UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF STONE

HUGGABLE HELPER, LLC, Plaintiff,	)	
v.	)	No. ST-25-01
EMW SYSTEMS, LLC & Bridget JAMES, Defendants.	)	

MEMORANDUM AND ORDER DENYING
DEFENDANTS' MOTION FOR A STAY OF PROCEEDINGS

P. Novotny, District Judge

Huggable Helper, LLC ("HH") filed suit against EMW Systems, Inc. ("EMW") and current EMW employee Bridget James, who is HH's former employee. HH alleges that EMW misappropriated HH's trade secrets in violation of the Defend Trade Secrets Act ("DTSA"). 18 U.S.C. § 1836. This Court has jurisdiction over the trade secret claims pursuant to 28 U.S.C § 1331 and § 1367.

During the initial phase of discovery in this matter, on January 20, 2025, James was arrested by the FBI and indicted on charges under the Economic Espionage Act ("EEA"), 18 U.S.C. § 1832, for misappropriation of trade secrets. The criminal case is ongoing but has not moved beyond the indictment stage. Defendants James and EMW have moved to stay these civil proceedings pending resolution of the criminal case. This Court temporarily authorized the parties to stay discovery pending resolution of this motion.

Facts and Proceedings

HH is a limited liability company headquartered in the state of Stone. HH began as a startup (originally named "Vansolutions") formed by Mary Ellen Vansom in July 2020.[1] Vansom, who is also HH's CEO, sought to alleviate the significant burdens placed on public school counselors in the United States by utilizing new technologies; namely, artificial intelligence ("AI"). Vansom herself was a public school teacher before earning a business degree. She recognized the lack of an adequate number of school counselors almost universally throughout America's public schools, because counselors were often pulled away from scheduled meetings with students by emergency situations within the school, mostly involving students in crisis. In 2020, she saw these problems escalate due to the impacts of the COVID-19 pandemic and decided to found a company focused on finding a solution.

Vansom testified,[2] and Defendants do not dispute, that in October 2020 she alone came up with the idea for a set of action-figure-like dolls equipped with microphones, which, when connected to Wi-Fi could use AI-powered technology to help students work through their feelings.[3] In theory, the action figures would be made available to a child when a school counselor could not be present. The child would communicate with the figure, and the figure

[1] Facts relating to Vansom's background and her work with HH come from her deposition, which the parties have completed.

[2] Vansom submitted an affidavit with HH's complaint, and has also been deposed as part of discover in this matter. At this point in discovery, no executives from EMW, including Bridget James, have been deposed.

[3] Generative AI was still new at this time but was developing rapidly. OpenAI introduced ChatGPT-1 in June 2018; the model was trained on just 117 million parameters. ChatGPT-2, which was trained on 1.5 billion parameters, was released in February 2019 and represented a significant improvement. ChatGPT-3, released in June 2020, was again an exponential improvement: the model was trained on 175 billion parameters. Bernard Marr, A Short History Of ChatGPT: How We Got To Where We Are Today, Forbes (May 19, 2023, at 01:14 AM), https://www.forbes.com/sites/bernardmarr/2023/05/19/a-short-history-of-chatgpt-how-we-got-to-where-we-are-today/.

would use its counselor-input-trained AI model to respond and help the child process their feelings in a healthy way. The toys could save school districts thousands of dollars and help many more children than one school counselor could in any given day.

Vansom recognized that she was unskilled in the area of AI datasets and programming, so in April 2021 she hired a skilled computer engineer, Bridget James, to create an AI-based technology and program a toy that would accomplish this goal. Together, over the next three years, the two created the "Huggable Helper" doll, matching Vansom's initial specifications. The two also became good friends. Vansom renamed her company to match its seminal product.

The Huggable Helper doll was released in early April 2024. It was the first product of its kind on the market, and it was an instant hit, generating over $10 million in sales in its first six months on the market. Unfortunately, the stress of creating a startup affected Vansom and James's friendship, which began to sour.

EMW Systems is a large Delaware corporation with a principal place of business in Milwaukee, Wisconsin. EMW owns GoodHelp, a company that owns a smartphone app that provides therapeutic services to adults struggling with mental health issues.

