

California's Uniform Trade Secrets Act Preempts State Common Law Claims

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The California Court of Appeal for the Sixth Appellate District recently issued an important decision confirming the preemptive effect of California's Uniform Trade Secrets Act ("CUTSA") on common law claims. In *K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.*, 09 C.D.O.S. 2624 (Cal. Ct. App. Mar. 3, 2009), the Court of Appeal unanimously held that the CUTSA preempted plaintiff's state law claims for breach of confidence, interference with contract and unfair competition because they were "based on the same nucleus of facts as the misappropriation of trade secrets claim." The case is noteworthy because it is the first published decision by a California court squarely addressing the CUTSA preemption issue. The California Appellate Court adopted the approach followed in prior federal decisions applying California law. By giving a broader and more preclusive effect to CUTSA Section 3426.7, this decision should help narrow the focus of pending and future trade secret litigations.

Background Facts and Claims

The case arose out of a business relationship whereby plaintiff K.C. Multimedia supplied technology services to Bank of America. Specifically, pursuant to the terms of two written contracts executed in 1998 and 2000, K.C. Multimedia developed prototypes for two banking applications to help facilitate online and wireless account access for Bank of America customers.

In 2001, K.C. Multimedia filed suit in California state court, claiming Bank of America misappropriated the technology used in the two banking applications, which K.C. Multimedia claimed as trade secrets. After several amended complaints, the final complaint included claims for trade secret misappropriation, breach of confidence, breach of contract, tortious interference with contract, and unfair competition. Just prior to trial, the trial court, on motions in limine, dismissed K.C. Multimedia's common law claims

for breach of confidence, interference with contract and unfair competition on the ground that they were preempted by CUTSA. After a lengthy jury trial, which resulted in special verdicts for defendant, K.C. Multimedia appealed the pretrial dismissal of the three common law causes of action.

Prior Interpretations of CUTSA and Its Preemptive Effect

As the Court discussed in its opinion, CUTSA has been characterized as a statute of "comprehensive structure and breadth." Its provisions set forth the definition of "misappropriation" and "trade secret," injunctive relief for actual or threatened misappropriation, damages, attorneys fees, methods for preserving secrecy of trade secrets, a limitations period, its effect on other statutes, statutory construction, and severability, among others.

CUTSA section 3426.7 specifically concerns preemption. Section 3426.7 reads in pertinent part: "(a) Except as otherwise expressly provided, this title does not supersede any statute relating to misappropriation of a trade secret, or any statute otherwise regulating trade secrets; (b) This title does not affect (1) contractual remedies, whether or not based upon misappropriation of a trade secret, (2) other civil remedies that are not based upon misappropriation of a trade secret, or (3) criminal remedies, whether or not based upon misappropriation of trade secrets." Section 3426.7 "expressly allows contractual and criminal remedies, whether or not based on trade secret misappropriation," while at the same time "implicitly preempt[ing] alternative civil remedies based on trade secret misappropriation."

Prior to this decision, federal courts applying California law interpreted CUTSA section 3426.7 as preempting common law claims that were "based

on the same nucleus of facts” as the claim for trade secret misappropriation. *See, e.g., First Advantage Background Services Corp. v. Private Eyes, Inc.* (N.D.Cal. 2008) 569 F. Supp. 2d 929 (dismissing claims for intentional interference with prospective economic advantage; holding common law claims based on trade secret misappropriation are preempted by CUTSA); *Digital Envoy, Inc. v. Google, Inc.* (N.D.Cal. 2005) 370 F. Supp. 2d 1025, 1033-35 (common law and statutory unfair competition claims preempted by CUTSA).

The California Appellate Court’s Opinion

The Sixth District Court of Appeal first disposed of K.C. Multimedia’s procedural challenges to the trial court’s preemption ruling and then turned to K.C. Multimedia’s substantive challenge on preemption, utilizing a two-step approach.

The Court concluded that the broad view of CUTSA’s preemptive effect was correct – specifically that CUTSA’s “comprehensive structure and breadth” suggested a legislative intent to occupy the entire field of common law claims relating to trade secret misappropriation. Looking more narrowly, the Court found that the specific language of section 3426.7(b)(2), which reads “(b) This title does not affect... (2) other civil remedies that are not based upon misappropriation of a trade secret,” would be rendered meaningless if common law claims based on misappropriation of trade secrets were not preempted. Finally, the language “based upon misappropriation” strongly suggested a factual inquiry, where the conduct alleged in the claim was examined for similarity to the misappropriation claim. Therefore, the Court ultimately agreed with and adopted the standard of prior federal cases, which held that section 3426.7(b) preempts common law claims that are “based on the same nucleus of facts as the misappropriation of trade secrets claim for relief.”

Applying this construction to K.C. Multimedia’s complaint, the Court determined that based on review of the allegations of the amended complaint, K.C. Multimedia alleged the same conduct for each common law claim as it alleged for its misappropriation of trade secrets claim. The claims were also legally similar. For the breach of confidence claim, the allegation that trade secrets were disclosed without consent constituted misappropriation. As to

the interference with contract claim, the allegations that Bank of America disrupted K.C. Multimedia’s contractual relationship with a now-former employee by helping or encouraging him to misappropriate its trade secrets fell within the statutory definition of “improper means” of acquiring a trade secret, which, “includes...breach or inducement of a breach of a duty to maintain secrecy.” Finally, K.C. Multimedia asserted a violation of CUTSA, and nothing more, as its legal basis for its unfair competition claim. Based on these factual and legal similarities, the Court found that the trial court was correct in concluding that K.C. Multimedia’s claims for breach of confidence, interference with contract and statutory unfair competition were preempted by CUTSA.

In light of this decision, plaintiffs asserting claims of trade secret misappropriation under CUTSA in conjunction with common law claims run the risk of preemption if they continue the practice of relying on the same set of facts to support multiple causes of action. To survive early pleading challenges, plaintiffs need to include factual allegations demonstrating that their common law causes of action are separate and distinct from their trade secret claims.

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