

KT Client Success

Trade secret misappropriation and related patent prosecution enjoined

On February 27, 2018, Ennis-Flint, Inc., a North Carolina-based developer and manufacturer of pavement marking technology, filed suit against its former Director of R&D, Robert Greer, and his company, GP Innovations, LLC, asserting a variety of claims including misappropriation of trade secrets, unfair and deceptive trade practices, and breach of an employment agreement. The Court entered a Consent Temporary Restraining Order on March 9, 2018. Greer contended he was a “good leaver” who had done no wrong.

Months of discovery – including investigation by multiple computer forensic experts who analyzed a variety of laptops, smartphones, thumb drives, and high capacity hard drives – revealed that Greer was not a “good leaver.” Instead, Greer had retained, after his resignation, massive amounts of Ennis-Flint’s confidential information and trade secrets (including thousands of trade secret formulas), was working closely with a company in China, and attempted to conceal his actions by systematically and intentionally deleting evidence with the use of data-wiping tools after the lawsuit was filed.

On February 11, 2019, the North Carolina Business Court issued the publicly available version of its February 4, 2019 Order and Opinion granting Ennis-Flint’s motion for preliminary injunction. The 44 page Order includes the following findings:

- Greer’s electronic devices contained a complete set of Ennis-Flint’s product formulas, including some unrelated to products for which he had any employment responsibility;
- Greer was still in possession of the copies of those formulas when the lawsuit was filed and at the time of the March 9, 2018 Consent TRO;
- Greer accessed one or more of those formulas on multiple occasions after leaving his employment with Ennis-Flint and before this lawsuit was filed;

- After receiving notice of the lawsuit, Greer undertook systematic efforts to destroy evidence, including any evidence that he had possessed or accessed Ennis-Flint’s formulas or other confidential files, and to cover up that he had done so;
- Greer continued to misrepresent facts regarding the possession or use of this information, but the results of the forensic examination made any further such denials incredible, and thereafter Greer admitted retaining nearly 4,000 product formulas and intentionally destroying evidence;
- “[T]he Court finds that Greer has repeatedly and consistently undertaken knowing and intentional action to destroy evidence, knowing that doing so was prohibited by his duty to preserve evidence and by the Consent TRO to which Defendants were bound and that Defendants have shown a manifest disregard for the Court’s orders and for the integrity of the judicial process.”
- Ennis-Flint has shown a probability of success in proving that Greer misappropriated Ennis-Flint’s confidential information and trade secrets by copying, retaining, and accessing files without authorization or permission, including two formulas that Greer directly or indirectly used when developing products after his resignation.

The injunction prohibits further use or retention of Ennis-Flint’s confidential information and trade secrets, and includes a provision prohibiting the further prosecution of any patent applications related to the technology at issue. The Court deferred its determination of Ennis-Flint’s motion for sanctions until additional forensic examination is complete, but noted that “a negative inference would be warranted” and that it would ultimately consider “whether Defendants’ answer should be struck in whole or part as part of sanctions to be imposed.”

For more information, please contact:

Jason Wenker at jwenker@kilpatricktownsend.com

Beth Winters at bwinters@kilpatricktownsend.com

www.kilpatricktownsend.com