

Spy Scheme Costs Plaintiff Its Patent Infringement Claims

Site 2020 Inc. v. Superior Traffic Servs., LLC, No. CV 21-63-M-DLC-KLD (D. Mont. Mar. 27, 2023)

By: Edward Runyan and Anthony Hao | April 7, 2023

Clever covert spy activities during active litigation may backfire. Recently, Magistrate Judge Kathleen L. DeSoto recommended dismissing all of Site 2020’s patent infringement claims against Superior Traffic with prejudice because Site 2020 acted in bad faith and “engaged deliberately in deceptive practices that undermine the integrity of judicial proceedings.”

Site 2020 and Superior Traffic are competitors in the portable traffic signal industry. In May of 2021, Site 2020 filed suit, alleging infringement of two patents related to traffic control systems. In the same month, Site 2020’s controlling entity acquired a construction company that had previously met with Superior Traffic to discuss the possibility of the two companies doing business together. Later, Superior Traffic contacted the construction company for another business pitch, not knowing of the company’s new affiliation with Site 2020. Site 2020 sent a Site 2020 manager to attend a Superior Traffic product demonstration posing as an employee of the construction company. The entire meeting, including Superior Traffic’s detailed explanation of its technology, was secretly recorded, and the recording was handed to Site 2020. After learning of the deception, Superior Traffic moved the court to (1) dismiss Site 2020’s claims with prejudice and (2) enter default judgment against Site 2020 on all of Superior Traffic’s counterclaims.

The court first noted that not only did it have the authority to sanction a party based on bad faith litigation misconduct, it also has the inherent authority to impose “case terminating sanctions” when “a party has engaged deliberately in deceptive practices that undermine the integrity of judicial proceedings” or “has willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice.” The court noted five factors courts should consider when imposing case terminating sanctions: (1) the public’s interest in expeditious resolution; (2) the court’s need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.

In dismissing Site 2020’s claims, the court “[had] no difficulty finding by clear and convincing evidence that Site 2020 acted willfully and in bad faith.” The court found that Site 2020 circumvented the Federal Rules of Civil Procedure governing discovery and interfered with Superior Traffic’s right to be represented by counsel. Declaring that “[t]he prejudice Superior Traffic has suffered because of Site 2020’s misconduct cannot be minimized,” the court found that although the public policy factor weighs against dismissal, the factor is heavily outweighed by the other four and that Site 2020’s misconduct undermined the integrity of the litigation process, as well as Superior Traffic’s confidence in the federal judicial system. While Site 2020’s claims were dismissed, the court declined to enter judgment on Superior Traffic’s counterclaims, finding that too severe a sanction under the circumstances. This case serves as a powerful reminder that “case terminating sanctions” are still very much alive—for the spies.

