UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CAUDILL SEED AND WAREHOUSE COMPANY, INC. **PLAINTIFF**

vs. **CIVIL ACTION NO. 3:13-CV-082-CRS**

JARROW FORMULAS, INC. **DEFENDANT**

CORRECTED MEMORANDUM OPINION

This matter is before the court on motion of the defendant, Jarrow Formulas, Inc., for judgment as a matter of law or, in the alternative, for a new trial (DN 492).

This action, alleging violation of the the Kentucky Uniform Trade Secrets Act ("KUTSA"), KRS 365.880, *et seq.*, was tried to a jury over a 3 ½ week period and resulted in a verdict in favor of Caudill Seed, a damage award totaling $2,427.605.00, and a finding of willful and malicious misappropriation by Jarrow Formulas. Jarrow Formulas contends that there was insufficient evidence to support the jury's finding of misappropriation of Trade Secret 1, willful and malicious conduct, or damages.[1]

For the reasons set forth below, we reject Jarrow Formulas' arguments. The court will deny Jarrow Formulas' motion for judgment as a matter of law or new trial and will affirm the award of compensatory damages in the sum determined by the jury.

[1] More particularly, the jury found that Caudill Seed possessed a trade secret with respect to research and development, the specific process for spray-drying myrosinase, vendor information, customer information, the laboratory notebook and hard drive. The jury found misappropriation of research and development, the specific process for spray-drying myrosinase, vendor and customer information, but not the laboratory notebook and hard drive. The jury awarded damages and found malicious and willful misappropriation only with respect to Caudill Seed's research and development.

I. General Background

Caudill Seed is a 65-year-old family-owned business located in Louisville, Kentucky which produces and supplies agricultural products including seeds, sprouts, and the like to commercial producers and distributors. It also sells ingredients for nutritional supplements, food and cosmetics, and sells some of its own nutritional supplements.

From 2002 until his resignation on May 2, 2011, Kean Ashurst ("Ashurst") was employed by Caudill Seed, holding a number of positions during that time. Pertinent to this litigation was his employment as Director of Research at Caudill Seed, with the responsibility for research and development of new products and processes in the area of the extraction, isolation, and development of compounds from broccoli seed including glucoraphanin, the myrosinase enzyme, and the production of sulforaphane. In that role, Ashurst had access to, worked with, and maintained as proprietary and confidential the body of research, data and information related to the development, production and marketing of broccoli seed extract and other related products.

Caudill Seed engaged in research and development related to seed and seed sprout production as well as processes for extracting, isolating and developing compounds from those products before, during, and after the period of Ashurst's employment with Caudill Seed. A significant body of research and development relating to seeds and seed extraction processes had been developed by Caudill Seed prior to Ashurst's arrival at Caudill Seed and was available to and utilized by Ashurst in his work for Caudill Seed.

During the years of his employment at Caudill Seed, Ashurst maintained crucial notes and formulas in stenographer's notebooks, a composition notebook, and on an external computer hard drive. He carefully guarded these items as they were the principal repositories for his task

lists, thought processes and research results in his work for Caudill Seed. He kept the lab locked and generally inaccessible. The steno pads were locked in a file cabinet and the lab notebook and hard drive were either kept with Ashurst or were locked in the lab. To Caudill Seed's great regret, it entrusted most of the memorialization of its science solely to Ashurst.

Broccoli extract proved to be valuable to Caudill Seed. Due to its high concentration of glucoraphanin, the consumption of which is thought to have positive health effects in humans, it was sought after by nutritional supplement manufacturers, and specifically Jarrow Formulas. Preceding his departure from Caudill Seed, Ashurst was working to develop a process to produce a glucoraphanin product that offered better release of sulforaphane, the beneficial compound yielded in the human body from the ingestion of glucoraphanin-rich material. The ability to produce a higher sulforaphane yield has been referred to as an "activated formula." Prior to Ashurst's resignation, Caudill Seed was preparing for commercial production of an activated formula broccoli extract product.

Jarrow Formulas was formerly a customer of Caudill Seed that purchased bulk quantities of Broccoraphanin, Caudill Seed's broccoli extract powder which Jarrow Formulas used in formulating its BroccoMax and other nutritional supplement products. Caudill Seed marketed its own broccoli extract nutritional supplement, Vitalica, and so competed with Jarrow Formulas in this aspect of its business. Jarrow Formulas was Caudill Seed's largest bulk purchaser of Broccoraphanin until Jarrow Formulas decided to cut out the middleman and become a broccoli extract manufacturer in 2011.

