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Trade Secret Wars Continue With Tech Companies Battling For Talent

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In an era where trade secret misappropriation battles can shape corporate landscapes, the *Apple v. Rivos* case stands as a stark reminder of the importance of diligent onboarding practices when it comes to trade secrets. In this case, the court's scrutiny of employee conduct underscores a crucial lesson: companies should ensure that new hires refrain from carrying confidential information from their previous employers. As exemplified by defendant Rivos, making an effort to remind new hires to avoid retaining confidential information can also go a long way.Here, we discuss the intricacies of the *Apple v. Rivos* case and provide several takeaways.

Background

The conflict emerged in 2022 when Apple accused former employees, who had joined Rivos, of misappropriating proprietary system-on-a-chip ("SoC") design information. Rivos is a "stealth-mode" startup—a company that operates in a low-profile, secretive manner, keeping its innovations and developments under wraps until launch—founded to design and market SoCs. At the time Apple filed its complaint, nearly fifty of its employees had left to join Rivos.

Apple's complaint included claims for trade secret misappropriation under the Defend Trade Secrets Act (DTSA) against Rivos and several of Apples former employees as well as claims for breach of contract against the former employees for retaining confidential information after termination of their employment with Apple. In response, Rivos and the former employees counterclaimed that Apple employed illegal measures to intimidate employees contemplating leaving the company in violation of Section 17200 of the California Business and Professional Code.

Legal Developments

The legal landscape shifted significantly when U.S. District Judge Edward Davila granted in part defendants' motion to dismiss for failure to state a claim. With respect to Apple's trade secret claims against Rivos the Court found that Apple had not sufficiently alleged how the misappropriation by these former employees could be imputed to Rivos or how Rivos ratified such misappropriation. To this end, the court noted that Apple itself alleged that Rivos's CEO had advised the former employees *not* to retain Apple's confidential information.

The court also dismissed Apple's trade secret claims against two former employees on grounds that, as pled, misappropriation could not be inferred from the mere fact that they had retained access to Apple information on their synced drives. The Court also dismissed the breach of contract claims against one of those two former employees, finding Apple's allegations too nebulous—*i.e.*, lacking any allegations as to when he saved the information to his drives or how he was still able to access those drives. In contrast, the court let stand Apple's breach of contract claim against the other of the two former employees.

Despite setbacks, the court also found Apple plausibly alleged trade secrets misappropriation and breach of contract against the remaining employees. The Court found that the transfer of confidential information by each of those employees, shortly before joining Rivos, supported an inference that those individual defendants threatened misappropriation. The Court also permitted Apple to file a revised complaint with respect to the dismissed claims.

Recent Developments

Since the court's decision on the motion to dismiss, Apple and the six former employee defendants dropped all claims against each other. As part of the resolution, the former employees agreed to refrain from accessing, using, or disclosing Apple's trade secrets. Consequently, only Apple and Rivos remain parties in case. The case is currently stayed to allow the parties to explore the possibility of settlement. *Apple v. Rivos*, 22-cv-2637, D.I. 387 (N.D. Cal. Jan 10, 2024) (Order granting Stipulation Staying Case).

Takeaways

- The court's distinction between employees that transferred confidential information shortly before joining Rivos and those that simply continued to have access to

confidential information underscores, in certain circumstances, that merely alleging accessibility to confidential information may not necessarily imply misappropriation, even where continued access would constitute a breach of contract.

- The court's finding that Apple did not sufficiently allege how the misappropriation could be imputed to Rivos reveals the complexities in establishing a connection between the misappropriation of individual employees and a corporation. This highlights the need for laying out a factual connection attributing an employee's misappropriation to its new employer.
- The court's scrutiny of how Rivos could be implicated or ratified the alleged misappropriation highlights the importance of advising new employees against retaining the confidential information of their previous employer. In a situation where allegations as to the new employer company's conduct may not be entirely clear, this sort of evidence has the potential to turn the tides.

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Related Professionals

- **Edward Wang**
  Associate
- **Baldassare Vinti**
  Partner