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Second Circuit Rules on Trade Secret Specificity and Unjust Enrichment Under the Defend Trade Secrets Act

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On May 25, 2023, in *Syntel Sterling Best Shores Mauritius Ltd v. TriZetto Group Inc.*, the Second Circuit affirmed a jury's finding that Syntel misappropriated TriZetto's trade secrets under the federal Defend Trade Secrets Act ("DTSA"), while vacating the jury's $285 million compensatory damages award under the DTSA. The decision is notable in two key respects. *First*, it affirms that whether a trade secret holder has identified its trade secrets with sufficient specificity is a factual question for the jury, while illustrating the amount of evidence that may be sufficient to sustain a finding at trial that the asserted trade secrets were in fact trade secrets. *Second*, the decision holds that an award of avoided development costs—a form of unjust enrichment damages available under the DTSA—is not available on top of lost profits, absent evidence that the value of the trade secrets was diminished as a result of the misappropriation.

1. **The Second Circuit Holds That Trade Secret Specificity Under The DTSA Is A Factual Question For The Jury**

The jury found that Syntel misappropriated TriZetto's trade secrets, in violation of both the DTSA and New York trade secret law.[1] Syntel argued on appeal that TriZetto had failed to adequately specify its asserted trade secrets as a matter of law, such that "no reasonable jury could have found for TriZetto on the trade secret misappropriation claims."[2] The Second Circuit held "whether TriZetto's trade secrets were adequately identified (and proved) was ultimately a question for the jury" and that Syntel's "argument really attacks the sufficiency of the evidence supporting the jury's verdict."[3]

The Second Circuit found that "a reasonable jury could have determined the asserted trade secrets were in fact trade secrets," and adequately specified as such, based on the following evidence: for each trade secret TriZetto asserted, a fact witness "explained (1) what the secret was, (2) how the secret was developed, (3) the value of the secret to TriZetto, and (4) that the secret was maintained as confidential."[4] Additionally, an expert "presented several demonstratives linking the title of each individual trade secret to specific exhibits."[5] TriZetto also provided the jury with documents or source code reflective of each of the asserted trade secrets.[6]

The evidence stands in contrast to that in *Olaplex, Inc. v. L'Oreal U.S., Inc.*, in which the Federal Circuit concluded that no reasonable jury could have found that the plaintiff met its burden of proving that it possessed protectable trade secrets.[7] There, the plaintiff failed to produce fact witness or expert testimony describing with "specificity" the alleged trade secrets—and failed to otherwise direct the Federal Circuit to evidence in the record identifying the alleged trade secrets beyond a "high level of generality."[8] Here, the Second Circuit declined to articulate "a general specificity rule," but was clear that TriZetto's evidence described above sufficed to support the jury's finding that TriZetto had trade secrets.[9]

2. **The Second Circuit Holds That Avoided Costs Are Not Recoverable On Top**

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Of Lost Profits Under The DTSA Absent Evidence That The Misappropriated Trade Secrets Lost Value

As to damages, Syntel argued that the district court should not have upheld the jury's $285 million compensatory damages award under the DTSA, which was predicated on TriZetto's avoided development costs. The parties did not dispute that avoided development costs—i.e., "the costs a trade secret holder had to spend in research and development that a trade secret misappropriator saves by avoiding development of its own trade secret"—is an unjust enrichment remedy afforded by the DTSA.[10] But Syntel argued that "avoided costs ma[d]e no sense here" because (i) TriZetto's expert presented evidence that it had lost $8.5 million in compensable profits; and (ii) "Syntel did not take or destroy the value" of the product incorporating the trade secrets, which was still generating "hundreds of millions of dollars a year" for TriZetto.[11]

The Second Circuit agreed. The Court first emphasized that the DTSA does not permit double counting of damages for actual loss and unjust enrichment. The DTSA allows for "(1) 'damages for actual loss caused by the misappropriation;' and (2) '*damages for any unjust enrichment caused by* the misappropriation . . . *that is not addressed in computing damages for actual loss*.'"[12] In vacating the district court's damages award, the Second Circuit held that "[b]eyond its lost profits … TriZetto suffered no compensable harm supporting an unjust enrichment award of avoided costs."[13] That was because (i) Syntel's misappropriation "did not diminish, much less destroy," TriZetto's trade secrets' continued commercial value to the company, since the product incorporating them was "worth even more today than it was when the misappropriation occurred," and (ii) the district court had permanently enjoined Syntel's use of the trade secrets, ensuring it could not profit from any avoided costs in the future.[14] Accordingly, TriZetto "suffered no compensable harm" beyond its lost profits that could "support[] an unjust enrichment award of avoided costs"—and therefore was "not entitled to avoided costs as form of unjust enrichment damages" as a matter of law.[15]

The Second Circuit acknowledged that its holding was "in some tension" with the Seventh Circuit's decision in *Epic Systems Corp. v. Tata Consultancy Services, Ltd.*, 980 F.3d 1117 (7th Cir. 2020).[16] There, the Seventh Circuit upheld a $140 million avoided costs award under Wisconsin's Uniform Trade Secrets Act, which mirrors the DTSA, based on the "significant head start" in operations the defendant gained through misappropriation.[17] The Second Circuit disagreed with the Seventh Circuit's reasoning "insofar as it can be seen to endorse a view that avoided costs are available as compensatory damages under the DTSA *whenever* there is misappropriation of any trade secret relating to an owner's product."[18] In the Second Circuit's view, that reasoning would endorse awarding "punitive damages under the guise of compensatory damages."[19]

Here, the district court had reasoned that avoided costs were appropriate because Syntel should have born the business risk of its misappropriation. In overruling that determination, the Second Circuit held that "[t]o the extent the district court deemed it necessary to punish Syntel" for a "business risk" it took, the punishment should be considered "in the context of punitive damages under the DTSA."[20]

In sum, the Second Circuit's decision in *Syntel* demonstrates the amount of evidence that may be sufficient to adequately specify alleged trade secrets at trial—specifically, fact witness testimony supporting the elements of a trade secret under the DTSA for each alleged trade secret, expert testimony tying the alleged trade secrets to documents, and documentary support for each alleged trade secret. The decision also clarifies that, at least in the Second Circuit, unjust enrichment damages, such as avoided costs, are not recoverable absent additional evidence of damages that are not addressed in computing damages for actual loss.

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[1] *Syntel Sterling Best Shores Mauritius Ltd. v. The TriZetto Grp., Inc.*, No. 21-1370, 2023

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WL 3636674, at *3 (2d Cir. May 25, 2023).

[2] *Id*. at *4.

[3] *Id*.

[4] *Id*. at *6.

[5] *Id*. at *7.

[6] *Id*. at *6-7.

[7] *Olaplex, Inc. v. L'Oreal USA, Inc.*, 855 F. App'x 701, 706 (Fed. Cir. 2021) (finding that no reasonable jury could have found trade secret misappropriation where, for example, certain information was readily ascertainable at the time of the alleged misappropriation).

[8] *Id*. at 709-10.

[9] *Syntel*, 2023 WL 3636674, at *5.

[10] *Id.* at *13.

[11] *Id*. at *3.

[12] *Id*. at *13 (citing 18 U.S.C. § 1836(b)(3)(B)) (emphasis in original).

[13] *Id*. at *15.

[14] *Id*.

[15] *Id*.

[16] *Id*. at 16*

[17] *Id*.

[18] *Id*. (emphasis in original).

[19] *Id*. at *17.

[20] *Id*.

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