Jarrow Formulas had never before engaged in research and development or manufacturing of broccoli extract and in 2011 it had no scientists on staff capable of doing it. Jarrow Formulas was interested in producing an activated formula of its BroccoMax and other

products. To that end, and in order to itself become a manufacturer of broccoli extract, it hired Ashurst away from Caudill Seed. The process of negotiation and transition began before Ashurst left Caudill Seed. Ashurst signed a consulting agreement with Jarrow Formulas the day before his resignation. When he left, the lab notebook and external hard drive containing Caudill Seed's critical formulas and research data disappeared. With its Director of Research gone and its laboratory in disarray, Caudill Seed was forced to essentially reverse engineer its own processes with the assistance of the testing facilities with which it worked. It took many months to get its house back in order, not in insignificant part due to the fact that it had permitted Ashurst to maintain and control all of its most critical information.

Caudill Seed also discovered that Ashurst provided numerous documents containing Caudill Seed's confidential and proprietary information in response to requests from Jarrow Formulas employees and agents. Ashurst acknowledged providing Caudill Seed documents to Jarrow Formulas.

Despite having no research and development of its own or any experience in the area of broccoli extract production, Jarrow Formulas created a successful manufacturing process and began producing a profitable activated formula mere months after hiring Ashurst as its consultant. Ashurst admitted that it was Jarrow Formulas' intention to "beat Caudill Seed to the punch" in bringing to market an activated formula broccoli extract product. Jarrow Formulas admitted and it was further proven at trial that Ashurst provided numerous confidential and proprietary Caudill Seed documents to Jarrow Formulas at Jarrow Formulas' request. Jarrow Formulas accomplished its goal of becoming a broccoli seed extract manufacturer and bringing an activated formula broccoli product to commercial production in four months' time, and subsequently succeeded in patenting its process for producing its activated formula.

II. Legal Standard

In this case, the court, sitting in diversity, "must apply the standard for judgment as a matter of law of the state whose substantive law governs." *Lindberg v. Jackson Nat'l Life Ins. Co.*, 912 F.3d 348, 360 (6th Cir. 2018)(quoting *DXS, Inc. v. Siemens Med.Sys., Inc.*, 100 F.3d 462, 468 (6th Cir. 1996)). Under Kentucky law, "a motion for directed verdict…should be granted only if there is a complete absence of proof on a material issue in the action, or if no disputed issue of fact exists upon which reasonable minds could differ. In deciding such a question, every favorable inference which may reasonably be drawn from the evidence should be accorded the party against whom the motion is made." *Ventas, Inc. v. HCP, Inc.*, 647 F.3d 291, 314 (6th Cir. 2011)(quoting *Morales v. Am. Honda Motor Co.*, 151 F.3d 500, 506 (6th Cir. 1998))(quoting *Washington v. Goodman*, 830 S.W.2d 398, 400; *Baylis v. Lourdes Hosp., Inc.*, 805 S.W.2d 122, 125 (Ky. 1991)).

However, federal law governs the district court's decision whether to grant a new trial on the basis of the weight of the evidence, even in a case brought under our diversity jurisdiction. *See Conte v. Gen. Housewares Corp.*, 215 F.3d 628, 637–38 (6th Cir. 2000); *J.C. Wyckoff & Assocs., Inc. v. Standard Fire Ins. Co.*, 936 F.2d 1474, 1487 & n. 20 (6th Cir.1991).

> Pursuant to Federal Rule of Civil Procedure 59(a) a new trial may be granted "in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States." Fed.R.Civ.P. 59(a). Generally courts have interpreted this language to mean that a new trial is warranted when a jury has reached a "seriously erroneous result" as evidenced by: (1) the verdict being against the weight of the evidence; (2) the damages being excessive; or (3) the trial being unfair to the moving party in some fashion, *i.e.*, the proceedings being influenced by prejudice or bias. *See Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251, 61 S.Ct. 189, 194, 85 L.Ed. 147 (1940); *Cygnar v. City of Chicago*, 865 F.2d 827, 835 (7th Cir.1989); *Mallis v. Bankers Trust Co.*, 717 F.2d 683, 691 (2d Cir.1983).

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