



Jam Recipe Yields 1st DTSA Verdict

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On Feb. 27, 2017, a federal jury in Pennsylvania returned the first verdict under the Defend Trade Secrets Act of 2016 and awarded what may amount to be more than \$5 million in damages to the plaintiff, the creator and owner of a proprietary fig spread. The case is notable not merely for being the first verdict under the newest amendment to the Economic Espionage Act; it also stands as a reminder of the potent remedies afforded to American companies seeking to protect their trade secrets.

By way of background, on May 11, 2016, President Barack Obama signed into law the DTSA, and thereby amended the Economic Espionage Act of 1996 to create a federal civil remedy for trade secret misappropriation. Since that time, courts around the country have largely interpreted provisions of the DTSA to be coextensive with the various state laws that provide similar protections for trade secrets.[1] However, no case had been brought to a jury verdict, until now.

The salient facts of the case are relatively straightforward. Plaintiff Dalmatia Import Group Inc. is a company co-founded by plaintiffs Maia Magee and Neb Chupin in 1994. Their signature product is the Dalmatia Original Fig Spread. Dalmatia's namesake comes from its origins in Croatia. Specifically, Dalmatia is a region of Croatia where Chupin grew up and Magee studied as a teenager, and where Chupin's grandfather dedicated his life to Croatian agriculture.

Chupin and Magee first conceived of the proprietary fig spread while traveling in Croatia in early summer 2000. Thereafter, inspired by the jarred fig preserves Chupin had experienced as a child in Croatia, he and Magee worked with and paid a food technologist to create the recipe and production process for what is now known as Dalmatia Original Fig Spread. According the complaint, the two spent "countless hours" creating Dalmatia's proprietary recipes — expressed in lists and percentages of ingredients — and production processes.[2] Perhaps unsurprisingly, Dalmatia kept a tight guard on these trade secrets. In addition to shielding these processes and recipe from the general public, it also requires all outside parties, including the defendant, Lancaster Fine Foods Inc., to sign a nondisclosure agreement before having access to them.

The central controversy here arose when Dalmatia decided to part ways with its manufacturer, Lancaster, and its distributor, FoodMatch Inc., toward the end of 2015. Specifically, in or around April 2015, Dalmatia became

concerned with the quality of Lancaster's production of the fig spread. This, in turn, caused delays and other issues on the distribution end, and ultimately led Dalmatia to terminate its arrangement with Lancaster. Dalmatia terminated its distributor agreement with FoodMatch soon thereafter in December 2015.

In or around the same time, FoodMatch and Lancaster decided to enter the fig spread business themselves, and created a product called "Divina." The problem with this, however, was that they enlisted the primary developer from Lancaster who had access to Dalmatia's propriety recipe and processes and told him to create "[t]he product we know and have become used to."

In response, Dalmatia filed an action in the Southern District of New York on Feb. 8, 2016, seeking, inter alia, to enjoin FoodMatch from using its trade secrets in the production of FoodMatch's Divina-brand fruit spread.[3] Because the DTSA had not been signed into law at the time Dalmatia filed its original complaint, Dalmatia did not include a count under the DTSA. However, on Aug. 1, 2016, Dalmatia filed an amended complaint and added a claim under the DTSA, which included a request for exemplary damages.

The litigation culminated in a four-week trial, after which the jury returned a verdict in favor of Dalmatia, and awarded compensatory damages, as well as an injunction preventing future use of Dalmatia's trade secrets. The parties continue to spar over the quantum of those damages.

Looking forward, the Dalmatia case is not necessarily memorable for its unique legal principles for several reasons. First, Dalmatia's proprietary recipes and processes would likely have been protected under common law, and would certainly have been protected under the existing Pennsylvania Uniform Trade Secrets Act. Indeed, in a case with strikingly similar themes, the Third Circuit affirmed a trial court's grant of injunctive relief under the Pennsylvania Uniform Trade Secrets Act six years before the DTSA's passage.[4] As is relevant here, the defendant in **Bimbo Bakeries**, was only one of seven people in the world with the detailed knowledge of all three components needed to replicate Thomas' English Muffins' distinctive "nooks and crannies."

Second, it is important to note that the Dalmatia decision was not just a DTSA case. Dalmatia claimed, among other things, counterfeiting under the Lanham Act, and only added the DTSA claim after the lawsuit was filed.[5] Finally, the facts of the case were compelling. It is well-known that trade secret cases are fact-sensitive matters that do not lend themselves to reasoning by analogy. This case is an extension of that maxim. Not only had Lancaster and FoodMatch allegedly hired the singular developer who had knowledge of Dalmatia's proprietary recipes and processes, but Dalmatia had the proverbial smoking gun — namely, a statement from the defendants that they intended to make a fig jam that was specifically based on Dalmatia's proprietary recipe and processes.

Nevertheless, the case is notable in several respects. First, the case stands as a reminder of the powerful protections that can arise from the DTSA in the proper factual scenario. Indeed, according to Dalmatia's motion for judgment on the verdict, submitted March 20, 2017, Dalmatia could be awarded up to \$500,000 on its claims under the DTSA and the Pennsylvania Uniform Trade Secrets Act. Second, the Dalmatia case is a testament to one of the DTSA's primary rationales — affording victims the ability to "move quickly to Federal court, with certainty of the rules, standards, and practices to stop trade secrets from winding up being disseminated and losing their value." [6] Here, Dalmatia was able to obtain relief in a little more than a year from the filing of its



original complaint and within six months of adding its DTSA claim in August 2016. Finally, because much of the decisional case law arising under the DTSA has yet to advance beyond the motion-to-dismiss stage, the Dalmatia jury verdict will likely stand as a bellwether case for future matters arising under the DTSA, or, at the very least, a reminder of the sharp guillotine that could await companies which steal trade secrets.

—By Thomas A. Muccifori and Daniel DeFiglio, **Archer & Greiner PC**

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[1] Forty-eight states have adopted some version of the Uniform Trade Secrets Act, the state analogue to the DTSA. The remaining two states — Massachusetts and New York — provide trade secret protection under the common law.

[2] As it turns out, the fig spread was a huge success; Dalmatia's Original Fig Spread has won several awards in the last 15 years.

[3] *Dalmatia Import Grp. v. FoodMatch, Inc.*, No. 16 Civ. 0933 (GBD) (S.D.N.Y. Feb. 18, 2016). Dalmatia also brought claims for breach of the distributor agreement, as well trademark infringement and counterfeiting. The suit also named Earth Pride Organics, LLC. Defendants C.O. Nolt Inc. and Michael S. Thompson were added later.

[4] *Bimbo Bakeries USA, Inc. v. Botticella*, 613 F.3d 102, 110 (3d Cir. 2010).

[5] It was not until Dalmatia's second amended complaint that the claim under the DTSA was added.

[6] H. Rept. 114-529 - DEFEND TRADE SECRETS ACT OF 2016

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