EMW was exploring options for bringing GoodHelp to the pediatric market; it found that many children do not have consistent access to cellular phones during the school day, which is when many children tend to need emotional support. Inspired by the success of the Huggable Helper doll, EMW began exploring the toy-based pediatric therapy market. Plaintiff alleges that once EMW realized the excessive amount of capital and person-hours it would take to create an AI model that could compete with the Huggable Helper's AI, EMW executives decided to access HH's confidential information instead and use that to create their own AI-based toy. Plaintiff further alleges EMW enticed James to depart from HH to and work for them instead, and that

James agreed to EMW's offer. Plaintiff has produced forensic records showing that James downloaded thousands of documents from HH's servers prior to her departure. Plaintiff alleges that James later turned those documents, many of which contained HH's trade secrets and confidential information, over to EMW.[4]

Due to its use of HH's trade secrets, EMW was able to create plans for the "Thought Hero," a superhero style action figure doll equipped with AI technology. The Thought Hero was advertised as a pediatric therapeutic tool that could help children become "heroes of their own minds" and "vanquish negative thoughts." EMW launched a marketing campaign to announce the release date of the toy but ultimately did not sell any of them.

In late November 2024, Vansom caught word of this product that was remarkably similar to her own. She dug into EMW, and quickly realized that her former employee, James, was now employed by EMW. Vansom contacted the Stone Attorney General's office, alleging that HH's trade secrets had been misappropriated by James and EMW. Plaintiff HH then commenced the present action against EMW and James on December 13, 2024.

The FBI raided EMW's corporate headquarters on January 20, 2025, searching for evidence of trade secret misappropriation. On February 20, 2025, EMW and James were each indicted on one count of misappropriation of trade secrets in violation of the Economic Espionage Act ("EEA"). EMW's stock price has plummeted as a result of public backlash against the company. It first fell minimally (around 4%) when Plaintiff brought this civil action,

[4] Plaintiff has served Defendants with a Request for Production of Documents, including requests for emails among EMW executives, emails between James and EMW executives, and for forensic imaging of all of James's devices. Plaintiff believes these documents and forensic images will support the allegations recounted in this Memorandum. Defendants have not yet completed their document review and have not turned over these documents or forensic images yet.

but the stock continued to tumble an additional 16%, for a total of 20%, after the indictments against James and EMW were announced.

Discussion

1. Proceedings under EEA and DTSA

Plaintiff brought this civil claim under the Defend Trade Secrets Act ("DTSA"). 18 U.S.C. § 1836. Defendants have now been indicted on charges under the Economic Espionage Act ("EEA"). 18 U.S.C. § 1832. For context, this Court will briefly discuss the relationship between these statutes.

Noticing the need for trade secret protection at the federal level (as opposed to the state level, where trade secret misappropriation cases were traditionally handled), Congress passed the EEA in 1996. 18 U.S.C. § 1831 et seq. The EEA criminalizes theft of trade secrets with the knowledge that the secret will benefit a foreign government or entity. Id. The EEA also criminalizes general trade secret misappropriation when the trade secret is related to a product used in interstate or foreign commerce. 18 U.S.C. § 1832. Under the EEA, companies can notify the Attorney General to allege that their trade secrets had been misappropriated; the Department of Justice may in turn investigate and bring criminal charges under the EEA. C. Bryan Wilson, Reach of Defend Trade Secrets Act & State Trade Secret Laws, Bloomberg L. (March 2022), https://www.bloomberglaw.com/external/document/X3RR42HG000000/trade-secrets-professional-perspective-reach-of-defend-trade-sec.

After passing the EEA, however, Congress concluded that federal criminal sanctions, on top of state laws creating civil misappropriation claims, were not sufficient to quell the massive economic loss stemming from trade secret misappropriation. John Cannan, A (Mostly) Legislative History of the Defend Trade Secrets Act of 2016, 109 L. Library J., 363, 365 (2017).

Thus, in 2016, Congress passed the DTSA as an amendment to the EEA. Id. at 367-68. The DTSA creates a private civil right of action in federal court for owners of trade secrets that have been misappropriated in interstate or foreign commerce.

Because the EEA makes trade secret misappropriation a criminal act, while the DTSA creates a civil right of action for trade secret misappropriation, it is possible for a defendant to face parallel criminal and civil proceedings under the two statutes stemming from the same set of facts. This Court could find no reported cases involving simultaneous proceedings under the DTSA and EEA, at least not one in which a defendant in a civil case arising under the DTSA moved for a stay of the civil proceedings to defend a criminal case arising under the EEA.

