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Takeaways from the Resolution of a Trade Secret Dispute: Competitors Resolve Battery Technology Trade Secret Dispute After ITC Ruling

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LG Chem and SK Innovation (“SK”) are world-leading designers and providers of battery technology used in the highly competitive automobile marketplace. Moreover, in light of the already experienced phenomenal growth of battery usage in automobile applications, and the expected and impending conversion from gasoline powered drivetrains to electricity driven vehicles, batteries and the technologies involved in their development and improvement are certainly expected to generate interest, profits and disputes in the coming years. In fact, such a dispute has already occurred.

In 2019, LG Chem became embroiled in a trade secret dispute with SK Innovation over trade secrets it claimed were pilfered and being used by SK to start the latter’s battery manufacturing business in the United States. Ultimately, LG Chem filed a complaint against SK with the US International Trade Commission (“ITC”). After nearly two years of litigation in that forum, the ITC ultimately issued its final ruling in favor of LG Chem (LG Chem’s battery business is now operated under the name LG Energy Solution). The ITC ruling would have banned SK from the US market for 10 years from the date of the order. That is, until the parties agreed to a resolution of the dispute after LG Chem’s ITC victory.

With the risk that the Biden administration might review and modify or reverse the ITC ruling coupled with the fact that SK had already invested heavily in US battery contracts and production in a Georgia plant, both parties had incentives to resolve their dispute. LG Chem and SK forged a resolution which took those uncertainties out of play. In the end, it was reported that SK agreed to pay \$1.8 billion in cash and royalties to LG Chem and both companies agreed to a commitment to not sue each other for ten years.

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Although there are many takeaways that might be gleaned from this dispute and its resolution, three highlights stand out. First, as always, the only way to truly protect a company's trade secrets is to act swiftly and aggressively. LG Chem did exactly that. The action on its part shows that what is at stake is important, critical to its business and is, resultingly, worthy of protection. Sitting on your hands, even for a short period of time through negotiations or a letter writing campaign between lawyers, can impact the perceived significance of the information at issue, especially if those types of exchanges drag on for weeks or months as they often do.

Second, the ITC is a potentially powerful tool in pursuing a trade secret or intellectual property claim that fits within its jurisdiction. In the appropriate case, the ITC has the power to ban importation of goods into the US it determines were created or manufactured in violation of trade secret, intellectual property or other laws. A ruling in favor of such a claimant, like LG Chem, is one big arrow in the quiver of a company pursuing such a claim.

Lastly, with the uncertainties of even a very favorable ITC ruling lingering and the risk that a huge financial investment in the US might be jeopardized, both parties came to the table to resolve this trade secret dispute with business in mind. In the end, regardless of the dispute and the level of proof of the tentacles of misappropriation, many trade secret disputes can and should be resolved with keen business interests at the forefront. Remaining the pilots of your own destinies drives the vehicle of resolution of business disputes, whether that vehicle is fossil fuel or electrically powered.

Butzel Long's Trade Secret and Non-Compete Specialty Team is well-versed in the intricacies of successful litigation and resolution of trade secret disputes, regardless on which side of the fence your company finds itself. Our team is ready to serve your needs, be they in state or federal court or in forums such as the ITC.

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