

Recently Filed Lawsuit by Trinseo Highlights the Potential for the Rapid Spread of Misappropriated Trade Secrets

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In the “standard” trade secret misappropriation case, Company A’s trade secret is misappropriated by Company B and used internally by Company B alone to gain an unfair advantage. The lawsuit filed on November 27, 2020, by Trinseo S.A. (Trinseo) against Kellogg, Brown and Root, LLC (KBR), however, alleges a different kind of case, one where Company B resells the misappropriated trade secrets as licenses to Companies C and D.

Trinseo (a spun-off business unit of Dow Chemical) produces polycarbonate resins that are used in everyday products such as eyeglass lenses and compact discs. According to the complaint, demand for polycarbonates—and the concomitant need for polycarbonate production facilities and manufacturing know-how—is increasing, especially in markets like China. Trinseo alleges that it possesses this knowledge and guards it closely as a highly-valuable trade secret. KBR, after getting a “taste” of Trinseo’s proprietary knowledge from a 2007 project, sought to enter the growing industry by licensing the information from Trinseo in 2014. While these negotiations ultimately failed, in 2017 KBR reached an agreement with an ex-Trinseo (technically ex-Dow) employee to help design a polycarbonate license package called PCMAX that included engineering and design services. Allegedly, this package allows a company to become a competitive polycarbonate manufacturer and to date, KBR has sold two licenses to Chinese firms for approximately \$40 million dollars total. The issue, as can be expected, is that Trinseo claims that the ex-employee, who ran his own polycarbonate consulting business, has misappropriated Trinseo polycarbonate trade secrets, and baked them directly into the PCMAX package. Indeed, Trinseo claims that without the Trinseo trade secrets, the PCMAX package would be “perhaps worthless.”

If true, not only has Trinseo had highly-valuable proprietary information misused by a domestic competitor, but that information is now in the possession of at least two foreign firms (with unclear jurisdictional ties to the U.S.) that are in the process of building manufacturing facilities that will directly compete with Trinseo in the marketplace without having to invest the same time and money as Trinseo. This could put Trinseo at a serious competitive disadvantage in the marketplace, even if its requested preliminary injunction against KBR is granted. The Chinese firms already possess the information, even if KBR employees are judicially estopped from further consulting.

Regardless of the veracity of the complaint’s allegations, these facts exemplify both the way in which misappropriated trade secrets can spread in an increasingly global and competitive marketplace, and how difficult it can be to recapture the information once it has been exposed.

TIP: If a former employee is suspected of misappropriating trade secrets, be prepared to litigate immediately, aggressively, and in a manner that allows you to ascertain the full scope of the leak.

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