There have been criminal EEA proceedings against defendants facing state trade secrets misappropriation claims, although the parties in these cases did not move for a stay of civil proceedings. See Cisco Sys., Inc. v. Huawei Techs., Co., 266 F. Supp. 2d 551, 555 (E.D. Tex. 2003) (civil proceeding); Indictment at 35, United States v. Huawei Techs. Co., No. 1:18-CR-00457-AMD (E.D.N.Y. 2020) (criminal indictment arising from the same facts). Thus, this Court will look to cases involving parallel proceedings in other contexts.

2. Parallel Proceedings and Stays

Civil proceedings are generally kept separate from criminal proceedings. Despite the two types of cases having many fundamental differences, the line between the two may blur when parallel proceedings occur. "Parallel proceedings refer to two or more concurrent . . . litigations arising out of a common set of facts." Deborah R. Meshulam, "Defending Parallel Proceedings Key Considerations and Best Practices," ¶ 2, Westlaw Practical Law W-003-8906 (updated 2022). Courts may, in their discretion, impose limits on parallel proceedings by staying the civil proceeding until the conclusion of the parallel criminal proceeding. See Aviva Life & Annuity

Co. v. Davis, No. 4:12-CV-00603-JEG, 2014 WL 12366406, at *3 (S.D. Iowa July 29, 2014). "A stay can protect a civil defendant from facing the difficult choice between being prejudiced in the civil litigation, if the defendant asserts his or her Fifth Amendment privilege, or from being prejudiced in the criminal litigation if he or she waives that privilege in the civil litigation." Louis Vuitton Malletier S.A. v. LY USA, Inc., 676 F.3d 83, 97 (2d Cir. 2012).

A district court's decision to stay civil proceedings during a parallel criminal prosecution is a discretionary one. Microfinancial, Inc. v. Premier Holidays Int'l, Inc., 385 F.3d 72, 77 (1st Cir. 2004). The movant, Defendants in this case, bears the burden of establishing a clear need for a stay. Louis Vuitton, 676 F.3d at 97. The movant must show that a clear case of hardship or inequity warrants the stay. Creative Consumer Concepts, Inc. v. Kreisler, 563 F.3d 1070, 1080 (10th Cir. 2009) (quotations omitted). Staying civil proceedings until the finality of criminal proceedings is an "extraordinary remedy." Aviva Life, 2014 WL 12366406 at *3 (quoting Louis Vuitton, 676 F.3d at 98).

A court may grant a stay of civil proceedings pending resolution of an ongoing parallel criminal proceeding when "the interests of justice seem () to require such action." SEC v. Dresser Indus., Inc., 628 F.2d 1368, 1375 (D.C. Cir. 1980) (alteration in original) (quoting United States v. Kordel, 397 U.S. 1, 13 n.27 (1970)). The movant has no constitutionally guaranteed right to a stay, however, "simply because a parallel criminal proceeding is in the works." Microfinancial, 385 F.3d at 78-79 (citing Kordel, 397 U.S. at 11).

When determining whether to stay the civil trial, the court undertakes a fact-specific task of balancing competing interests. Id. at 78. The court must balance the interests of the defendant, the plaintiff, the court itself, and the public. See Aviva Life, 2014 WL 12366406, at *3. The court must be reasonable in squaring the interests. Microfinancial, 676 F.3d at 78.

Courts in different jurisdictions consider different factors when evaluating whether to stay a civil trial pending the resolution of parallel criminal proceedings. The factors that are consistent across courts include:

- The interests of the civil proceeding's plaintiff in the expeditiousness of the proceeding;
- The burden placed on the defendant by any aspect of the proceedings;
- The interests of both courts, including the convenience of case management and efficient use of judicial resources;
- The interest of any third parties in the proceeding; and
- The interest of the public in both the civil and criminal cases.

See, e.g., Microfinancial, 385 F.3d at 78 (listing First Circuit factors); Louis Vuitton, 676 F.3d at 99 (listing Second Circuit factors). Some courts consider additional factors, including:

- The good faith, or lack thereof, of the civil litigants;
- The status of the cases, including whether the defendant had been indicted; and
- The extent to which the issues in the criminal case overlap with the facts in the civil proceeding.

Microfinancial, 385 F.3d at 78; Louis Vuitton, 676 F.3d at 99.

