

Trade Secrets, Restrictive Covenants, and Computer Abuse

In this era of intense competition, increased employee mobility and electronic information, theft of trade secrets, computer abuse, and employee raiding cases are becoming ever more prevalent and increasingly difficult to prevent. Additionally, the number of new federal and state statutes relating to restrictive covenants, trade secrets, computer abuse, and theft of electronic information, and the interaction of potentially conflicting state laws, increases the complexity of these matters for companies that do business in multiple jurisdictions. Add to this mix the Federal Trade Commission's Final Rule invalidating most noncompete agreements and the landscape is thornier than ever. Companies now face multi-dimensional problems involving the interaction of employment law, intellectual property law, computer law, cybersecurity law, insurance law, privacy law, and having to address those issues in multiple jurisdictions at both the state and federal levels — sometimes simultaneously.

Cozen O'Connor's team of lawyers across the country are ready to assist national and multinational corporations, midsize businesses, and startups facing unfair competition matters. Our practice blends skilled attorneys from our labor and employment, intellectual property, and commercial litigation practices. Collectively, these attorneys have implemented and litigated nationwide restrictive covenants, invention assignment agreements, and confidentiality agreements. We have handled hundreds of injunction proceedings relating to theft of trade secrets, theft of computer data, restrictive covenants, and breach of employee loyalty in almost every state and court in the nation. Should a case proceed to trial, Cozen O'Connor attorneys have extensive first-chair jury-trial experience in large multi-jurisdictional cases involving restrictive covenants, theft of trade secrets, unfair competition, computer fraud and abuse, and duty of loyalty claims. We have successfully obtained and defeated emergency injunctions, won multimillion-dollar verdicts on behalf of plaintiffs, achieved full exoneration on behalf of defendants, and obtained fee awards on behalf of both, where possible.

Experience

Prevailed on behalf of a private medical practice and its majority shareholders in a "business divorce" arbitration against one of their founding shareholders after uncovering that he was working to create a competing practice. After successfully compelling arbitration in NJ Superior Court, contentious motion practice and discovery, and a seven-day hearing, a three-arbitrator AAA panel found that the practice proved its claims for breach of fiduciary duty and breach of contract, and rejected the founder's minority shareholder oppression claim. The panel awarded the practice significant equitable relief, including enforcing a two-year restrictive covenant and ordering that the practice buy out the founder for only one-third of the fair value of his 25 percent interest under their shareholders' agreement's punitive, for "cause" termination provision.

Secured an arbitration award in favor of the employer (a radiology practice) in a dispute with a physician over a non-competition agreement, which the panel found to be fully enforceable under Pennsylvania law.

Convinced the San Diego County Superior Court to sustain a demurrer on behalf of the new employer, without leave to amend, in an employment-related trade secrets misappropriation and customer interference case.

Egnyte hired seven employees from Citrix in North Carolina to work remotely and filed suit in state court in California both for declaratory relief and damages under California Bus. and Prof. Code 17200. Citrix then filed for injunctive relief in Florida state court against Egnyte and the seven former



James A. Gale
Co-Chair, Intellectual Property Litigation

jgale@cozen.com
Phone (305) 358-1991
Fax (305) 720-2192



Craig Schloss
Member

cschloss@cozen.com
Phone (619) 685-1772
Fax (619) 234-7831

Related Practice Areas

- Entertainment Law
- Franchising
- Hatch-Waxman & Biologics
- Intellectual Property
- Intellectual Property Litigation
- IP Transactions & Licensing
- Labor & Employment
- Patents
- Technology, Privacy & Data Security
- Trademark & Brand

Industry Sectors

- Food & Beverage
- Gaming
- Insurance
- Real Estate & Construction

employees. We successfully moved to stay/abate the second filed Florida case. After the stay was lifted, we moved to dismiss the Florida case for lack of jurisdiction. The lower court denied the motion, but was reversed by the appellate court. After 11 months of no injunction, the case settled favorably for our clients.

