

CBD Pain Cream Producer Feels the Pain from Dismissal of its Trade Secrets Claims for Lack of Misappropriation Evidence

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A federal magistrate judge in the United States District Court for the Southern District of Florida, in a trade secrets dispute involving CBD-based pain cream, recently granted summary judgment in favor of all but one defendant. The Court's ruling is a useful illustration of why it is important to present actual (rather than speculative) evidence of misappropriation of a trade secret in order to prevail on such a claim. The ruling is also a good reminder that plaintiffs must be diligent in defining what is being claimed as trade secret(s) at the outset, rather than trying to have this definition evolve as the litigation develops.

Background

Plaintiff Healthcare Resources Management Group, LLC ("HRMG") sued Defendants

EcoNatura All Healthy World, LLC (“EcoNatura”), Medterra CBD, LLC (“Medterra”), Rejuvenol Laboratories, Inc. (“Rejuvenol”), and NoXeno Health Sciences, Inc. (“NoXeno”).

HRMG, a producer of pharmaceutical-grade hemp products, cooperated with EcoNatura, a cosmetic health product developer and seller, to reformulate and manufacture a CBD-based pain cream for Medterra, a retailer introduced to EcoNatura by HRMG. The CBD-based pain cream was then manufactured by Rejuvenol, an owner and operator of a production facility through which EcoNatura manufactures its products. The CBD-based pain cream was created using one of EcoNatura’s creams as the base. After the relationship between HRMG and EcoNatura deteriorated and ultimately terminated, Medterra discontinued ordering the CBD-based pain cream from HRMG and purchased it from EcoNatura. HRMG alleged that it had entrusted the Defendants with highly sensitive confidential information – the formula for proprietary CBD cream – and that the Defendants misappropriated the formula by continuing to use it outside of their business relationship with HRMG and without HRMG’s consent.

HRMG’s complaint alleged trade secret misappropriation by all of the Defendants under the Florida Uniform Trade Secrets Act (“FUTSA”) and the federal Defend Trade Secrets Act (“DTSA”), violations of the Florida Deceptive and Unfair Trade Practices Act by EcoNatura, Medterra, and NoXeno, as well as tortious interference with a business relationship by EcoNatura. In its complaint, HRMG identified its alleged trade secret as a CBD cream formula consisting of “the combination of specific ingredients”, “the relative percentages of each individual ingredient and the manner in which the specific amount of each ingredient gets blended with the remaining ingredients to form the finished product.”

HRMG’s Belated Attempt to Redefine the Alleged Secret Formula

The Defendants each moved for summary judgment on all claims asserted in the lawsuit, arguing, among other things, that HRMG had failed to identify its trade secret with reasonable particularity. In response, HRMG attempted to redefine the alleged formula as “a combination of precise concentrations of CBD, the manufacturing process for the CBD (time, temperature, mixing rate, and others), along with the complementary active ingredients at specific concentrations for pain relief (menthol, tea tree oil, and arnica).” The Court rejected HRMG’s attempt to make such a significant change to its trade secret definition so late in the proceeding, i.e., after discovery was closed and summary judgment had been filed against HRMG. Instead, the Court evaluated HRMG’s trade secret misappropriation claims solely based on the trade secret definition it set forth in the complaint.

The Court’s Findings on Trade Secret Misappropriation

The Court addressed the federal and state trade secrets claims (DTSA and FUTSA) together. The Court noted that, for both claims, misappropriation of a valid trade secret occurs when a person: (1) acquires the trade secret while knowing, or having reason to know, that he or she is doing so by improper means; (2) acquires or derives knowledge of the trade secret and discloses it without the owner’s consent; or (3) acquires or derives

knowledge of the trade secret and uses it without the owner's consent.

In ruling in favor of Defendant Rejuvenol, the Court found that evidence in the record showed that HRMG did not know how the CBD-based pain cream was manufactured by Rejuvenol, that Rejuvenol did not receive any instructions or other information from HRMG concerning the formulation of this cream, and that Rejuvenol did not use the same process that HRMG claimed to be its trade secret. The Court concluded that there was no evidence that the alleged trade secret process had ever been conveyed to, or used by, Rejuvenol as required to properly support the DTSA and FUTSA claims.

The Court likewise ruled in favor of Defendant Medterra. The Court found that while evidence demonstrated that HRMG shared with Medterra a list created by EcoNatura of the ingredients in descending order based on the percentages of the ingredients in the CBD-based pain cream and subsequently provided Medterra with the percentage of “key ingredients,” there was no evidence that Medterra knew any instructions or processes for manufacturing the cream in issue or that Medterra had deceived HRMG into disclosing its list of “key ingredients.” Accordingly, the Court held that HRMG could not establish that Medterra used, acquired, or disclosed HRMG’s alleged trade secret as required by both the DTSA and FUTSA.

The Court also granted summary judgment in favor of NoXeno because there was no evidence that NoXeno had misappropriated the alleged trade secret. The Court’s analysis with respect to NoXeno was aided by the fact that HRMG failed to respond to any of the arguments in NoXeno’s summary judgment motion or oppose NoXeno’s statement of material facts, essentially leaving the motion unopposed.

Finally, in contrast to the summary judgment holdings in favor of the other Defendants, the Court found that there was a genuine issue of material fact concerning alleged misappropriation by Defendant EcoNatura because there was evidence in the record that HRMG had sent a list of ingredients with their amounts to EcoNatura and that several calls took place between representatives of HRMG and EcoNatura during which HRMG explained how ingredients were heated and cooled during the manufacturing process. The Court deferred the factual issue of whether the manner in which the CBD cream’s ingredients blend to form the finished product is, in fact, HRMG’s trade secret, and whether it was misappropriated by EcoNatura, to determination at trial.

HRMG’s Florida Deceptive and Unfair Trade Practices Act Claim Preempted by State Trade Secrets Claim

In its decision, the Court also made clear that FUTSA can preempt certain conflicting state tort, restitutionary, and other laws providing civil remedies for misappropriation of a trade secret, such as the Florida Deceptive and Unfair Practices Act (“FDUPTA”), if allegations of trade secret misappropriation alone comprise the underlying wrong. The Court found that the only unfair or deceptive practice alleged by HRMG against Medterra under the FDUPTA was the same trade secret misconduct that formed the basis for HRMG’s trade secret misappropriation claim. Finding no material distinction between the basis for HRMG’s trade secrets claim and FDUPTA claim, the Court granted Medterra’s

motion for summary judgment as to the latter on grounds of preemption.

As for HRMG's FDUTPA claim against EcoNatura, the Court found that HRMG's complaint contained separate trade secret allegations regarding a different CBD-based roll-on product or psoriasis cream. However, it also found that HRMG had failed to prove these separate allegations or to respond to EcoNatura's arguments against these allegations, such that HRMG had effectively abandoned them. Since there were no material distinctions left between HRMG's remaining allegations in support of its FDUTPA and trade secrets claims, the FDUTPA claim was likewise found to be preempted, and the Court granted summary judgment on this claim.

Practice Points

The Court's decision provides a useful reminder on several important principles in trade secrets litigation. First, the Court's varying summary judgment opinions on misappropriation illustrate how appropriately proving actual misappropriation of a trade secret is essential to prevailing on such a claim. Second, the Court's decision to confine the Plaintiff HRMG to the definition of its trade secret in its complaint, rather than its eleventh-hour reformulation, demonstrates the importance of carefully formulating such a definition at the pleading stage. Finally, plaintiffs asserting trade secret claims along with additional non-trade secret claims, should consider the possibility of preemption of the latter, and whether separate and distinct allegations exist to support those claims in order to avoid preemption.