

Court Upholds “Monster” \$293 Million Award But Declines to Award Monster Energy Company Exemplary Damages for Energy Drink Competitor’s Trade Secret Violations

November 14, 2023 – *The TMCA*

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Last month, Vital Pharmaceuticals, Inc. (“Vital”), the manufacturer of the Bang energy drink, fell short in its post-trial challenge to a “monster” jury award in favor of Monster Energy Company (“Monster”). After nearly five years of litigation in the Central District of California, Monster’s Lanham Act, California Uniform Trade Secrets Act (CUTSA), Federal Defend Trade Secrets Act (DTSA), intentional interference with contract, and Computer Fraud & Abuse Act claims reached a jury in August 2022 that ultimately awarded Monster \$293 million in damages. The parties filed post-trial briefing whereby Vital attempted to overturn or alternatively peel back the enormous award, while Monster sought, among other things, enhanced damages and attorneys’ fees. The court’s October 6, 2023 post-trial order ultimately upheld the jury award and awarded Monster nearly \$21 million in attorneys’ fees under the Lanham Act’s, DTSA’s, and CUTSA’s heightened standards for fee shifting. Despite meeting this high burden for shifting fees and the jury’s finding that Vital’s trade secret violations were “willful and malicious,” the court declined to award exemplary damages under the CUTSA and DTSA. The court’s ruling demonstrates the high bar for obtaining exemplary damages in trade secrets cases.

The jury awarded Monster \$3 million in damages for its trade secrets claims, which was perhaps overshadowed by the \$272 million lost profits award for Vital’s Lanham Act violations. (Monster’s Lanham Act false advertising claim alleged that Vital falsely advertised Bang as containing the supplement “super creatine,” which was neither a “super form” of creatine nor actual creatine with any health benefits.)

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Monster based its trade secrets claims on its contention that Vital recruited Monster employees to join Vital and bring with them Monster's confidential and valuable business information in violation of the CUTSA and DTSA. Monster introduced evidence that Vital offered several Monster employees jobs with a significant salary increase, conditioned on providing Monster's sensitive competitive information. Witnesses for Vital and Monster provided more details on this scheme, testifying that Vital interviewers asked Monster employees to bring confidential information with them, openly admitted to these recruiting practices, and circulated internal Monster documents, including about an unreleased product. Monster focused on its former Georgia regional manager who left Monster for Vital, gave Vital a link and password to Monster's internal and proprietary database, accessed that database after leaving Monster, and took five Monster-branded USB drives containing hundreds of confidential files and gave them to Vital's in-house counsel. Monster's damages expert testified that Vital's Georgia sales outperformed the rest of the United States by \$4.175 million, attributable to those confidential documents, which contained information specific to Georgia. The jury found that Vital "maliciously and willfully misappropriated" Monster's trade secrets and awarded \$3 million in damages.

The DTSA and CUTSA allow courts to award exemplary damages in an amount that is up to two times that of the damages award for "willful and malicious" trade secret misappropriation. Although exemplary damages are permitted by statute, the court has an independent obligation to consider the facts and calculate an equitable and constitutionally sound exemplary damages award. In determining the amount of exemplary damages, courts consider the nature of the misconduct, amount of compensatory damages, and the defendant's financial condition. The court noted that the "largest exemplary awards are reserved for the most reprehensible acts." And to determine if, and to what extent, misconduct is reprehensible, courts consider whether:

the misconduct caused physical harm, the conduct disregarded the health or safety of others, the misconduct targeted a financially vulnerable party, the misconduct was repeated, and the harm resulted from intentional malice, trickery, or deceit, or mere accident.

In light of the jury's finding that Vital's trade secret misappropriation was willful and malicious, Monster's post-trial motion requested \$3 million in exemplary damages, which would double Monster's damages on its trade secrets claims. The court denied this request based on its analysis of the exemplary damages factors discussed above. The court found that Vital's conduct "was not particularly reprehensible." The evidence of Vital's trade secret misappropriation, which the jury found "malicious and willful," fell short of "reprehensible conduct" warranting exemplary damages. Specifically, Vital's misconduct with regard to Monster's trade secrets did not "cause physical harm, disregard the health or safety of others, or target a financially vulnerable party." Thus, the court found that the jury's \$3 million award in trade secrets damages sufficiently "deters and punishes Vital" for misappropriating trade secrets and, accordingly, declined to award exemplary damages on Monster's trade secret claims.

The court's denial of exemplary damages is notable because, in the same order, it granted Monster's request for nearly \$21 million in reasonable attorneys' fees under the Lanham Act's "exceptional case" standard and the CUTSA and DTSA's "malicious and willful" standard. And, in finding that the case met the "exceptional case" standard for awarding fees under the Lanham Act, the court cited the jury's unanimous finding that Vital's false advertising was willful and deliberate (similar to the jury's trade secrets finding) and the unreasonable manner in which Vital litigated the case. The unreasonable litigation conduct cited by the court included disparaging remarks and otherwise disrespectful conduct at trial by Vital's CEO, and the CEO's contradiction of his prior sworn testimony at trial, which Monster's counsel impeached more than 50 times. Despite the court finding that this constituted an "exceptional case" in light of these circumstances, it nonetheless declined to award exemplary damages under the DTSA and CUTSA.

While the DTSA and CUTSA leave open the possibility of exemplary damages for trade secret violations, the *Monster* ruling illustrates the difficulty in obtaining them, even where the fact finder explicitly determines that the misappropriation was willful and malicious.