

## The Pitfalls of Proprietary Information: Boeing Hit With \$72M Trade Secrets Verdict

**Zunum Aero, Inc. v. The Boeing Company et al., No. 2:21-CV-00896-JLR,  
(W.D. Wash. May 30, 2024)**

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A Washington jury recently issued a \$72 million verdict in favor of Zunum Aero Inc. (“Zunum”), a now-defunct aerospace startup, against The Boeing Company (“Boeing”) for willful and malicious misappropriation of trade secrets, breach of a nondisclosure agreement (“NDA”), and tortious interference. The companies had multiple NDAs, and Boeing argued its use was actually permitted by those NDAs. The jury, however, disagreed, highlighting the difficulties in maintaining ongoing obligations when obtaining proprietary information.

Zunum developed proprietary methods for a 9-12 seat hybrid-electric (“HE”) aircraft that could be viable by the early 2020s, a decade prior than previously believed feasible by those in the industry, including Boeing. Pursuant to a 2016 NDA, Zunum disclosed to Boeing confidential information about the HE project. Boeing was permitted to use Zunum’s information to “explore the feasibility of potential projects in the field of electric based power systems for aviation use.”



In 2017, the parties executed a second NDA, and Boeing invested \$5 million in Zunum. Zunum continued to share proprietary information which Boeing was only permitted to use for purposes of managing its investment in Zunum.

Boeing then launched internal R&D efforts in the HE aircraft area. Zunum put forth evidence that Boeing used Zunum’s information in these R&D efforts. Zunum also pointed to Boeing communications that the Zunum investment allowed Boeing to quickly “catch up” with the state of technology. It also came out that Boeing placed individuals who received Zunum information on its R&D team.

The jury found for Zunum on trade secrets misappropriation, breach of an NDA, and a tortious interference claim, further finding Boeing’s actions willful and malicious. This case highlights the importance of making joint development arrangements clear. Boeing’s defense, that the use was permitted by the parties’ NDAs, was rejected not only by the court on summary judgment but also by the jury.

This case also shows the importance of implementing internal mitigation strategies. Boeing’s defense may have been more successful if they could have pointed to efforts to conduct its internal R&D independently from Zunum’s information, to sequester employees who received proprietary information, or to prevent any reliance on the internal R&D after it ended. At a minimum, such steps may have convinced a jury that any misappropriation was not willful or malicious.