

1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

3 MEDIDATA SOLUTIONS, INC.  
and MDSOL EUROPE LIMITED,

4 Plaintiffs,

5 v.

17 Civ. 589 (JSR)

7 VEEVA SYSTEMS, INC.,

8 Defendant.

Trial

9 New York, N.Y.  
July 15, 2022  
8:35 a.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge  
- and a Jury

14 APPEARANCES

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1 (Trial resumed; jury not present)

2 THE COURT: Please be seated.

3 So I am grateful to counsel who have worked very hard  
4 throughout this case on both sides for their submissions this  
5 morning on the motion for judgment as a matter of law. There  
6 are several aspects of this that I already alluded to in our  
7 discussion yesterday, but I think now need to be fleshed out.

8 The first is that to the extent that plaintiffs' case  
9 rests on allegations regarding specific trade secrets that were  
10 misappropriated, they have failed to make their case. This has  
11 been an issue from the very beginning of this case. And Judge  
12 Schofield dealt with it at length.

13 But the real, to my mind, motion-revealing aspect of  
14 the proceedings before me came when, having flagged this issue  
15 repeatedly, I asked plaintiffs' counsel to submit to me, under  
16 seal, as they requested, greater specificity and a more  
17 particularized statement of the 113 specific trade secrets that  
18 they allege were misappropriated. Because in the chart, which  
19 is, I think, Defendant's Exhibit 1851, they are stated in only  
20 the most general terms and, with very few exceptions, that  
21 remained the case at the time I asked for greater  
22 specification, indicating that if there was greater  
23 specification, then we might need to consider whether that had  
24 been presented to the jury. This was well before the  
25 plaintiffs' case was concluded.

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1 Instead, what I got was basically a rehash of the  
2 generalized terms and, similarly, nothing further in the way of  
3 specification was presented to the jury except in one or two  
4 instances. So as to the great bulk of the alleged trade  
5 secrets, they were never presented to the jury with anything  
6 like the specificity that would allow a jury to determine  
7 whether the specific trade secrets had been misappropriated or  
8 not. By the way, many of them, as indicated in the exhibit to  
9 the sealed proceeding -- to the sealed submissions that the  
10 defense presented, may well not have been trade secrets at all,  
11 but I don't need to reach that because there was, in the  
12 Court's view, a clear lack of specificity.

13 Now, it is true that the Second Circuit does not  
14 appear to have yet specifically decided whether under the  
15 federal statute -- and I might add the California statute, which  
16 basically follows the federal law -- requires specificity. But  
17 numerous circuits, other circuits have; and virtually all the  
18 district courts in this district have required it as well.

19 For example, in *Sit-Up Limited v. IAC/Interactive*  
20 *Corporation*, 2008 WL 463884, a decision by my learned colleague  
21 Judge Cote in 2008, she states: "every court to have opined on  
22 this issue has ruled that specificity is required. Although  
23 the Second Circuit has not squarely articulated a specificity  
24 requirement, there is no reason to believe that it would permit  
25 a party to advance a trade secret claim in vague and ambiguous

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1 terms."

2 And that's precisely what plaintiffs' counsel  
3 undertook to do in this case with the arguable, at most,  
4 exception of a few of the items. But those items were not tied  
5 to any specific damages. So the jury would have no basis for  
6 awarding damages on those few items, even assuming that those  
7 items were trade secrets, which, as I indicated, was not at all  
8 obvious, given the submissions from defense counsel, let alone  
9 the testimony.

10 Indeed, I think a more general problem with  
11 plaintiffs' case is they seem to think that just about anything  
12 in the world can be a trade secret. And that, of course, would  
13 mean that you could never hire away an employee from another  
14 company because anything they said, one word out of their  
15 mouth, would indirectly reveal something they had learned at  
16 their prior employment, couldn't really be helped; and so it  
17 would be impossible for a company to hire away an employee  
18 because it wanted to develop some new competitive aspect to its  
19 business. And both the statutes here involved and also  
20 legislative history make clear that that was not the intent of  
21 the legislators and presumably would have been a gross  
22 antitrust violation if it had been the intent of the  
23 legislators.

24 So we come then to the fallback position, which  
25 defense counsel says was never really the position of the

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1 plaintiffs' approach. But I'm going to assume to the contrary,  
 2 I think there was enough there to support the assertion that  
 3 they had a fallback theory, the fallback theory being that you  
 4 couldn't develop this particular kind of product in the time  
 5 that the defendant developed it without access to the  
 6 plaintiffs' trade secrets. And that access was provided  
 7 through the employees that they hired and through those  
 8 employees' failure to delete numerous documents that they  
 9 should have deleted under their contractual obligations to  
 10 Medidata; and that that's enough to circumstantially suggest  
 11 that a jury could find that it was more likely than not that  
 12 trade secrets were misappropriated, even if they were not  
 13 specifically noted.

14 Now, notice about this argument, this assumes, in  
 15 effect, that you can go outside the specificity requirement, if  
 16 it is a requirement. So if specificity is a requirement, then  
 17 this theory fails for that reason alone.