This Court has not previously considered which factors to use in evaluating whether to stay a civil trial pending the resolution of parallel criminal proceedings, and neither has the Fourteenth Circuit or any other district court in this jurisdiction. Thus, this is an issue of first impression in this Court.

3. Application of Factors

As an initial matter, Defendants urge this Court to focus on the fact of their indictment and the overlap between the proceedings. They contend that "the strongest case for deferring civil proceedings until after completion of criminal proceedings is where a party under

indictment for a serious offense is required to defend a civil or administrative action involving the same matter." Dresser Indus., 628 F.2d at 1375-76. They argue that this is especially true "if there is a significant overlap" between the civil and criminal trials, because in such a case, "self-incrimination is more likely." Trs. of Plumbers & Pipefitters Nat. Pension Fund v. Transworld Mech., Inc., 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995).

Although it is the case that the proceedings here stem from identical facts and allegations, this Court declines to consider these factors, let alone to give them the nearly dispositive weight that Defendants request. "[A] defendant has no constitutional right to a stay simply because a parallel criminal proceeding is in the works." Microfinancial, 385 F.3d at 77-78. It is the case that defendants will face criminal indictments and overlapping facts in many cases involving parallel proceedings. These factors are also redundant with a factor that all courts already consider: the burden on defendants in any aspect of the proceedings. It would therefore be unreasonable to assign significant weight to those additional factors, and indeed would risk allowing Defendants to benefit from the very criminal activity that led to these parallel proceedings in the first place.

This Court does find relevant, however, whether all parties to this civil proceeding acted in good faith. Failing to consider good faith would also risk rewarding bad behavior. Here, it appears that all parties have litigated this civil matter in good faith, and neither party claims otherwise.

Turning to the factors generally considered in all jurisdictions, this Court finds that there are no third parties with a significant interest in this matter. Additionally, nothing about these matters especially impact the interests of the courts in terms of resources of efficiency. The

parties do not argue otherwise as to either of these factors. Thus, these factors do not weigh in favor of or against a stay.

The remaining factors—Plaintiff's interest in expeditious proceedings, the burden on Defendants in both proceedings, and the interest of the public in both proceedings—are a closer call and must be balanced against each other. Defendants contend that defending these parallel proceedings will place, and have already placed, a significant burden on them, largely for the reasons discussed above. Defendants add that if this case proceeds alongside the EEA proceedings, James will face an impossible choice at her deposition.[5] She can invoke her Fifth Amendment privilege against self-incrimination, which will risk having an adverse inference drawn against her in the civil proceeding. See Louis Vuitton, 676 F.3d at 98. Or she can opt not to invoke her privilege, and risk waiving it in the criminal proceedings. See Volmar Distribs., Inc. v. N.Y. Post Co., 152 F.R.D. 36, 40 (S.D.N.Y. 1993). This Court acknowledges the burden on James with respect to her Fifth Amendment rights but is wary of permitting either Defendant, especially EMW, to hide behind James's privilege. See Koester v. Am. Republic Invs., Inc., 11 F.3d 818, 823 (8th Cir. 1993).

Defendants also contend that on balance, they are more burdened by a lack of stay than Plaintiff will be by a stay in these proceedings. Plaintiff does have a strong interest in expeditious proceedings, however. Given that the criminal case has not proceeded since the indictment, if civil proceedings are stayed, the delay may be substantial. Even if all witnesses in this case remain available, Plaintiff will be forced to utilize witnesses whose memories have "become stale with the passage of time." Digit. Equip. Corp. v. Currie Enters., 142 F.R.D. 8, 12

[5] EMW acknowledges, as it must, that as a corporation it cannot assert any Fifth Amendment privilege against self-incrimination in any proceeding.

(D. Mass. 1991). Additionally, Plaintiff will face a financial burden from a delay. EMW's stock prices have plummeted. Staying civil proceedings while Defendants' resources dwindle will reduce the likelihood that Plaintiff could ever receive a civil judgement. See Gen. Dynamics Corp. v. Selb Mfg. Co., 481 F.2d 1204, 1215 (8th Cir. 1973). This Court finds that Plaintiff's interests here are significant.

