

# CLIENT ALERTS

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## A Few Bad Actors: Jury Awards Motorola \$764.4 million in Trade Secrets Case

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On February 14, 2020, an Illinois federal jury awarded Motorola Solutions, Inc., (“Motorola”) \$764.6 million in a trade secret theft and copyright infringement case against its Chinese rival company, Hytera Communications, Corp., (“Hytera”). In *Motorola Solutions, Inc., et. al. v. Hytera Communications Corp., Ltd., et. al.*, Docket No. 1:17CV01973 (USDC–Northern District of Illinois 2017), Motorola filed suit against Hytera alleging that the company lured away Motorola’s senior radio engineers with access to trade secrets for the purpose of misappropriating the information to create a two-way radio communications device. The radio devices were typically used for commercial and public safety purposes, including use by school districts, police and fire departments.

### I. Trade Secrets Trial

After three years of contentious litigation, the case was submitted to a federal jury for trial on November 6, 2019. The trial centered on whether Motorola’s former engineers stole thousands of confidential technical documents and millions of lines of source codes before leaving Motorola to work for Hytera. Motorola maintained that Hytera would not have been able to make a competing radio communications devices without Motorola’s confidential information and trade secrets.

At trial, Hytera conceded that certain engineers stole confidential information from Motorola prior to joining Hytera, but asserted that knowledge of the theft did not extend beyond the culprit engineers. In other words, Hytera contended that it had no knowledge of the theft of trade secrets from Motorola and that Motorola was trying to pin the bad acts of a few employees on the entire company.

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After roughly two hours of deliberation following a three-month trial, the jury found that Hytera used Motorola's confidential documents and copyright-protected source code to create and sell two-way radio communications. Ultimately, the jury found in favor of Motorola on all claims and issued a verdict for the full amount requested by Motorola, which included \$345.76 million in compensatory damages and \$418.8 million in exemplary damages, totaling \$764.4 million. Hytera announced it is reviewing the case for all possible appeals.

### II. Injunctive Relief

Immediately following the verdict, Motorola advised the Court of its intent to seek a global permanent injunction preventing Hytera from further misappropriation of trade secrets and infringing copyrights. Shortly thereafter, Motorola filed a Motion for Temporary Restraining Order requesting that the Court “(1) enter a TRO immediately to prevent further irreparable harm to Motorola, and (2) set a hearing and briefing schedule on Motorola's forthcoming motion for a permanent injunction to occur prior to the expiration of the TRO.”<sup>[i]</sup>

In support of its request, Motorola asserted that the harm suffered “cannot be remedied through judgment for past damages, even putting aside the likelihood that Hytera will attempt to avoid enforcement of any monetary judgment entered by this Court.”<sup>[ii]</sup> Motorola further argued that “entry of worldwide TRO to immediately address Hytera's complete indifference to the laws protecting Motorola's trade secrets and copyrights is necessary to stop more irreparable harm from occurring while the parties brief and appear before the Court on a hearing on Motorola's forthcoming motion for a permanent injunction.”<sup>[iii]</sup>

Hytera's response to Motorola's request for a TRO was sealed from the public. Several customers of Hytera filed amicus briefs opposing Motorola's request for a TRO. For instance, the Dealers Industry Viability Group—a group of 20 Hytera dealers located in 13 States—filed a publicly available amicus brief opposing the TRO request, noting the group's belief that both Hytera dealers and their customers would suffer significant harm if the presiding judge grants a permanent injunction preventing the dealers from selling the radio devices. The Dealers Industry Viability Group argued, *inter alia*, the following:

1. That an injunction would create “chaos” by precluding users from replacing old or damaged Hytera radios with new ones, or by precluding the purchase of additional radios for their current communications systems;
2. That there was a “very real risk” to public safety by having first responders, hospitals, and similar users unable to communicate with one another. For instance, school communication systems will be inoperable and school buses will not be able to communicate with one another if replacement radios are unavailable to the public.
3. That the real-world implications of an immediate preclusion of sales of the radios would be catastrophic.<sup>[iv]</sup>

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The crux of Motorola's response to the purchasers of the Hytera radios is that the potential for lower product pricing is not a legitimate justification for the use of stolen information and technology.

As of March 6, 2020, the Court has yet to rule on Motorola's Application for a Temporary Restraining Order. Butzel Long will monitor this case for developments and provide an updated Client Alert.

The Motorola case serves as a cautionary tale to companies hiring employees from direct competitors. Even when non-compete issues are no longer in play, employees formerly associated with a competitor may possess confidential and proprietary information that may lead to a trade secrets action. As seen in the Motorola case, a jury may impute liability on a company for the use of stolen information even though "a few bad actors" were the true culprits in obtaining the proprietary information.

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[i] See *Motorola Solutions, Inc., et. al. v. Hytera Communications Corp., Ltd., et. al.*, Docket No. 1:17CV01973 (USDC-Northern District of Illinois 2017), Plaintiff's Application for Temporary Restraining Order, Docket Entry 899 Filed February 18, 2020.

[ii] *Id.*

[iii] *Id.*

[iv] See *Motorola Solutions, Inc., et. al. v. Hytera Communications Corp., Ltd., et. al.*, Docket No. 1:17CV01973 (USDC-Northern District of Illinois 2017), Dealers Industry Viability Group's Motion for Leave to File Amicus Brief and Exhibit Attaching Proposed Brief, Docket Entry 906 Filed February 20, 2020.