

Evidence Spoliation by Autonomous Car Startup Results in Sanctions in Trade Secret Case

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Last month, United States District Court Judge Edward J. Davila granted a motion for default and sanctions against defendants in the trade secret misappropriation case, *WeRide Corp. et al v. Huang et al*, due to spoliation of data, including corruption of source code, destruction of emails, and deletion of email accounts.

WeRide, a self-driving car startup, filed a complaint in November 2018 against competitor AllRide and two of AllRide's founders (both former executives of WeRide). WeRide accused the defendants of, among other things, trade secret misappropriation under federal and state laws. According to the complaint, former CEO Jing Wang left WeRide, formed AllRide, and then began recruiting Kun Huang while Huang was still acting as Head of Hardware Technology at WeRide. WeRide alleged that during the time between Wang's recruitment of Huang and the time Huang left WeRide, Huang "downloaded an unusually large amount of data from WeRide's servers." WeRide also alleged that after leaving WeRide, Huang destroyed two of his WeRide-issued laptops and a personal computer. Although Huang argued his duty to preserve evidence did not arise until WeRide filed its complaint, the court disagreed. The court found that Huang's internet search history indicated that he subjectively expected litigation to follow, and the court explained that "[t]he duty to preserve evidence begins when litigation is pending or reasonably foreseeable."

The court found that spoliation continued even after WeRide was granted a preliminary injunction, which prohibited the parties from "[d]estroying, concealing, disposing, deleting, removing or altering any and all documentation of any kind whether paper or electronic, . . . data, drafts or other things or materials' that are related to WeRide's confidential material or information, or AllRide's source code." Despite these explicit instructions, it appears that AllRide left in place its "company-wide policy of deleting from its server all emails older than 90 days" and "repeatedly destroy[ed] email accounts . . . after the original complaint was filed." This continued "until months after the preliminary injunction issued." AllRide admitted to deleting emails before litigation began and violating the preliminary injunction, stating that it did not discover that the auto-delete function was still intact until three months after the preliminary injunction went into effect. AllRide did not alert the court for another two months after this realization.

WeRide also presented forensic evidence indicating that AllRide had modified source code in violation of the preliminary injunction. The court found that because AllRide spoliated its internal emails, it had essentially eliminated its own ability to defend its actions. The company's weekly engineering reports, circulated via the now-deleted email, "would have offered critical insight" according to the court. As a result of the "staggering" amount of spoliation, the court entered an order directing the clerk to enter default against AllRide, Wang, and Huang, and ordering that these

defendants pay sanctions to WeRide under Federal Rule of Civil Procedure 37(b) and (e). One week later on May 8th, the case settled.

TIP: This case offers a fascinating glimpse into the role that forensic research can play in a trade secret case and highlights the perils on non-compliance with ethical duties to preserve relevant evidence where litigation seems reasonably imminent, both issues that arise frequently in trade secret litigation.

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