

Trade Secret Litigation: Selected Aspects from a Mock Jury Trial

For over seventy-five years, Hogback Hiking® has been a leader in the outdoor sports industry. At its inception, Hogback manufactured leather hiking boots primarily sold in the northeast. Over the years, it has grown and adapted to changes in the outdoor sports market and to its prime demographic. Thus, while Hogback still distributes hiking footwear, it has branched out to backpacks, clothing, tents, and a wide variety of hiking and outdoor sports related products.

Hogback's Strategic Product Group decided that customers who had difficulty riding mountain bikes or sprinting up trails would be receptive to "assisted" mobility. They tasked the engineering staff, led by Chief Engineer Liz Shaw, to develop all-terrain rollerblades, intended for older outdoors enthusiasts, which could be used on the roughest of trails.

While venting at The Saloon one evening after months of seemingly unsurmountable challenges in trying to get the rollerblades to work, Engineer Shaw was approached by a stranger, who said, "I overheard you talking. I may have some ideas that will help." That person (Ira Adler) claimed to be an independent programmer who had new technology that might fit the bill for both of the new products: to wit, source code which would allow for more efficient energy use for the lightweight assist motors; and source code which could be incorporated into the controller units for the electronic suspension system used in the rechargeable, all-terrain rollerblades.

Intrigued, Shaw talked with Hogback's General Counsel, Sally Carrera, who inquired whether Adler actually had invented and owned the technology and whether he might be subject to any nondisclosure or noncompetition agreements. After Adler denied any restrictions, he was hired and provided Shaw with a thumb drive that, in addition to having source code, also included detailed engineering drawings and spec sheets for various designs. In early December 2015, Hogback announced its new GammelGeit¹ series of all-terrain rollerblades, which used proprietary technology to quickly adjust the blade wheels to the terrain.

Ms. Carrera soon received a cease & desist letter from Alten Engineering, stating that Ira Adler had been an Alten employee whose departure was problematic, and that he was subject to a noncompete and nondisclosure agreement. The letter continued that the rollerblades used trade secret technologies of Alten. After checking with Shaw and closely interviewing Adler, Attorney Carrera (a) responded to Alten's letter by denying the allegations; (b) advised the business side of Hogback that while there were risks, she would recommend filling orders; and (c) alerted all relevant business persons to prepare for litigation.

The trial will focus on the trade secret misappropriation issues presented by Ira Adler joining the company, and providing the thumb drive of source code, schematics etc.

¹ Norwegian for Old Goat.