Finally, Defendants argue that considering the public interest weighs in favor of a stay. "If delay of the noncriminal proceeding would not seriously injure the public interest, a court may be justified in deferring it." Dresser Indus., 628 F.2d at 1376. The public also has an interest in fair and effective criminal prosecutions; Defendants argue that allowing them to focus on that defense and preventing Plaintiff from using civil discovery rules to the government's benefit in a criminal matter is in the public's interest. See Aviva Life, 2014 WL 12366406 at *11. This Court finds, however, that the public's interest in the timely resolution of both cases weighs in favor of Plaintiff. Keating v. Office of Thrift Supervision, 45 F.3d 322, 325 (9th Cir. 1995).

Although Defendants do face a significant burden from having to defend both proceedings in parallel, that burden is ultimately outweighed by the Plaintiff's interests in expediency and the public's interest in seeing both matters adjudicated. Thus, Defendants cannot meet their heavy burden of showing that a stay of civil proceedings is warranted.

Conclusion

For the reasons stated herein, Defendants' motion for a stay of proceedings is DENIED.

SO ORDERED.

Dated: March 19, 2025

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF STONE

HUGGABLE HELPER, LLC, Plaintiff, v. EMW SYSTEMS, LLC & Bridget JAMES, Defendants.	)	No. ST-25-01

MEMORANDUM AND ORDER GRANTING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

P. Novotny, District Judge

Following a short period of discovery, HH has moved for summary judgement pursuant the Federal Rule of Civil Procedure 56(a), arguing that when EMW induced James to work for it and share the trade secrets that she learned in the course of her employment at HH.[6] Summary judgment should be granted where no genuine issue of material fact exists and one party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Additionally, Plaintiff seeks a permanent injunction barring Defendants from all future use of Plaintiff's trade secrets. This order will be brief.

Facts and Discussion

Following this Court's denial of Defendants' motion to stay proceedings, discovery proceeded in this case. Defendants turned over to Plaintiff the requested emails among EMW executives, emails between James and EMW executives, and forensic images of all of James's

[6] Although James led the team that developed the AI algorithm that powers Plaintiff's Huggable Helper doll, James's employment contract makes it clear that all trade secrets she developed were the sole property of HH.

devices. Plaintiff also deposed all relevant EMW executives. Notably, Defendant Bridget James was deposed by Plaintiff's attorneys on May 28, 2025. She invoked her Fifth Amendment rights multiples times during this deposition, refusing to answer questions a total of five times.

The parties have now completed discovery. Plaintiff has proffered ample evidence obtained during discovery in support of its contention that Defendants misappropriated Plaintiff's trade secrets as a matter of law, including email correspondence between the Defendants and Defendant James's deposition testimony. Defendants have proffered no evidence to suggest that any material facts are in dispute and therefore have conceded that no genuine issue of material fact exists.

Holding and Order

Based on the undisputed material facts before this Court, this Court holds that as a matter of law, Defendants misappropriated Plaintiff's trade secrets in violation of the DTSA. For the reasons stated herein, Plaintiff's motion for summary judgment is GRANTED. The Defendants are permanently ENJOINED from using, possessing, or retaining any trade secrets belonging to Plaintiff.

SO ORDERED.

Dated: August 18, 2025

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF STONE

HUGGABLE HELPER, LLC, Plaintiff,	)	
v.	)	No. ST-25-01
EMW SYSTEMS, LLC & Bridget JAMES, Defendants.	)	

MEMORANDUM AND ORDER AWARDING DAMAGES

P. Novotny, District Judge

On August 18, 2025, this Court granted Plaintiff Huggable Helper, LLC's motion for summary judgment against Defendants EMW Systems, Inc. and Bridget James holding that as a matter of law that Defendants misappropriated Plaintiff's trade secrets in violation of the DTSA. This Court also entered an order permanently enjoining Defendants from the use, possession, or retention of any of the Plaintiff's trade secrets.

This matter proceeded to the damages phrase. Plaintiff seeks compensatory unjust enrichment damages in the form of the costs that Defendant EMW avoided through the use of Plaintiff's trade secrets.[7] 18 U.S.C. 1836(b)(3)(B)(i)(II).