Mediware brought suit for breach of restrictive covenants and theft of trade secrets against four of its former employees who left after selling Mediware a blood collection software program and then starting their own company. After taking the case over from a top-25 law firm, we successfully defeated an evidentiary injunction and then successfully resolved this matter.

Represented St. Jude Medical in a series of 16 cases involving over 50 sales representatives from Intermedics in over a dozen different jurisdictions, when that company's assets were acquired by Guidant Corp. Guidant tried to enforce the covenants and confidentiality provisions. After successfully obtaining an anti-suit injunction against Guidant, the cases settled favorably, resulting in hundreds of millions of dollars in new sales for the plaintiffs.

Won a five-day jury trial in federal court regarding an alleged breach of covenant not to compete, theft of trade secrets, and breach of term-of-years contracts and counterclaims for breach of contract, tortious interference and theft of confidential information. With a verdict entitling our clients to up to \$2.5 million in attorneys' fees and costs, the case settled for an undisclosed amount.

Represented St. Jude Medical in a theft of trade secret case involving a former employee who downloaded the client's server and fled to China to set up a competing medical device company with the assistance of a Chinese government-backed company. Jury verdict of more than \$2.3 billion.

Represented St. Jude Medical against a sales representative, his wife, and her new employer, Medtronic. The sales representative was funneling sales from St. Jude to Medtronic through his wife. The suit was brought by St. Jude in Florida, and thereafter by Medtronic in Minnesota. After the Florida court issued an injunction preventing the second-filed Minnesota action from proceeding, the parties entered into private binding arbitration. After a 4-week trial before a three-judge panel, the client was awarded a confidential multimillion-dollar verdict plus more than \$1.5 million in fees.

Defended St. Jude Medical S.C. and five of their sales representatives who formerly worked for rival manufacturer Biosense Webster, Inc. Biosense alleged that the former employees could not sell electrophysiology biomedical devices to its clients for St. Jude, regardless of whether or not they were competing devices. After two injunction hearings, the court declined to enter an injunction and counterclaims were filed. The case thereafter settled and the employees were permitted to work for St. Jude.

Brought in to dissolve an injunction against five sales representatives in Maryland who were given large bonuses to join St. Jude. The injunction was dissolved after an evidentiary hearing and the case thereafter settled favorably.

Obtained a temporary restraining order on behalf of St. Jude Medical against two former sales representatives, both of whom left St. Jude to join a competitor. The temporary restraining order was upheld and converted to a preliminary injunction by the court and a favorable settlement was negotiated thereafter.

Represented Telectronics Pacing Systems, a cardiac pacemaker manufacturer, in a breach of distribution agreement and non-compete. Jury verdict in favor of our client.

Represented Alliant Insurance Services, a commercial insurance brokerage, and three of its new employees, who were previously employed by Wells Fargo, in multiple actions in Georgia and Florida

to invalidate non-disclosure and non-compete covenants. We sued to invalidate the covenants in Georgia and Wells Fargo sued in Florida to enforce the covenants. The matter settled on favorable terms for our clients.

Successfully represented an international packaging solutions company in a case centering on the allegation that the client had hired a senior employee in violation of a non-compete agreement. The Cozen O'Connor team started depositions immediately in preparation for the TRO hearing two days later. As a result of our discovery efforts, the other side voluntarily dismissed their lawsuit. They had originally sought damages of seven figures; in the end, our client was not required to pay any damages as part of the settlement.

Represented a manufacturer of vascular brachytherapy products against a former sales employee who violated non-compete, non-solicitation, and trade secret covenants. The case settled favorably prior to an injunction hearing.

Represented the plaintiff in an action seeking a declaratory judgment and injunctive relief on behalf of an employee who had been forced to sign non-compete and non-solicitation agreements under duress by his prior employer. The court granted our motion for partial summary judgment and later ruled that both agreements were unenforceable.

