

## **Failure to Take Steps to Protect Trade Secrets Fatal to Breach Claim**

A company that designed an enclosure for electronic tablets cannot sue a manufacturer with whom it shared the design pursuant to a confidentiality agreement because the disclosing company failed to take reasonable measures to protect its trade secret.

nClosures Inc. developed a metal case for electronic tablets such as iPads. In 2011, the company signed a confidentiality agreement with Block and Company, Inc. and shared the design with Block, which subsequently manufactured the enclosure named Rhino. The parties failed to sign an agreement regarding the manufacture of the enclosure. The two companies worked on correcting some design issues in late 2011. In August 2012, Block terminated its relationship with nClosures and brought out its own product called Atrio. nClosures claimed the Atrio was nearly identical to its Rhino product.

nClosure sued Block for fraud, trade secret misappropriation, breach of fiduciary duty, and breach of contract. Both parties filed motions for summary judgment. The district court granted Block's motion and all counts were dismissed. nClosure appealed only the granting of summary judgment on breach of contract and breach of fiduciary duty.

The breach of contract claim was based on the confidentiality agreement. "While nClosures and Block did sign a confidentiality agreement at the outset of their business relationship, no additional confidentiality agreements were required of individuals who accessed the design files for the Rhino or Rhino Elite devices. Additionally, neither the Rhino nor the Rhino Elite drawings were marked with words such as 'confidential' or 'contains proprietary information.' Furthermore, the drawings were not kept under lock and key, nor were they stored on a computer with limited access," the Seventh Circuit noted. "These facts show that nClosures did not engage in reasonable steps to protect the confidentiality of its proprietary information, and therefore that [sic] the confidentiality agreement with Block is unenforceable."

As to the breach of fiduciary duty, the appellate court said there was no agreement between the parties to share profits or form a partnership or other joint venture. Moreover, the appellate court observed that the draft agreements between the parties included a clause specifying that the parties should not be considered as partners to which nClosures did not object. These facts persuaded the court "that nClosure and Block did not contemplate a partnership when structuring their business relationship."

*nClosures Inc. v. Block and Company, Inc.*, Seventh Cir. No.13-3906 and 14-1097, issued October 22, 2104.