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ABBVIE Stock – 3rd Circuit revives trade-secret claims against Aurobindo



by ALEX LOWE — June 17, 2021 in Stock Market 0

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- Aurobindo allegedly stole injectable drug technology
- N.J. court had dismissed Oakwood's complaint four times
- Oakwood complaint sufficiently described secrets, misuse, 3d Circ. said

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(Reuters) – The 3rd U.S. Circuit Court of Appeals on Tuesday reinstated drug company Oakwood Laboratories LLC's claims that Aurobindo Pharma USA Inc misused its trade secrets, after a New Jersey federal district court had dismissed Oakwood's complaint four times.

Oakwood sufficiently identified what injectable-drug trade secrets Aurobindo and a former Oakwood executive allegedly stole and how they were misused to survive Aurobindo's motion to dismiss under the Defend Trade Secrets Act, U.S. Circuit Judge Kent Jordan wrote for a three-judge panel, noting that the court wanted to clarify the requirements for pleading a misappropriation claim under the law.

Oakwood attorney Michael Barrie of Benesch, Friedlander, Coplan & Aronoff said the company was pleased with the ruling.



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According to its complaints filed between 2017 and 2019, Oakwood Village, Ohio-based Oakwood Labs invested more than \$130 million to develop injectable drugs for cancer treatment using “microspheres” to provide sustained release. Oakwood planned to use the technology in a generic version of AbbVie Inc’s Lupron Depot, which treats diseases including prostate cancer, and doesn’t have any approved generic versions based on the “high level of difficulty” in its development and manufacture, Oakwood said.

The company had discussed a collaboration with Hyderabad, India-based generic drugmaker Aurobindo’s U.S. subsidiary to develop products based on the technology, and disclosed information under a confidentiality agreement about its development, strategic plan, and clinical trial results, among other things, according to the lawsuit.

Oakwood said Aurobindo’s CEO emailed then-Oakwood vice president of product development Bagavathikanun Thanoo, who spent more than 80% of his time working on the project, two days after a visit to Oakwood headquarters, noting they were “old friends” from college.

Talks between Oakwood and Aurobindo broke down, and Aurobindo hired Thanoo six months later to develop its own microsphere technology, Oakwood said. Oakwood argued that Aurobindo’s \$6 million investment in the technology was “remarkably small for the scientific advances claimed,” that it had no prior experience with microsphere technology and that it couldn’t have met its short development timeline without using Oakwood’s trade secrets.

Oakwood sued Aurobindo and Thanoo for misappropriating its trade secrets in New Jersey federal court. U.S. District Judge Peter Sheridan dismissed Oakwood’s complaint four times, finding that Oakwood hadn’t identified its trade secrets, didn’t show how they were misused, and didn’t describe how it was harmed.

Jordan, joined by Circuit Judges Cheryl Ann Krause and Felipe Restrepo, revived the case, finding Oakwood’s fourth complaint was “plainly sufficient” to identify its trade secrets, Aurobindo and Thanoo’s knowledge of their protected status, and their incentive to misuse them.

Among other things, Jordan said Oakwood specifically noted secrets including its microsphere designs, test results and manufacturing processes.

“The Defendants here unquestionably are on notice of the trade secret information that is at issue,” Jordan said.

Sheridan also erred by finding that Oakwood had to show that Aurobindo “replicated” its microsphere project to sustain claims that Aurobindo made “use” of its trade secrets.

The term “use” under the DTSA covers “all the ways one can take advantage of trade secret information to obtain an economic benefit,” including “assist(ing) or accelerat(ing) research or development,” Jordan said.

Oakwood also showed harm from the alleged misuse. “By statutory definition, trade secret misappropriation is harm,” Jordan said, even if Aurobindo hadn’t yet launched a competing product.

The case is Oakwood Laboratories LLC v. Thanoo, 3rd U.S. Circuit Court of Appeals, No. 19-3707.

For Oakwood: Michael Barrie and Kevin Capuzzi of Benesch, Friedlander, Coplan & Aronoff

For Aurobindo: Jonathan Janow and Chance Lyman of Buchanan Ingersoll & Rooney

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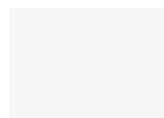
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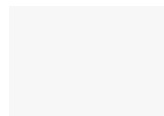
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