[7] Plaintiff does not seek a royalty fee in lieu of damages. 18 U.S.C. § 1836(b)(3)(B)(ii). Plaintiff does not seek exemplary damages that could have been awarded upon a showing of willful and malicious misappropriation, and Plaintiff has not alleged willful and malicious appropriation. 18 U.S.C. § 1836(b)(3)(C). Plaintiff also does not seek an award of attorney's fees. 18 U.S.C. § 1836(b)(3)(D). Finally, although Stone has adopted the UTSA as its state misappropriation law (commonly referred to as "STUTSA," S.G.L. c. 96, § 27 et seq.), Plaintiff brings no state claims here.

Facts and Proceedings

This Court incorporates by reference all facts discussed in its Memorandum and Order Denying Defendants' Motion for a Stay of Proceedings, dated March 19, 2025, and in its Memorandum and Order Granting Plaintiff's Motion for Summary Judgment, dated June 18, 2025. The following additional facts, obtained through the parties' discovery and proffered by the parties at summary judgment, are not in dispute.

Mary Ellen Vansom hired Bridget James to work at HH as a lead computer engineer in April 2021, expressly to work on developing the large language model, which specifically incorporated training data and input from licensed pediatric therapists and school counselors. HH grew rapidly, expanding from two (Vansom and James) to over a dozen employees a few months after James' hiring, from July 2021 through November 2021. James led a team of twelve employees solely focused on creating an AI model and ensuring that the AI model was well-trained on therapeutic needs, terms, and common issues. Vansom was thrilled with James's progress, and James was proud to be working for a company which she anticipated would make positive changes across the country for young people. The two became fast friends.

The work was challenging and specific, so HH poured millions of dollars into research and development of a proprietary dataset and algorithm from April 2021 until April 2024. Additionally, because the doll's intended user was mostly school aged children in a school environment, HH spent a great deal of time and money developing a strong set of privacy firewalls that would prevent an unauthorized user, apart from approved medical professionals or authorized parents, from accessing the child's therapeutic record and data. Significant fiscal resources and personnel also went in to ensuring that the AI model had strong guardrails to prevent it from speaking in any way that would not be appropriate for a child. Research and

development costs and personnel costs totaled nearly $5 million (4,000,000 and $800,000 respectively).

After the major challenge of creating the software, HH was able to move rapidly to manufacture the dolls and get ready to launch. Manufacturing costs paled in comparison to R&D costs – only $300,000 was spent on materials and manufacturing. In total, HH spent $5.1 million to get the Huggable Helper to market.

The Huggable Helper hit the market in April 2024, marketed to schools, pediatric therapy centers, pediatric hospitals, and families struggling with mental health issues. In just six months, over $10 million dollars' worth were sold, which account for 100,000 units. Sales continue to be robust.

In early August 2024, EMW hired James away from HH, and did so expressly to make use of Plaintiff's trade secrets. After seeing the success of the Huggable Helper doll, EMW was seeking to enter the therapeutic toy market, but quickly realized that it would take an excessive amount of capital, personnel, and time to create an AI model that could compete with the Huggable Helper's AI. Thus, as emails between EMW executives show, EMW decided to access HH's confidential information instead and use that to create its own AI-based toy. EMW enticed James to depart from HH to and work for EMW instead, offering her a hefty executive compensation package that included eye and dental health care.[8] James, frustrated by the deteriorating friendship between herself and Vansom, agreed to EMW's offer. James

[8] One of the significant factors resulting in the deterioration of Vansom and James' friendship and working relationship was Vansom's refusal to include eye and dental coverage in the employee health plan at HH. James alleges that she repeatedly informed Vansom that James was dealing with decreased eyesight capabilities due to long hours spent coding at her computer screen, to no end. Thus, James was frustrated and eager at the opportunity to receive more thorough care.

downloaded thousands of documents from HH's servers prior to her departure. James later turned those documents, many of which contained HH's trade secrets and confidential information, over to EMW.

Instead of spending millions of dollars and multiple years developing its own product, EMW used Plaintiff's trade secrets to create detailed product specifications for the "Thought Hero," an superhero style action figure doll equipped with AI technology. The Thought Hero was advertised as a pediatric therapeutic tool that could help children become "heroes of their own minds" and "vanquish negative thoughts." EMW developed the Thought Hero toy in just three months, with programming and manufacturing specifications complete by early November 2024, with plans to release the product on the market sometime during Q1 2025. Including the expensive compensation package that EMW had provided to James, EMW spent under $1 million and three months on R&D, compared to the three years and $5.1 million HH spent to create the Huggable Helper.

