

A Helpful Reminder of Utilizing a TRO to Keep the Trade Secret ‘Genie in the Bottle’

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A temporary restraining order (“TRO”) followed by a preliminary injunction is often essential for a company to maintain the trade secrets status of its information that is being misappropriated. Typically, once the information is widely disseminated it will lose its trade secret status, even if such dissemination was done by unlawful means. Thus, acting fast to “keep the genie in the bottle” is essential when a company learns that its trade secret information may have been misappropriated. A recent TRO victory for biotech startup Trilobio, Inc. (“Trilobio”) demonstrates the importance of acting quickly, and with credible evidence, to protect confidential information and thwart trade secret misappropriation efforts.

On September 9, 2024, Trilobio filed suit against Keoni Gandall (“Gandall”), a former Trilobio employee, claiming, *inter alia*, that he breached his confidentiality agreement with the company and misappropriated highly-valuable trade secret information to launch his own biotech startup in violation of, *inter alia*, the Defend Trade Secrets Act (18 U.S.C. §§ 1836, *et seq.*) and California Uniform Trade Secrets Act (Cal. Civ. Code § 3426.1). In the Complaint, Trilobio stated it fired Gandall in February 2023 for poor performance. Prior to Gandall’s termination, Trilobio alleged Gandall accessed the company’s computer systems and data, without permission, and copied large amounts of confidential research, code and trade secrets to his personal devices. The trade secrets at issue concerned Trilobio’s proprietary methods of using robotics and machine learning in synthetic biology to decrease the cost of synthesizing sequences of genetic material for medical research, and improve the processes involved in genetic engineering with automation. Trilobio claimed Gandall then disclosed its confidential information to third parties and marketed its trade secret inventions as his own through his new startup company, Nanala LLC (“Nanala”).

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Less than three weeks after filing its Complaint, Trilobio filed a Motion for Temporary Restraining Order (the “Motion”) seeking to prohibit Gandall from, *inter alia*, using or disclosing Trilobio’s confidential information and trade secrets, and prohibiting Gandall from destroying, deleting or concealing evidence of such. The Motion also sought to conduct expedited discovery.

On October 17, 2024, U.S. District Court Judge Jon S. Tigar entered an Order granting, in relevant part, Trilobio’s request for a TRO, effectively prohibiting Gandall (and Nanala) from using, disclosing or destroying Trilobio’s confidential information and trade secrets. The Order also required Gandall to identify any individuals or entities to whom he may have disclosed, transferred or otherwise marketed Trilobio’s confidential information.

In granting the TRO, Judge Tigar found Trilobio had established a strong likelihood “to succeed on the merits” of its trade secret misappropriation claim, one of the legal standards litigants must satisfy for a TRO to issue. Judge Tigar stated: “The evidence shows that Gandall took confidential, trade secret information from Trilobio after his termination and has continued to use the information for Nanala’s benefit, despite Gandall having signed a confidentiality agreement while employed at Trilobio.”

Trilobio’s use of a forensic expert to examine Gandall’s work-issued computer was key in demonstrating Trilobio could succeed on the merits of its trade secret misappropriation claim – a necessary element of which is demonstrating the improper acquisition, use or disclose of the trade secret(s) at issue. In the Motion, Trilobio stated its forensic expert analyzed the Trilobio desktop computer issued to Gandall, and found that shortly after Gandall was notified he was terminated, Gandall accessed: (1) Trilobio’s proprietary GitHub source code repositories, (2) Trilobio’s investor update slide decks; (3) Gandall’s Trilobio Google email account and Google drive; and (4) the Trilobio Google email and Google Drive of CEO Roya Amini-Naieni (including Gandall’s own performance review).

The forensic expert further determined Gandall created a “backdoor” on his company-issued computer to remotely copy all Trilobio’s source code and documents to Gandall’s encrypted personal storage device, and he wrote a program to automatically upload confidential Trilobio investor and financial information to the same device. Judge Tigar noted Gandall admitted he downloaded Trilobio’s proprietary information onto his own computer, and found Gandall’s arguments that Trilobio’s CEO consented to this download prior to his termination “simply...not credible.”

Judge Tigar also disposed of Gandall’s other arguments opposing the TRO. In response to the Motion, Gandall argued Trilobio’s procedures for combinatorial assembly of DNA using oligo pools, one of the trade secrets at issue, were, *inter alia*, well known and had no commercial value. Thus, Gandall contended they are not trade secrets since an element of a trade secret is that the information is valuable because it is not generally known. Judge Tigar held these arguments were not supported by the evidence. First, the articles Gandall submitted in support of his argument that Trilobio’s DNA procedures were well known did *not* discuss or reveal Trilobio’s proprietary methodologies or its source code, thus demonstrating the information was not well known. Second, “Gandall’s contention that the information has no commercial value is belied by his attempts to start a company using that same technology.”

In addition to granting Trilobio TRO relief, Judge Tigar also granted its request for expedited discovery under Federal Rule of Civil Procedure 26(d)(1). The Order stated Trilobio “established ‘good cause’ to seek discovery before a Rule 26(f) conference” in order to protect Trilobio’s trade secrets from further disclosure and aid in the discovery of facts for the preliminary injunction briefing. Following the issuance of a TRO, expedited discovery is often essential in a trade secret dispute to support the basis for a preliminary injunction at the preliminary injunction hearing that follows the issuance of a TRO. Thus, trade secret plaintiffs should typically seek to move for expedited discovery in conjunction with a TRO motion to avoid being ‘behind the eight ball’ for the preliminary injunction hearing.

Judge Tigar’s ruling is a good reminder that injunctive relief is an important tool for maintaining trade secret status of information. If a company does not move quickly after learning of misappropriation, the information may lose that legal status. In those circumstances courts may also reject a later request for injunctive relief, and instead limit the remedies to damages for the trade secret misappropriation. However, when moving quickly to seek a TRO, it’s important to present credible evidence to support claims of trade secret misappropriation. Trilobio’s presentation of compelling forensic evidence substantiating misappropriation was key in securing its TRO against Gandall.