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Unfair Competition

Brescia v. Angelin, the Latest Reported Case Regarding CCP 2019.210 Trade Secret Statements: A More Employer-Friendly Standard

April 2009

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One issue in trade secret litigation is whether a plaintiff has adequately identified the trade secrets it alleges were misappropriated. In California, a plaintiff alleging misappropriation of trade secrets must identify the allegedly misappropriated trade secrets with "reasonable particularity" before commencing discovery concerning the trade secrets claim.[1] As a result, defendants often challenge a plaintiff's so-called California Code of Civil Procedure section 2019.210 statement to force the plaintiff to better define the scope of the allegedly misappropriated trade secrets.

Last month, a California Court of Appeal provided further guidance on the degree of "particularity" for section 2019.210 statements. *Brescia v. Angelin*,[2] involved a dispute over the formula and manufacturing process for high protein low carbohydrate pudding. The appellate court in *Brescia* reversed the trial court's determination that Brescia had inadequately described the allegedly misappropriated trade secrets and further reversed the trial court's ruling that erroneously dismissed Brescia's trade secret claim because of the purported section 2019.210 deficiencies.

The appellate court in *Brescia* concluded that, in most instances, "the trade secret claimant need not specify how the secret or its elements are distinguishable from matters known to skilled persons in the field." The court based this on the idea that the "identification is to be liberally construed, and reasonable doubts concerning its sufficiency are to be resolved in favor of allowing discovery to commence." The *Brescia* decision underscores that section 2019.210 should not be seen as an insurmountable obstacle to pursuing a claim in California under the Uniform Trade Secrets Act.

From a practical standpoint, the *Brescia* decision should help streamline the efforts of an aggrieved employer to identify its allegedly misappropriated trade secrets with reasonable particularity. All too often defendants accused of trade secret misappropriation engage in the obstreperous tactic of trying to delay discovery by creating artificial burdens and hurdles for an employer that is attempting to comply with section 2019.210. The court in *Brescia* concluded that the "plaintiff must make some showing that is reasonable, *i.e.*, fair, proper, just and rational under all of the circumstances that will allow the trial court to control the scope of subsequent discovery, protect all parties' proprietary information, and allow them a fair opportunity to prepare and present their best case at a trial on the merits." *Brescia* should help put an end to costly and time-consuming tactical gamesmanship over the adequacy of section 2019.210 statements.

The *Brescia* decision helps to clarify the legal standard cited in *Advanced Modular Sputtering, Inc. v. Superior Court*,[3] a 2005 decision that also addressed the "reasonable particularity" standard under section 2019.210. The court in *Advanced Modular* had stated that under section 2019.210 the plaintiff was to "distinguish the alleged trade secrets from the prior art, or matters within the general knowledge of persons in the [relevant] industry."

Reversing the trial court's ruling that the section 2019.210 statement in the case before it was inadequate, the California Court of Appeal in *Brescia* concluded that the trial court's analysis of *Advanced Modular* was taken "out of context." In reviewing *Advanced Modular's* language regarding the prior art and matters of industry knowledge, the *Brescia* decision found that *Advanced Modular* "cannot be read as requiring an explanation in every case." The *Brescia* court was careful to note that the exhaustive process undertaken in *Advanced Modular* of offering expert testimony to support the section 2019.210

statement was "well beyond normal practice." The California Court of Appeal in *Brescia* then noted "The essential lesson of *Advanced Modular* is the flexibility of the reasonable particularity standard."

The court of appeal in *Brescia* began its analysis by reviewing the purpose of section 2019.210, which is to: (1) promote well-investigated claims; (2) prevent plaintiffs from using the discovery process to obtain defendant's trade secrets; (3) assist the court in framing the scope of discovery; and (4) enable defendants to form complete and well-reasoned defenses.

To achieve the purposes of section 2019.210, the court found that a trade secret claimant "need not particularize how the alleged secret differs from matters already known to skilled persons in the field." Instead, the test for the disclosure is whether it allows "the defendant to investigate how [the trade secret] might differ from matters already known and to allow the court to craft relevant discovery." The court also stated that the disclosure rules must be flexible – trade secrets in highly technical fields may require a greater degree of specificity than trade secrets in other fields.

The court specifically highlighted that the disclosure rules are not "a procedural device to litigate the ultimate merits of the case." Instead, "[t]he statute simply imposes a precondition to discovery." For trade secret disclosures, the court stated that "[t]he identification is to be liberally construed, and reasonable doubts concerning its sufficiency are to be resolved in favor of allowing discovery to commence."

The court was careful to comment that "[A]t this very preliminary state of the litigation, the proponent of an alleged trade secret is not required, on pain of dismissal, to describe it with the greatest degree of particularity possible, or to reach such an exacting level of specificity that even its opponents are forced to agree the designation is adequate."

In reversing the trial court's ruling, the court of appeal concluded that Brescia's section 2019.210 disclosure was adequate and that the trial court improperly dismissed Brescia's trade secrets claim. The court stated that Brescia's specific identification of ingredients in the pudding and the steps needed for its preparation were "certainly adequate to permit respondents to investigate whether his alleged trade secrets were within the public domain and prepare a defense." More importantly, *Brescia* also establishes that the claimant does not have to prove the existence of a trade secret at the outset of the case to commence discovery regarding the allegedly misappropriated trade secrets. *Brescia* should also help employers lessen the expense of complying with section 2019.210 because it establishes that the practice undertaken in *Advanced Modular* of having dueling experts testify was "well beyond normal practice." *Brescia* should help pave the way for employers to proceed with meaningful discovery regarding the allegedly misappropriated trade secrets and avoid costly, time consuming disputes over whether the trade secrets have been sufficiently described to meet the requirements of section 2019.210.

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[1] Cal. Code of Civil Proc. § 2019.210.

[2] 2009 WL 684744 (Cal. App. 2 Dist Mar. 17, 2009).

[3] 132 Cal. App. 4th 826, 836.

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