Quashed $72 Million Boeing Jury Verdict Underlines Importance of Trade Secret Descriptions
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Maia Biermann
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When a federal jury found Boeing liable of misappropriating trade secrets belonging to its former investee, electric aircraft startup Zunum Aero, the prevailing expectation was that it would be almost a mission impossible to reverse the verdict. However, the American multinational has succeeded in convincing a court to vacate the $72 million judgment.

This twist demonstrates the significance of identifying disputed trade secrets with sufficient particularity and the complexity of being able to deliver on this requirement to the satisfaction of a court.

The case, which has been framed as a 'David-versus-Goliath' showdown, involves the failed startup's allegations that Boeing covertly developed a "replica prototype" of Zunum's market entry aircraft design instead of funding the project that was meant to make Zunum "the Tesla of commercial aviation". The jury delivered its verdict in Zunum's favour on 30 May, finding that Boeing had wilfully misappropriated 11 of the 19 trade secrets at issue.

Those watching the case closely expected that the federal judge would end up tripling the multi-million dollar damages award. Yet Boeing moved under Federal Rule of Civil Procedure 50 for judgment as a matter of law on Zunum's claims. Rule 50 is considered appropriate when the jury could have relied only on speculation to reach its verdict.

Following a full hearing of the evidence, the US District Court for the Western District of Washington announced that Zunum's expert testimony was conclusory and that it was not substantiated or supported by evidence.

According to the 14 August Judgment, Zunum failed to sufficiently identify its disputed trade secrets, establish that they derived value from not being generally known to or readily ascertainable by proper means by other persons, and to provide substantial evidence that Boeing improperly used the alleged trade secrets.

Referring to the precedential case law, Judge James Robart highlights in the 53-page ruling that Zunum's failure to specifically identify the alleged trade secrets meant that the court could not determine whether Boeing "had misappropriated any trade secrets".

The argument is that Washington courts require trade secret plaintiffs to provide "specific, concrete examples" illustrating that the disputed information meets the requirements for a trade secret as part of their "burden of proving a trade secret". Zunum's case was filed under the Washington Trade Secrets Act.

Other potential litigants and their legal representatives should take note that the insistence on "specific, concrete examples" in a trade secret case does not necessarily mean the lengthiness of explanations. Judge Robart's order reveals that at trial, the court rejected Zunum's proposed trade secret descriptions, which consisted of more than 500 pages of definitions and accompanying exhibits — "because it was 'too voluminous' to be helpful to the jury".

The issue of sufficient particularity

In trade secret litigation, it is not uncommon for a misappropriation complaint to falter over the identification requirement at a very early stage. However, the reversal of the verdict in Zunum has taken

the US business and legal community by surprise because it is unusual for a trial court to overturn a jury verdict due to a lack of evidence.

For more than three years, Boeing argued Zunum's case must be dismissed because the company failed to state what information was a "secret" as opposed to being publicly available. Robart previously rejected those arguments and allowed a jury to decide the case.

"Typically, a trial court will dismiss a lawsuit for a lack of evidence before it ever reaches a jury. That did not happen here. However Judge Robart's ruling effectively concedes the case never should have gone to a jury because there was zero evidence to prove any claim against Boeing," says Michelman and Robinson's Jeffrey Farrow, who chairs its Trade Secrets, Financial Fraud and Executive Disputes team.

Robert Manley, a trial lawyer at McKool Smith, also stresses that the issue of when and how an IP owner identifies its trade secrets is an important factor in trade secret lawsuits as it is handled differently by various courts.

"Some courts require a more stringent identification much earlier in the litigation, for example," he tells IAM. "Here, Judge Robart appears to have given Zunum several opportunities to identify its alleged trade secrets, and then found that the evidence elicited at trial was legally insufficient."

For Manley, the procedural history and the outcome of this lawsuit demonstrates the "intellectual rigour" courts apply to each element of trade secret claims. Robart's opinion, according to him, "highlights several of the difficulties inherent to trials of trade secret cases". Alongside the identification challenge, this relates to substantiating the allegation with evidence that information that is claimed to be a trade secret has value based on it being kept secret.

For example, Zunum's alleged trade secret No 1 (ATS 1) involves certain design requirements and objectives for hybrid-electric aircraft pertaining to range, speed, payload, economics, aircraft, noise, and runway. As Judge Robart notes, Zunum's founder Matt Knapp identified at trial a single slide that featured a "subset" of Zunum's design requirements and objectives and stated that the remaining information related to ATS 1 "would be in various places in our documents".

Emphasising that Zunum "never" identified those other documents, Judge Robart reckons: "Without knowing the extent of what ATS 1 did or did not encompass, the jury could not have reasonably found that ATS 1 was a trade secret or that Boeing misappropriated it."

Moreover, the ruling explains that Zunum's expert Viswanath Tata acknowledged during cross-examination that "many of the design requirements he discussed as part of ATS 1 were disclosed in Zunum's public marketing materials". This prompted Robart to conclude that, throughout the trial, Zunum provided "only vague and amorphous descriptions of the alleged trade secrets" which was entirely insufficient to support the $72 million verdict.

For Scott Gibson, a trial lawyer with a focus on trade secrets and restrictive covenants at Denton Peterson Dunn, the latest development in Zunum v Boeing emphasises the importance of presenting clear evidence supporting the trade secret categorisation.

"My chief takeaway is that attorneys and clients both need to understand why something is a trade secret and have an articulate company representative who can explain why the trade secret meets the legal definition of a trade secret," Gibson says. "Many people believe it is adequate to use superlatives to describe their alleged trade secrets, such as 'unique qualities', but cannot explair what makes those qualities 'unique'."

Boeing said in an emailed statement that the company was grateful for the "court's careful and thorough consideration of all the evidence at trial to reach this decision". Zunum, unsurprisingly, stated that it plans to appeal the decision. Its next moves will be interesting to observe.

Generally, jury verdicts are difficult to overturn. As long as the parties have presented their respective evidence, the judge is unlikely to set aside the verdict simply because he would have reached a different decision personally. “The ruling on the motion for judgment as a matter of law indicates that plaintiff had utterly failed to present evidence from which a reasonable jury could conclude that the information was a trade secret,” Gibson says.

If Zunum appeals, the appellate court will scrutinise the evidence presented at trial and determine whether it presented sufficient evidence from which a jury could find that a trade secret exists. At that point, it will be decisive for Zunum to go beyond conclusory statements — for example, that the information is not commonly known in the industry and explain why it is not commonly known in the industry or what the common knowledge in the industry is, Gibson tells IAM.

Jeff Farrow of Michelman and Robinson is on the same page, saying that any company preparing to take a case to trial must be extremely specific about what its trade secrets are.

“Zunum’s attempt to introduce a 500-page document describing its 19 trade secrets must have caused Judge Robart to roll his eyes If you cannot succinctly describe your trade secret in five sentences or less — it probably isn't a trade secret that will survive scrutiny,” he warns.