

3rd Circ. Revives Trade Secrets Suit Against Aurobindo

By **Jeannie O'Sullivan**

Law360 (June 8, 2021, 7:00 PM EDT) -- The Third Circuit revived a pharmaceutical laboratory's trade secrets lawsuit against a former executive and Aurobindo Pharma units on Tuesday, ruling that a district court applied an improperly heavy burden on the lab to establish the proprietary information at issue and show how it was misused.

In a precedential decision clarifying pleading standards of trade secrets misappropriation claims, a three-judge panel said the allegations in Oakwood Laboratories LLC's third amended complaint were sufficient under the Defend Trade Secrets Act. Oakwood claimed its former vice president of product development defected to Aurobindo with information about Oakwood's microsphere products, which are sustained-release drug delivery systems.

The panel found that Oakwood's complaint established that Aurobindo and Dr. Bagavathikanun Thanoo had knowledge of the information's protected status and also outlined the defendants' incentive to access and use the information.

"The District Court's demand for further precision in the pleading is thus misplaced and ignores the challenges a trade secret plaintiff commonly faces when only discovery will reveal exactly what the defendants are up to," U.S. Circuit Judge Kent A. Jordan wrote for the court.

The district court had reasoned that the amended complaint, which included additional exhibits and more specifics than previous versions, was plagued by the "critical missing component" of a precise allegation how the defendants misappropriated Oakwood's trade secrets. However, that reasoning "excludes a broad scope of activity that amounts to misappropriation under the DTSA, including 'use' of a trade secret," the panel said.

"Second, it focuses on Aurobindo's actual product development and mandates a heightened level of pleading specificity about which trade secrets were used, how they were used, and whether they needed to be used in order for Aurobindo to develop its product or products," the decision said.

The district court had also faulted Oakwood for not showing that it was harmed. But misappropriation itself is harm, the panel said.

"The trade secret's economic value depreciates or is eliminated altogether upon its loss of secrecy when a competitor obtains and uses that information without the owner's consent. Thus, cognizable harm is pled when a plaintiff adequately alleges the existence of a trade secret and its misappropriation," the panel said.

According to Oakwood's July 2017 complaint, Thanoo was hired in 1997 and "directly designed Oakwood's microsphere process technology." The company claimed it invested more than \$130 million, two decades and dozens of full-time employees in its microsphere project, which yielded three lead product candidates by 2013.

Around that time, Aurobindo approached Oakwood about a possible collaboration on the microsphere project, according to court records. During the discussions, Aurobindo, which revealed it had no previous experience with peptide-based microsphere products, acquired some of Oakwood's trade

secrets in a memorandum.

Aurobindo ultimately informed Oakwood it wasn't going to pursue a microsphere collaboration due to financial considerations, court records show. Aurobindo then hired Thanoo in April 2014 and within months formed a microsphere technology development group, according to court records.

Thanoo had assured Oakwood that his role at Aurobindo would be to develop standard generic injectable drugs, but Oakwood alleged the resulting Aurobindo products were "substantially similar to and competitive" with its own products. By May 2015, Aurobindo was telling investors that it was developing microsphere products and on track to obtain regulatory approval by 2018, Oakwood alleged.

U.S. District Judge Peter G. Sheridan of the District of New Jersey dismissed the third amended complaint without prejudice in October 2019. The jurist opined that Oakwood's previous failed attempts likely rendered amendment a "futile endeavor," but left the litigation door open in "the event that new evidence of misappropriation arises in the future."

The Third Circuit panel noted that the use of Oakwood's trade secret information could be understood from the timing of Thanoo's new employment with Aurobindo and the doctor's deception with respect to the work he was going to do. It could also be construed from Aurobindo's lack of experience in the microsphere technology and its "rapid success" in developing microsphere products it took Oakwood 20 years to develop, the panel said.

"In short, the factual allegations of the complaint in its latest iteration are more than sufficient to meet Oakwood's burden of pleading use of a trade secret," the decision said.

Representatives for the parties did not immediately respond to requests for comment.

U.S. Circuit Judges Kent A. Jordan, Cheryl Ann Krause and L. Felipe Restrepo sat on the panel for the Third Circuit.

Oakwood is represented by Michael J. Barrie and Kevin M. Capuzzi of Benesch Friedlander Coplan & Aronoff LLP.

The defendants are represented by Jonathan D. Janow and Chance Lyman of Buchanan Ingersoll & Rooney PC.

The case is Oakwood Laboratories LLC v. Bagavathikanun Thanoo et al., case number 19-3707, in the U.S. Court of Appeals for the Third Circuit.

--Editing by Jill Coffey.