

## Intellectual Property Alert: California Court of Appeal Weighs in on the Uniform Trade Secret Act's Preemption of Common Law Claims

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On March 3, 2009, the California Court of Appeal for the Sixth District of California addressed the issue of whether the California Uniform Trade Secrets Act (CUTSA) preempts common law claims based on trade secret misappropriation allegations. Although various district courts, including the Northern District of California, have interpreted the CUTSA to preempt such claims, California appellate courts had remained silent on the issue until now, with the Sixth District issuing an opinion consistent with the federal district courts' CUTSA interpretation.

In *K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc. et al.*,<sup>1</sup> the plaintiff asserted a claim for trade secret misappropriation against the defendants. The plaintiff also asserted three additional claims for breach of confidence, tortious interference with contract, and unfair competition under Cal. Bus. & Prof. Code §§ 17200 et seq., which were all based on the plaintiff's trade secret misappropriation allegations. Prior to trial, the trial court granted the defendants' motion to dismiss these three causes of action, finding that they were preempted by the CUTSA. The remaining cause of action for trade secret misappropriation went to trial before a jury, which issued a defense verdict. The plaintiff appealed, among other things, the trial court's dismissal of these three causes of action.

The appellate court found that the trial court had properly dismissed the plaintiff's breach of confidence, tortious interference with contract, and statutory unfair competition claims. Noting that the CUTSA<sup>2</sup> expressly allows contractual and criminal remedies, whether or not based on trade secret misappropriation, the appellate court held that it implicitly preempts alternative civil remedies based on trade secret misappropriation. In reaching this holding, the appellate court agreed with the aforementioned federal courts' interpretation that the CUTSA preempts common law tort claims and statutory unfair competition claims which are "based on the same nucleus of facts as the misappropriation of trade secrets claim for relief."

The appellate court then recognized that the determination of whether a claim is based on trade secret misappropriation is dependant on the particular facts pled. After conducting a "fair reading" of the operative pleading, the appellate court found that the entire complaint rested on allegations of trade secret misappropriation, and in particular, that "the gravamen of the wrongful conduct" asserted in the plaintiff's breach of confidence, tortious interference with contract, and unfair competition claims was the defendants' theft of its trade secrets. As such, the appellate court held that the CUTSA preempted those claims and affirmed the trial court's decision.

This ruling is significant because *K.C. Multimedia* provides guidance as to how a California court may address the preemption issue. In this regard, plaintiffs should exercise a degree of care in drafting complaints for trade secret misappropriation to ensure that any independent noncontractual claims will be properly pled to distinguish them from any trade secret misappropriation claim.

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### Endnotes

<sup>1</sup> \_\_\_ Cal. Rptr. 3d \_\_\_ (2009), 2009 WL 519383 (Cal. App. 6th Dist.).

<sup>2</sup> Cal. Civ. Code § 3426.7.

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*For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.*

**Karineh Khachatourian**  
(650) 251-7717  
KKhachatourian@mintz.com

**Jeffrey M. Ratnoff**  
(650) 251-7755  
JRatnoff@mintz.com

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