18 But assuming *arguendo* that the theory could legally  
 19 survive, and there is maybe some *dicta* in the case ended up  
 20 yesterday by plaintiffs' counsel, the *Electro-Miniatures* case,  
 21 suggesting that that theory might survive, although on a closer  
 22 reading of that case last night, it seemed to me obvious that  
 23 the case was mostly a specificity case and was about quite  
 24 specific drawings that were alleged to have been wrongfully  
 25 obtained and wrongfully utilized.

1 So the side language is, at best, *dicta*.

2 But, again, even if that theory can legally be put  
 3 forth, and even assuming that plaintiffs' counsel had preserved  
 4 their right to put it forth, I think that they haven't  
 5 presented enough evidence to allow a jury to reach any rational  
 6 conclusion supportive of the plaintiff on that issue. There is  
 7 some evidence that it took Medidata some years to develop the  
 8 relevant parallel product. But, of course, technology has  
 9 advanced in our world at rapid speed, and so that says very  
 10 little about how much time it would take years later for a  
 11 competitor to develop.

12 There is evidence that Veeva had not gone down this  
 13 road prior to Medidata's offering this product to its  
 14 customers; but that again says little. Of course, your  
 15 competitor comes up with a new product that you look and you  
 16 say, Well, let's see if we can do that too.

17 Now, part of this is a function of Judge Schofield's  
 18 motion *in limine* ruling on motion *in limine* number four, where  
 19 she indicated that the methodology used by Professor Davies  
 20 with respect to this theory was, as a matter of law, defective  
 21 in that it was much too vague, did not meet the rigorous  
 22 standards of Rule 702 of the Federal Rules of Evidence and  
 23 other case law standards. But that ruling, of course, did not  
 24 preclude plaintiff from trying to introduce other evidence that  
 25 would shore up its theory.

1 And the mere fact that defendant then, after it  
 2 decided it wanted to get into this act as well, hired away some  
 3 of the folks from Medidata who knew about this, is not only  
 4 what one would expect, but is, in fact, as both sides have  
 5 repeatedly affirmed, perfectly proper in itself. So Veeva, in  
 6 effect, says, Hey, they've built a better mousetrap; we've got  
 7 to offer that too. We'll hire away the folks who know the most  
 8 about it because they can do a real good job in producing  
 9 something similar for us. All totally lawful.

10 So the theory, I think, even assuming it's one that  
 11 could legally survive, has not been shown to a degree of  
 12 evidence that would allow a rational jury to adopt that theory.

13 I note that the statute itself, the federal statute,  
 14 18 U.S.C., Section 1839, makes clear that improper means of  
 15 misappropriation does not mean "reverse engineering,  
 16 independent derivation, or any other lawful means of  
 17 acquisition." And it's that latter that plaintiff has failed  
 18 to prove under this time-based theory.

19 I should add just by way of footnote that the bulk of  
 20 Professor Davies' testimony on this is to describe the  
 21 technology and why it is, in his view, in Medidata's hands  
 22 trade secrets, rather why Veeva could not have built its  
 23 products in rapid time without misappropriating Medidata's  
 24 trade secrets.

25 The bottom line is that there's not sufficient

1 evidence, even assuming this fallback theory is legally  
 2 permissible, for the jury to make a reasonable determination,  
 3 even to a civil preponderance standard, of whether the  
 4 defendant's product was independently developed or was  
 5 developed through misappropriation of trade secrets.

6 And I might add, finally, in that regard, that there  
 7 was extremely scant evidence of an actual conveyance of  
 8 specific alleged trade secret information of any kind from the  
 9 former Medidata employees to the defendant. Giving a very  
 10 liberal interpretation in favor of plaintiff to Judge  
 11 Schofield's rulings, I did allow in a couple of letters that  
 12 show this, that's about it. The rest requires inference upon  
 13 inference.

14 So for all those reasons, I'm going to grant the  
 15 motion for judgment as a matter of law, and judgment will be  
 16 entered accordingly later today.

17 I want to add a couple of things.

18 First, just so you're all aware of it, because many  
 19 lawyers are not, the law in this circuit is that you can talk  
 20 to the jurors as they are leaving the jury room, if they want  
 21 to talk, of course; if they say they don't want to talk, you'll  
 22 respect that. But I would understand that it would be natural  
 23 for the attorneys to want to talk to them, and they may be  
 24 willing to talk. But that's the only time you can talk with  
 25 them without prior express approval of the Court.

1 So if you, a week from now, want to talk to the jurors  
2 about something, you need to make a motion first to me.

3 Secondly, I have to say that one of the reasons that I  
4 was hesitant to make this decision, though I felt compelled to  
5 in the end, was my huge appreciation for the very hard work  
6 done by plaintiffs' counsel, obviously defense counsel as well.  
7 But while you all know that from time to time I might be  
8 critical of counsel on one little aspect or another, I don't  
9 want that to in any way detract from my huge appreciation for  
10 the very fine work that was done by all counsel in this case.  
11 It was really impressive. So you have the thanks of the Court.

