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EV Trade Secrets Litigation Series: EV Trade Secrets Dispute Takes a Twist as $71M Verdict is Overturned

Proskauer on Trade Secrets on **September 23, 2024**

Continuing our series on electric vehicle (EV) trade secret litigations, a federal judge has overturned a jury's verdict awarding $71 million to Zunum Aero, Inc. for The Boeing Company's violation of the Washington Trade Secrets Act. Despite the jury's multi-million-dollar verdict, the judge granted judgment as a matter of law for Boeing finding that plaintiff Zunum failed to sufficiently identify its alleged trade secrets at trial.

Zunum filed its lawsuit against Boeing, and various Boeing suppliers, in November of 2020 in the Western District of Washington. Zunum accused Boeing of trade secret misappropriation relating to its proprietary EV aircraft technology and propulsion systems. According to Zunum, Boeing accessed Zunum's technological analyses, proprietary development information, and other trade secrets as an early investor and Zunum board of director. Also according to Zunum, Boeing copied Zunum's EV designs and used them to develop Boeing's own hybrid-electric propulsion system for a new EV aircraft.

After three and a half years of litigating, the parties tried the case in May of 2024. While there were numerous claims and counterclaims amongst all the parties involved, a jury ultimately found in favor of Zunum for its trade secrets claims. The jury determined that Boeing violated the Washington Trade Secrets Act and was liable to Zunum for $71 million. Shortly after the verdict, Boeing filed a motion for judgment as a matter of law arguing that Zunum's claims had no merit and Zunum failed to sufficiently identify any of its alleged stolen trade secrets.

U.S. District Judge Robart granted that motion ruling that Zunum was not entitled to damages for its allegations of trade secret misappropriation based on the evidence presented at trial. The judge's order presented a different version of events than that put forth in Zunum's complaint and at trial. The order states that "Zunum strived to be the Tesla of commercial aviation" and desired to be a mover in the EV industry in aviation. It goes on to point out that Zunum relied on Boeing as an early investor between 2017 and 2018 and Boeing contributed $9 million to Zunum's EV development efforts. By 2018, however, Boeing stopped investing in Zunum and Zunum could not secure any other investors. Thus, by the end of 2018, Zunum was effectively a non-operating entity. When Boeing started developing its own EV aircraft, Zunum filed suit.

Regardless of the background of the parties' relationship and development efforts, the court ultimately reversed the verdict because Zunum failed to meet its burden of proof at trial. Specifically, Zunum gave the jurors a brief description of 19 alleged trade secrets but failed to even discuss each of them at trial. Moreover, for the trade secrets that were discussed at trial, the judge found:

(1) Zunum failed to sufficiently identify its alleged trade secrets;

(2) Zunum failed to provide substantial evidence that the alleged trade secrets were valuable;

(3) Zunum failed to provide substantial evidence that the trade secrets were not generally known;
and

(4) Zunum failed to provide substantial evidence that Boeing improperly used those trade secrets.

As stated by the Court, "Zunum failed to tell the jury what its trade secrets were. The jury 'require[d] precision,' and Zunum did not provide it." Moreover, according to the Court, Zunum's conclusory statements at trial that its trade secrets were valuable and novel were insufficient to establish the existence of a trade secret and did not meet the statutory definition of a trade secret. Thus, the Court concluded that Zunum lacked substantial evidence to support the jury's $71 million verdict and that verdict was overturned.

The dispute between Zunum and Boeing reinforces the importance of identifying a trade secret with particularity, describing how value is derived from the trade secret, and detailing how the confidential information is kept secret. Additionally, Zunum's lawsuit evidences the continued trend of companies in the EV space resorting to litigation to enforce their intellectual property rights surrounding the research and development of proprietary EV technology. Proskauer's extensive legal and technical expertise can help EV companies successfully enforce or defend in trade secrets litigation and Proskauer's attorneys are well-versed in navigating the fine line between proving the existence of a trade secret while ensuring important, proprietary details remain confidential.

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