

Defendant and His Companies Ordered to Pay Over \$2 Million in a Theft of Trade Secrets Case

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On September 23, 2019, Colorado District Judge Christine M. Arguello found Thomas Kutrubes and his companies, Peak Serum, Inc. and Peak Serum, LLC, liable for federal trademark infringement, Colorado trademark infringement, misappropriation of trade secrets under the Colorado Uniform Trade Secrets Act (CUTSA), and breach of fiduciary duty, following a bench trial. *Atlas Biologicals, Inc. v. Kutrubes*, No. 15-cv-355-CMA-KMT, 2019 WL 4594274, at *23 (D. Colo. Sept. 23, 2019). Final judgment was entered against Mr. Kutrubes and his company for over two million dollars. *Id.*

Defendant Kutrubes was an employee, partial owner, and member of the Board of Directors for Atlas Biologicals, Inc., a company specializing in the production of bovine serum. Bovine serum is a byproduct of cow blood used in scientific research. The Court found that in 2014, Kutrubes created companies to compete with Atlas (while still working for Atlas) and began emailing himself important Atlas documents and trade secret information including customer contact lists, a supplier agreement, the quality manual, an organizational chart, and other key business items. He then began falsely representing to Atlas's customers that his new company (Peak Serum) and Atlas were "sister companies" and that Peak Serum would be "assuming Atlas's international customers." Shortly thereafter, Kutrubes resigned from Atlas and Atlas discovered that he had been using his work email address to "send numerous company documents to his personal Gmail account and to extensively email Atlas's customers to solicit business for [his companies]." *Id.* at *3. Atlas took action: it filed a complaint against Kutrubes and his companies and then filed a motion for immediate injunctive relief. The Court entered a preliminary injunction, enjoining the Defendant from using Atlas' trademarks and trade names and from further disclosing its proprietary information and trade secrets.

The parties engaged in a bench trial in March 2018. Judge Arguello found for Atlas on all claims except for conversion and civil theft, which were denied because "Atlas ha[d] not proven...that [Defendants] intended to permanently deprive Atlas of the benefit of its documents and information contained therein." *Id.* at *18. The Court awarded Atlas a permanent injunction, damages in the amount of \$2,048,180.50, and the ability to file a motion for attorneys' fees within 30 days because the theft of trade secrets was "willful and wanton."

TIP: It is important to take swift legal action to protect trade secrets and proprietary information upon first notice of potential theft.

2 Min Read

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