



News & Trending

PUBLICATIONS & ALERTS

NC BUSINESS COURT SIGNALS CLOSE SCRUTINY OF TRADE SECRET CLAIMS

The Devil's in the Detail

12.18.2014

Susan H. Hargrove and Lauren Bradley

It is black-letter law that a plaintiff must identify its trade secrets “with sufficient particularity so as to enable a defendant to delineate that which he is accused of misappropriating.” *Analog Devices, Inc. v. Michalski*, 157 N.C. App. 462, 468, 579 S.E.2d 449, 453 (2003). Judge Gale of the North Carolina Business Court reinforced this principle recently in *Le Bleu Corp. v. B. Kelley Enterprises, Inc.* Interestingly, while declining to dismiss a claim for misappropriation of trade secrets, Judge Gale exercised his inherent discretion to order the plaintiffs to file a more definite statement regarding their trade secrets before proceeding with further discovery.

The plaintiffs, Le Bleu Corporation and SCP Distribution, LLC (collectively, Le Bleu), make, sell and distribute bottled water. The corporate defendant, B. Kelley Enterprises, Inc. d/b/a Blue Caffé, Inc. (Blue Caffé), supplies in-house water filtration systems to businesses. Le Bleu sued Blue Caffé and two of Blue Caffé’s employees (collectively, Blue Caffé) asserting that they stole Le Bleu’s customers by, among other things, misappropriating Le Bleu’s trade secrets. In its complaint, Le Bleu identified its allegedly misappropriated trade secrets as “customer lists, pricing information, transaction histories, key contacts and customer leads.” Blue Caffé moved to dismiss the complaint, arguing that Le Bleu failed to identify adequately its trade secrets.

Judge Gale ultimately denied the motion to dismiss citing recent authority from the North Carolina Court of Appeals holding that identification of trade secrets as “pricing information, customer proposals, historical costs and sales data” was sufficient to state a claim.

Judge Gale did not end his analysis there. “In its discretion, the Court may treat a motion to dismiss under Rule 12(b)(6) as a motion for a more definite statement under Rule 12(e).” Although Le Bleu’s complaint was sufficient to plead trade secrets misappropriation, Judge Gale astutely noted that whether its “pricing information, transaction histories, key contacts, and customer leads” are, in fact, trade secrets “depends upon the contents of the materials at issue.” He used the price list as an example: a price list is a trade secret when it contains market forecasts but not when it is merely raw information that could be culled from public sources. Because the determination of whether materials are entitled to trade secrets protection is “better made when the claim is more definitely pleaded,” Judge Gale ordered Le Bleu to file a more definite statement “specifically describ[ing] the contents of both lists and why the information is entitled to trade secret protection.” Judge Gale held Le Bleu’s further discovery in abeyance until it filed a more definite statement reasoning that a more definite statement should narrow discovery and, at a later date, make it easier for the court to determine whether the information genuinely qualifies for trade secret status.

Le Bleu signals the need for a trade secret claimant to understand fully the nature of the trade secret it seeks to protect and to plead the claim in sufficient detail to guide discovery and allow a reasonable assessment of entitlement to trade secret status. For a defendant this case validates the legitimacy of a motion for a more definite statement, either alone or in conjunction with a motion to dismiss, when a trade secret claim is pleaded by listing general categories of information.

For additional information related to [Trade Secrets](#) or questions about this article, please contact [Susan Hargrove](#).

PRACTICE AREAS

[Non-Compete & Trade Secrets](#)

