

TRADE SECRETS—N.D. CAL.: CISCO'S MISAPPROPRIATION CASE FAILS AGAINST FORMER EMPLOYEE, COMPETITOR

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Wolters Kluwer Intellectual Property Law Daily • March 23, 2023

Because Cisco presented only allegations of a possible future injury, rather than evidence of an impending threatened injury, it did not have standing to request injunctive relief; moreover, it failed to prove “use” or “disclosure” of the trade secrets and was not entitled to damages.

In trade secret misappropriation case where Cisco sued a former employee and his new employer, a market competitor, the federal district court in San Francisco granted summary judgment to the defendants. Because Cisco presented only allegations of a possible future injury, rather than evidence of an impending threatened injury, it did not have standing to request injunctive relief. Moreover, Cisco could not raise a triable issue as to whether the competitor “used” or “disclosed” the trade secrets under the meaning of either the federal or state trade secret statutes. Cisco needed to show disclosure or use of the trade secrets; mere acquisition of them was not enough, and therefore the court granted summary judgment for the defendants on Cisco's claim for damages (*Cisco Systems, Inc. v. Chung*, March 22, 2023, Hamilton, P.).

Background. Cisco Systems and Cisco Technology (“Cisco”), a California software and hardware electronics corporation, sued Plantronics, Inc. (dba “Poly”), a market competitor, along with former employee Wilson Chung, who had left Cisco and began working for Poly. While at Cisco, Chung's duties included developing Cisco's collaboration products, and he had access to the company's trade secrets. Much of the crux of the lawsuit dealt with Project Polaris, a “videoconferencing desktop product,” ultimately released as the WebEx Desk Pro.

Cisco alleged a series of instances in 2019 where Chung downloaded, copied, or emailed various Cisco documents and files concerning certain technological and business subject matter. After becoming aware of the alleged infringement, Cisco alerted Poly to the matter, citing to conduct by both Chung and another former employee. Poly conducted an investigation into Chung's conduct, and determined that five Cisco documents had been found on Chung's devices. Poly placed Chung on administrative leave and retained a neutral third-party forensics firm to conduct an investigation of Chung's devices. When Poly brought Chung back to work, Cisco filed a lawsuit in the Northern District of California against Chung and Poly, alleging violations of the federal Defend Trade Secrets Act and its California state law counterpart. All parties filed motions for summary judgment.

The court addressed the parties' motions for summary judgment under [Rule 56 of the Federal Rules of Civil Procedure](#), reviewing whether there was a genuine dispute as to any material fact, and whether any of the parties was entitled to judgment as a matter of law.

Injunctive relief requested by Cisco and related evidentiary issues. The plaintiff requested injunctions against both Chung and Poly, relating to the Polaris project only. To have Article III standing to seek injunctive relief, the court explained that Cisco needed to show a threat of suffering injury in fact that is concrete and particularized; the threat is actual and imminent, not conjectural or hypothetical; the threat is fairly traceable to the challenged action of the defendant; and it is likely that a favorable judicial decision will prevent or redress the injury.

In this case, Cisco failed to present any evidence that Polaris documents were ever shared by Chung, the court held. Though the plaintiff attempted to fill the gap by claiming spoliation of evidence, the court held that Cisco's data, purportedly deleted by Chung, would have shown only when Chung accessed the files, rather than showing any currently-ongoing threat of

misappropriation. As a result, there was no actual, material prejudice to Cisco resulting from any alleged spoliation. Because Cisco presented only allegations of a possible future injury, rather than evidence of an impending threatened injury, it did not have standing to request injunctive relief. The court granted Chung's motion for summary judgment as to all claims, and denied Cisco's request for evidentiary sanctions based on the alleged spoliation issue.

As to Poly, the court likewise held that Cisco's arguments for standing suffered from the same shortcomings. There was no evidence that Poly ever used the Polaris documents or had them in its possession at any time, and therefore, Cisco had not presented evidence of an actual or imminent threat that Poly will misappropriate any Polaris-related trade secrets. The court granted Poly's motion for summary judgment as to the request for injunctive relief.

Damages requested by Cisco. The plaintiff also requested damages in its claims against Poly. The court noted that the federal and state trade secret claims could be analyzed together, given that the elements are substantially similar; Cisco needed to show the presence of a trade secret, its misappropriation by Poly, and damages.

Cisco did not seek damages under a lost profits or unjust enrichment theory, it sought only reasonable royalty damages. Poly argued that under both federal and state law, Cisco needed to show disclosure or use of the trade secrets; mere acquisition of them was not enough. Finding Poly's evidence and research persuasive, the court held that Cisco did not present evidence that Poly disclosed any trade secrets to a third party, concluding that Cisco could not raise a triable issue as to whether Poly "disclosed" the trade secrets under the meaning of either the federal or state trade secret statutes. Regarding "use," the court also held that Cisco failed to raise a triable issue of fact as to Poly's own use or disclosure of any trade secret information. The court again rejected Cisco's reach for alleged spoliation as a means of avoiding its burden to raise a triable issue regarding Poly's purported use of the trade secrets.

Cisco argued that Poly ratified Chung's conduct when it "failed to investigate or respond" to the complaints of potential trade secret misappropriation, but the court again disagreed. The court noted that when Cisco eventually did alert Poly to potential misappropriation by Chung, Poly preserved Chung's laptop and phone and sent them to a third-party forensics firm where searches were run at Cisco's request. Further, the court rejected Cisco's arguments that Poly was vicariously liable for Chung's conduct, and that it knew or should have known of the unauthorized conduct. The court granted Poly's motion for summary judgment as to Cisco's request for damages.

Conclusion. The court granted the defendants' motions for summary judgment, denying Cisco's motion for summary judgment as moot.

The Case is No. 19-cv-07562-PJH.

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Companies: [Cisco Systems, Inc.](#); [Plantronics, Inc.](#)

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