debate, uh, if, if a bill like this passes, does the protection only exist under state law? So, you know, as you know, there are state and federal trade secret law, most states adopt the uniform trade secrets act and federal law has the defend trade secrets act, which is parallel to the uniform trade secrets act. But, uh, cannabis is not legal under federal law. So if there's a, um, a misappropriation claim, for example, can the plaintiff only Sue under the uniform act, state law? I don't know, we'll, we'll follow that. Um, we'll follow that and see where it goes. Okay. And now

for our takeaways to prove misappropriation, you need to match your trade secrets with what was allegedly misappropriated like in the coffee extract case, the processes, uh, and the patent applications.

Jordan Grotzinger:

It seems like a common sense principle, but it can be challenging when you're discussing a complex process, but you need to be technical because, uh, for example, in that coffee extract case, the court drilled down, looked at the patent applications where the alleged disclosures were compared that to the alleged trade secrets and they didn't match. And so the court found them to be too sweeping and conclusory. And by the way, two great law firms, uh, on both sides of that case. So a very common sense thing, you know, match your proof to what you're saying, but it's easier said than done. So make it a focus.

Ashley Farrell Pickett:

Yeah. And when moving for a preliminary injunction, of course, you have to show how the misappropriation would do more than just damage the company monetarily, in order to show irreparable harm, for example, would it render the plaintiff unable to compete, threatening the survival, their business, try to go further. You can't just say it's going to cost me money,

Jordan Grotzinger:

Right? And lastly, another sort of common sense principle, but the court noted it in the coffee extract case. If you're seeking preliminary injunctive relief, move promptly, the longer you wait, the weaker, your showing will be for the irreparable harm requirement. And that, as they say, is that by everybody. Bye bye.

Jordan Grotzinger:

Okay. That's a wrap. Thanks for joining us on this episode of the trade secret law evolution podcast as the law evolves. So will this podcast. So we value your feedback, let us know how we can be more helpful to you. Send us your questions and comments. You can reach me by [email@gratsingerjatgtlaw.com](mailto:email@gratsingerjatgtlaw.com) or on LinkedIn. And if you like, what you hear, please spread the word and feel free to review us. Also, please subscribe. We're on apple podcasts, Stitcher, Spotify, and other platforms. Thanks everybody. Until next time,

Speaker 4:

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