

# Appeals Court Affirms Order Precluding Company From Pursuing Vague and Open-Ended Trade Secret Claims

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December 2009

Lawsuits alleging misappropriation of trade secrets allow businesses to impose substantial expenses on their competitors, even in the absence of a well-grounded claim. To reduce the potential for abuse, California Code of Civil Procedure section 2019.210 prohibits a party from pursuing a misappropriation of a trade secret claim without first describing the secret with “reasonable particularity.” A recent decision of the California Court of Appeal, *Perlan Therapeutics v. Superior Court*, illustrates how exacting this requirement can be. In that case, the Appellate Court upheld the trial court’s ruling that the plaintiff’s trade secret description was inadequate, even though it consisted of several pages of highly technical explanations of the secrets at issue.

Perlan manufactured a nasal spray “for the prevention and treatment of the common cold.” The company’s founder, who served on its board of directors, resigned to become chief executive officer of a new company engaged in a similar business. Perlan sued the founder and his new company, claiming that they had taken Perlan’s trade secrets.

In an effort to comply with section 2019.210, Perlan provided a statement describing eight categories of trade secrets it believed the founder had taken. Perlan’s statement contained several pages, consisting of highly technical descriptions of the scientific processes involved in its business. Nonetheless, the trial court granted the defendants a protective order, precluding Perlan from conducting discovery on the ground that its statement lacked sufficient “particularity.”

The Court of Appeal affirmed the trial court’s ruling. The appellate court relied upon prior case law explaining that section 2019.210 is designed to, among other things, “dissuade the filing of meritless trade secret complaints” and to help defendants “form complete and well-reasoned defenses, ensuring that they need not wait until the eve of trial to effectively defend against charges of trade secret misappropriation.” Applying these principles, the appellate court found fault with Perlan’s trade secret designation on two grounds. First, Perlan had failed to provide the formulas constituting the alleged trade secrets. Second, Perlan had used open-ended language in its designation so that it could expand the list of trade secrets at issue as the case progressed. As a result, the appellate court determined that Perlan had failed to provide the defendants with adequate notice of the trade secrets involved in the case.

As the Perlan court noted, companies often bring trade secret misappropriation claims against their former executives and their new employers. The decision demonstrates that section 2019.210 provides such defendants a powerful tool to limit such lawsuits, or at least clearly define their scope. In the appellate court’s words, “[d]efendants gain strategic and tactical advantages when they are able to convince trial courts that plaintiffs should be required to provide more details pursuant to section 2019.210 before plaintiffs are able to commence discovery.”