

DTSA claims without sufficient particularity are DOA

Calendar Research LLC v. StubHub, Inc. et al., No. 2:17-cv-04062-SVW-SS (C.D. Cal. May 13, 2020)

By: Reid Huefner & Peggy Herrmann | May 26, 2020

On May 13, 2020, the United States District Court for the Central District of California granted summary judgment to all corporate and individual defendants with respect to Plaintiff’s non-source-code, “know-how”-based Defend Trade Secret Act (“DTSA”) (18 U.S.C. §§ 1830-1839) claims seeking relief for misappropriation of trade secrets. All source-code based claims were previously dismissed. The court reasoned that for each claim of trade secret misappropriation, the Plaintiff failed to “identify the trade secrets and carry the burden of showing that they exist.”¹

Three individuals (Gray, Dusseault, and Efremidze) worked for Calaborate developing the scheduling application Klutch. Calaborate attempted to sell Klutch to StubHub. However, the deal did not close, and Gray, Dusseault, and Efremidze left Calaborate to work as independent contractors for StubHub. Calendar Research subsequently purchased Calaborate and the Klutch assets. Calendar Research brought claims against StubHub, its corporate parent, eBay, and the former employees under the DTSA and the Computer Fraud and Abuse Act (18 U.S.C. § 1030). The court previously granted partial summary judgment to the corporate defendants because StubHub had not used any of Calaborate’s source code in its application. However, Calendar Research was not precluded from pursuing claims that StubHub misappropriated the code in ways other than directly using it in its applications.

To bring a successful trade secret misappropriation claim, the plaintiff must demonstrate that: (1) it possessed a trade secret, (2) the defendant misappropriated the trade secret, and (3) the defendant’s misappropriation caused or threatened damage to the plaintiff. However, with three years of litigation and two rounds of in-depth discovery including hundreds of thousands of documents, Plaintiff was unable to demonstrate that it possessed a trade secret. Namely, Plaintiff did not describe any trade secrets with sufficient particularity to separate them from general knowledge in the trade or special knowledge of those skilled in the trade.

When the purported trade secrets concern a highly specialized field (such as software) or are incremental variations, “a more exacting level of particularity may be required to distinguish the alleged trade secrets from matters already known to persons skilled in that field.”² Nonetheless, Plaintiff, through its expert, presented broad, catchall phrases and voluminous lists of technical terms rather than identifying the specific set of “methods, techniques, processes, procedures, programs, or codes” that could establish certain aspects of Klutch as trade secrets.³ Without such particularity, the court further would be unable to determine whether the purported trade secret has “independent economic value . . . from not being generally known” or if Plaintiff had “taken reasonable measures to keep [the] information secret.”⁴

Although the former employees allegedly kept or wiped Calaborate’s devices, deleted or delayed the return of software keys, or retained Calaborate documents on third-party, online platforms, the court could not determine if purported trade secrets were misappropriated because such trade secrets were not sufficiently defined by Plaintiff.

An important takeaway from this case is the importance of trade secret owners having an internal system to sufficiently identify, categorize, and sort the trade secrets so that any necessary litigation can be brought quickly and efficiently, and those trade secrets can be identified with sufficient particularity to increase the likelihood of surviving motions to dismiss and motions for summary judgment.

¹ *Calendar Research LLC v. StubHub, Inc. et al.*, No. 2:17-cv-04062-SVW-SS, at *4 (C.D. Cal. May 13, 2020).

² *Id.* at *7.

³ 18 U.S.C. § 1839 (3).

⁴ 18 U.S.C. § 1839 (3)(A)-(B).