12 All right. Let me find out if the jury is here.

13 THE DEPUTY CLERK: They are.

14 THE COURT: They are. All right.

15 Let's bring in the jury.

16 MR. OWEN: Your Honor, after the jury is excused, may  
17 we have one moment to make a record about something?

18 THE COURT: I'm sorry?

19 MR. OWEN: After the jury is excused, may we have one  
20 moment to make a record about something?

21 THE COURT: Yes, of course.

22 (Jury present)

23 THE COURT: Good morning, ladies and gentlemen.

24 You may recall that plaintiffs completed their case  
25 late yesterday. And after that happens, the Court has to

1 consider motions made as to whether they have presented enough  
2 evidence to allow the jury -- to allow the case to go forward  
3 and ultimately the jury decide the case. And counsel and I  
4 were here on that issue till past 7 o'clock last night. And  
5 then I received written submissions and then we reconvened here  
6 in court at 8:30 this morning.

7 And in the end, I granted the motion to dismiss the  
8 case as a matter of law. This is based on legal standards that  
9 I won't bother to repeat to you.

10 One of the reasons I was a little hesitant to make  
11 that decision, even though I felt legally compelled to do so,  
12 was because of what a terrific jury you have been. I've been  
13 watching you, as you know, and you have been so attentive and  
14 so careful. And I'm sure you would have received detailed  
15 instructions from me in the end, but I'm sure you would have  
16 studied them very carefully and then made your decision.

17 But the law requires that if the evidence is not  
18 sufficient to meet various legal standards, then I have no  
19 choice but to dismiss the case, which I've now done.

20 I want to also say what I'm sure is obvious to you,  
21 that this is no reflection on counsel for either side; they  
22 have all worked extremely hard.

23 It would be natural now for them to want to talk to  
24 you to get your views. Let me tell you what the law is on  
25 that.

1 If you don't want to talk to them, you just tell them  
2 that, and that's the end. The only time they are permitted to  
3 talk to you, except upon order of the Court, is while you're  
4 leaving the jury room right in a few minutes. So they may be  
5 out there; they may ask to talk to you individually or  
6 whatever. It's totally up to you.

7 For what it's worth, I've always thought that it's  
8 best for jurors not to talk to lawyers, because these jury  
9 deliberations and jury service is, by its very nature, a  
10 private kind of thing. That's why if this case had gone to  
11 deliberations, they would have been secret deliberations, and  
12 all we would have known is your final determination. So  
13 there's a privacy interest, I think, in not talking to the  
14 lawyers. But the law says you can, if you want to. So that's  
15 up to you.

16 Let me once again express to you my very great thanks  
17 for your excellent service and you are now excused.

18 (Jury discharged)

19 THE COURT: Please be seated.

20 All right. Plaintiffs' counsel wanted to make a  
21 record. Yes.

22 MR. OWEN: Good morning, your Honor.

23 I appreciate your Honor's courtesy.

24 Before the case closed, we just wanted to, for the  
25 clarity of the record, determine how your Honor would like to

1 receive a written or other offer of proof with respect to those  
2 bits of evidence which were either excluded by Judge Schofield  
3 or occasionally by your Honor's own rulings.

4 THE COURT: Why don't we do this: Rather than my  
5 entering judgment today, I will give you and your adversary a  
6 brief time. We'll talk about how much time you need to put in  
7 what, in effect, would be a motion for reconsideration. You  
8 can label it whatever you want to label it.

9 MR. OWEN: Okay.

10 THE COURT: You can throw in there anything you want  
11 to throw in, which I'm sure will be -- obviously this case is  
12 likely to go up on appeal. So if you want to put something  
13 into the record that is not presently in the record, that's  
14 fine, and the other side can object to it, of course. But I  
15 think it's important that we move the case along. It's an old  
16 case as it is.

17 So how long would you like for -- understanding that  
18 this will be the only submission and, likewise, the only  
19 submission from defense before I enter judgment. We're not  
20 going to have a prolonged back-and-forth with replies and  
21 sur-replies and oral argument, unless you bring something to my  
22 attention that so much changes my mind that I then ask for oral  
23 argument. But barring that, how long would you like?

24 MR. OWEN: Your Honor, would two weeks be reasonable?

25 THE COURT: Pardon?

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1 MR. OWEN: Would two weeks be reasonable?

2 THE COURT: Two weeks is very reasonable, even by my  
3 standards.

4 So let's see. Today is the 15th. So that would be  
5 the 29th.

6 And how long does defense counsel want to put in their  
7 papers?

8 MR. TILLERY: Your Honor, if we could have two weeks,  
9 that would be appreciated.

10 THE COURT: Yes. So that would be August 12th.

11 And then unless I find something from all that that  
12 causes me to reconsider, I will enter judgment no later than  
13 the 19th.

14 MR. OWEN: Thank you, your Honor.

15 THE COURT: Very good.

16 All right. Once again, my thanks to all counsel.

17 And that concludes this proceeding.

18 (Trial concluded)

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