Represented a national securities firm and banking association in proceedings before the Financial Industry Regulatory Authority (FINRA) for breach of contract, misappropriation of confidential information, unfair competition, and tortious interference with business relationships against a former wealth management advisor and his new employer. We obtained a temporary restraining order in Ohio federal court as well as a year-long preliminary injunction from FINRA.

Won a record \$7 million jury award based on a three-week jury trial, also proving extensive spoliation against the defendants, which secured a permissive-inference jury instruction at trial. It is believed that this \$7 million jury award is the largest ever for a claim under the Pennsylvania Uniform Trade Secrets Act.

Successfully represented a large sports management and marketing company in a trade secrets lawsuit brought against a former employee who, prior to leaving to join a competing company, downloaded and misappropriated confidential and proprietary information. Obtained a temporary restraining order and preliminary injunction against the former employee which barred him from working for the competitor until all confidential information was retrieved and recovered from his possession.

Secured a TRO for an international sales company where an employee suddenly resigned, then joined a competitor while taking confidential information and trade secrets. After the court granted a temporary restraining order for our client, the parties reached a favorable settlement.

Secured a TRO for a publicly-traded insurance company against three former top executives who resigned the same day and tried to claim that their restrictive covenants were not valid. Based on clear proof that these individuals took and/or retained massive amounts of confidential information and trade secrets, the court entered a TRO. The case then resolved based on the entry of a stipulated injunction that contained significant post-employment restrictions against the former executives.

Won a complete defense victory for software developers who were sued in California and Florida by their former employer for alleged copyright infringement and misappropriation of trade secrets after they launched their own successful start-up.

Obtained a dismissal of a \$40 million dollar trade secret, unfair competition, and commercial

disparagement claim.

Counsel for an Italian manufacturing corporation in a breach of contract, fraud, and misappropriation of trade secrets action filed in Indiana receiving national media attention; matter settled

Obtained temporary restraining order and permanent injunction enforcing terms of the employment agreement, preventing dissemination of trade secrets and enjoining former employee and new employer from soliciting customers.

Successfully defended professionals in lawsuit alleging misappropriation of trade secrets and violation of restrictive covenant prohibiting solicitation of clients. The case settled after obtaining a favorable ruling on a motion challenging the enforceability of these claims.

Won a series of cases brought against the founders of a gaming industry startup by their former employer, successfully defending them against allegations of alleged misappropriation of trade secrets, breach of contract, and intentional interference with contractual relations.

Successfully represented a gaming industry hardware and software manufacturer in several “bet the company” copyright infringement and trade secrets actions in state and federal courts across the country.

Secured a jury verdict in the client’s favor in a case centering on claims of misappropriation of trade secrets involving theft of computerized data.

Achieved victory in a FINRA arbitration on behalf of a major investment bank and one of its financial advisors. The dispute centered on the advisor’s former employer’s allegations of violation of the Illinois Trade Secrets Protection Act, breach of contract, and tortious interference after several former clients transferred their accounts to our clients. A central legal question was whether the plaintiff’s attempt to foreclose its former employee from using his recollection of client names to contact them, after the expiration of a contractual non-solicitation period, sought to create a lifetime ban on competition that is illegal and against public policy.

Successfully defended a large real estate company against claims of tortious interference with contract, breach of a non-solicit agreement, breach of fiduciary duty, and unfair competition claims.

Secured the voluntary dismissal against a large corporate client who was sued for tortious interference, unfair competition, and employee piracy. After the court denied injunctive relief, the plaintiff voluntarily withdrew its claims.

Served as lead trial counsel for Beachbody, LLC and its BODY BEAST fitness program in defense of trademark infringement and unfair competition claims filed by USA Nutraceuticals.

Successfully defended insurance producers from trade secret and unfair competition claims.

Secured a complete defense verdict in a California consumer class action based on the Unfair Competition Law seeking \$247 million in restitution, as described more fully in the narrative above.

Successfully defended a large, privately owned real estate company in a restrictive covenant / non-compete case brought by a competing real estate company.

Successfully enforced post-employment restrictive covenants in a declaratory judgment action against employees who left a retail insurance brokerage to open a competing business.
