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Addressing the pleading standard under the Defend Trade Secrets Act (DTSA) and New Jersey Trade Secrets Act (NJTSA), the US Court of Appeals for the Third Circuit vacated the district court’s dismissal of a third amended complaint for trade secrets misappropriation and remanded for further proceedings. Oakwood Labs. LLC v. Thanoo, Case No. 19-3707 (3d Cir. May 8, 2021) (Jordan, J.)

Thanoo was a key player in Oakwood Laboratories’ Microsphere Project, a 20-year, $130 million project to develop injectable sustained-release drug products using a complex and rare microsphere technology. In 2013, Aurobindo approached Oakwood about a possible collaboration, specifically to involve Aurobindo’s manufacture of an active pharmaceutical ingredient for Oakwood. Subject to a nondisclosure agreement, Oakwood shared with Aurobindo confidential information, including a 27-page memorandum describing the Microsphere Project. Ultimately, Aurobindo declined to proceed, citing financial considerations. Aurobindo subsequently hired Thanoo. Although Thanoo told Oakwood that he was going to Aurobindo to work on standard injectable drugs and not microspheres, he immediately set up a research and development program concerning microspheres for Aurobindo. Aurobindo, which had no previous experience in microspheres, announced that it would have products...
ready for clinical testing in just one to four years, despite a relatively small investment of only $6 million. Oakwood sued Thanoo and Aurobindo for trade secret misappropriation under the DTSA and NJTSA, and for breach of contract and tortious interference.

On Thanoo’s motion, the district court dismissed Oakwood’s complaint, finding that it failed to provide specific allegations of what trade secrets were allegedly misappropriated and how Aurobindo allegedly used the trade secrets. Oakwood filed first, second and third amended complaints, each alleging with greater specificity the trade secrets associated with the Microsphere Project and expanding on the allegation that Aurobindo could not have proceeded so quickly from no experience to announcing near-complete development of microsphere products without using Oakwood’s trade secrets. Nonetheless, the district court dismissed each complaint as being insufficiently specific as to which particular trade secrets were allegedly misappropriated and the particular way in which Aurobindo allegedly used the trade secrets. The district court also held that, absent any product launch from Aurobindo, any harm from the alleged misappropriation was too speculative to support a claim. After dismissal of the third amended complaint, Oakwood appealed.

The Third Circuit reversed, concluding that Oakwood’s complaint sufficiently pled a claim for trade secret misappropriation under either the DTSA or the NJTSA. The Court explained that Oakwood had sufficiently identified its trade secrets by its allegation that information laying out its design, research and development (including identification of variables that affect the development), test methods and results, manufacturing processes, quality assurance, marketing strategies and regulatory compliance related to its development of a microsphere system were trade secrets. Oakwood had also identified a specific memorandum disclosed to Aurobindo under a confidentiality agreement as containing trade secrets, and attached other documents specifying in detail secrets related to the Microsphere Project.

The Court further found that Oakwood had sufficiently alleged misappropriation. Although there are several ways to misappropriate trade secrets, the Court focused on “use” of the trade secret. The Court found error in the district court’s narrow interpretation of “use” to mean “replicate” (which, it noted, is a separate ground for culpability under the DTSA) and embraced the broader interpretation of “use” to mean (generally) deriving any economic benefit that has been widely used to interpret, e.g., the Uniform Trade Secrets Act. The Court concluded that Oakwood’s allegation that Aurobindo could not have achieved its level of advancement in microsphere technology without use of Oakwood’s trade secret information to be sufficient because, taking all inferences in Oakwood’s favor, it was at least plausible that Aurobindo actually used the trade secrets (which Aurobindo knew were proprietary to Oakwood).

Finally, the Third Circuit found error in the district court’s view that Oakwood had only pled speculative harm, explaining that trade secret misappropriation is a harm in itself because the misappropriation destroys the value of the trade secret. Thus, Oakwood need not have alleged harm beyond the misappropriation itself to survive a motion to dismiss.

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