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Court Rules in Favor of Chinese Company Reviewing American Company's Trade Secrets in Hong Kong

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Chinese state-owned Fujian Jinhua Integrated Circuit Co. and Taiwanese United Microelectronics Corp. face criminal prosecution in a California federal court for trade secret theft. See *U.S. v. United Microelectronics Corporation, Inc., et al.*, No 18-CR-465 (N.D. Cal.). The victim of the alleged crime is Idaho-based Micron Technology Inc. According to Micron, the two defendant companies conspired to steal \$8 billion dollars-worth of Micron's trade secrets underpinning its dynamic random access memory (DRAM) chip technology.

Last year, the Department of Justice and the defendants were negotiating a consent order designed in part to prevent the future wrongful disclosure of the Micron trade secrets which defendants are entitled to review in defense against their indictment. An issue arose as to where the defendants would be allowed to transport Micron's trade secrets for review by their legal teams, which included their attorneys, expert witnesses, and key company representatives. Although the parties and Micron agreed that the United States, Japan, Taiwan, and Singapore were all acceptable locations within which to conduct the review, they disagreed as to Hong Kong.

The defendants wished to review the trade secrets in Hong Kong, where, according to their counsel, it would be most convenient for everyone on their globally-dispersed legal teams to come together to conduct the review. The defendants claimed that conducting their review in any other location would be substantially less convenient for their legal teams. At that, the DOJ filed a motion, joined by Micron, seeking a protective order to prevent and proscribe any review of Micron's trade secrets in Hong Kong.

According to the DOJ and Micron, having the trade secrets in Hong Kong presented an unacceptably high risk of their further wrongful disclosure and misappropriation. As the DOJ argued,

Related People

Phillip C. Korovesis
Of Counsel

Ivonne M. Soler
Senior Attorney

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Trade Secret & Non-Compete
Specialty Team

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China, through the Chinese defendant, specifically targeted Micron's trade secrets. Micron further emphasized that Hong Kong is now an administrative region inside China. Both Micron and the DOJ cited several public and other authorities that have deemed Hong Kong to be a high-risk location for intellectual property theft. The DOJ further noted the court's obligation under 18 U.S.C. § 1835 to "enter such orders and take such other action as may be necessary and appropriate to preserve the confidentiality of trade secrets."

The court, however, rejected Micron and the DOJ's arguments, questioning those authorities who equated Hong Kong to mainland China in terms of intellectual property risk, and noting that defendants are represented by "reputable law firms" who can be trusted to manage and sufficiently safeguard Micron's trade secrets—even in Hong Kong—in compliance with the overall protections set forth in the protective order that the court said it would enter. The court ultimately ruled in favor of the defendants, holding that blacklisting Hong Kong was not necessary to protect the trade secrets at issue, thereby allowing the defendants to review Micron's trade secrets in Hong Kong.

Without question, the court's ruling has caught the attention of trade-secret-case watchers, some of whom view it as a backfire on the DOJ's efforts to crack down on China for trade secret and intellectual property infringement. It may be too early to know whether they are correct. At the very least, though, the ruling may give aggrieved companies and the DOJ something else to ponder when seeking relief for trade secret theft by Chinese firms.

Don Orlandoni

313.225.5314

orlandoni@butzel.com