In early September 2024, EMW began an extensive marketing campaign targeting parents and educators during "back-to-school" season. Their campaign included print, web, and television advertisements, as well as a display booth at a national toy convention. There was significant media buzz, in part thanks to GoodHelp's already established place in the online mental health care market as a trusted adult treatment option. In November 2024, a demonstration model of Thought Hero was featured on an episode of "Great Day America," the daily morning news show on ECT Network, where news anchors directed parents to be ready once sales of the Thought Hero launched, as they were likely going to sell out quickly. This episode drew national attention, including Vansom's attention, leading to this civil matter and the criminal indictment that Defendants are still under.

After the criminal indictment issued, EMW was faced with a public relations crisis. Several social media influencers launched a social media campaign calling for a boycott of Thought Hero, which the public perceived as tainted goods. EMW cancelled its advertising campaign and delayed the launch of the Thought Hero doll. As of June 18, 2025, this Court enjoined Defendants' use of Plaintiff's trade secrets, effectively prohibiting any future sales of the Thought Hero doll. EMW has not made a single sale of a Thought Hero doll.

Discussion

Defendants do not now challenge this Court's conclusion on summary judgment that as a matter of law, Defendants misappropriated Plaintiff's trade secrets.

1. Statutory History of the DTSA

Trade secret misappropriation claims are not new to the United States. Initially, trade secret protection fell under state common law. James Pooley, A Brief History of U.S. Trade Secret Law, 50 AIPLA Q.J. 689 (2022). Trade secret law across the states was inconsistent, however, with key terms defined discordantly throughout the country. Id. at 693. Thus, the National Conference of Commissioners on Uniform State Laws proposed the Uniform Trade Secrets Act ("UTSA") in 1979, amending the proposed language in 1985. Id. Today, all states except for New York have adopted a state form of UTSA (although some states adopted the model law with variations). Id. Each state's UTSA provided civil remedies for private businesses and individuals who claimed that their trade secrets had been misappropriated. John Cannan, A (Mostly) Legislative History of the Defend Trade Secrets Act of 2016, 109 L. Library J., 363, 365 (2017).

Congress passed the DTSA in 2016 in light of a need for a federal, rather than state, private civil right of action for misappropriation. Charles J. Monterio Jr., Q&A On the Defend

Trade Secrets Act, Westlaw Intellectual Prop. Daily Briefing, 2021 WL 4618227 at *1 (2021). The DTSA was largely modeled after the UTSA, resulting in similar language, definitions, and statutes of limitations in both various state jurisdictions and federal court. See, e.g., Deerpoint Grp., Inc. v. Agrigenix, LLC, 345 F. Supp. 3d 1207, 1227 (E.D. Cal. 2018) (comparing the DTSA with the California UTSA). Therefore, many courts, including this one, interpret state UTSA claims in the same way they do DTSA claims. Id. Thus, this Court may rely on cases interpreting the UTSA to evaluate the claim here that arises under the DTSA. Kuryakyn Holdings, LLC v. Ciro, LLC, 242 F. Supp. 3d 789, 797-98 (W.D. Wis. 2017).

2. Damages Available under the DTSA.

The DTSA contains a damages clause that is identical to the UTSA's damages clause. Compare Uniform Trade Secrets Act, § 3 (Nat'l Conf. on Uniform State L., amended 1985), with Defend Trade Secrets Act, 18 U.S.C. § 1836(b)(3)(B)(i).

Under the DTSA, a court may award:

(I) damages for actual loss caused by the misappropriation of the trade secret; and
(II) damages for any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss.

18 U.S.C. § 1836(b)(3)(B)(i).[9]

Actual loss can be calculated in various ways, and courts have established those methods under the common law, state iterations of the UTSA, and the DTSA. See HealthPlan Servs., Inc. v. Dixit, No. 8:18-CV-2608-SDM-AAS, 2021 WL 4927434 at *5-6 (M.D. Fla. May 27, 2021),

[9] Most states' adopted versions of the UTSA contain identical language to the UTSA and DTSA damages provisions. See, e.g., Minn. Uniform Trade Secrets Act, Minn. Stat. § 325C.03 (1987). Many state versions of the UTSA contain damages provisions that, while not identical, are substantively similar to those found in UTSA and DTSA. See, e.g., Mass. G. L. c. 93, § 42B. Stone has adopted a damages provision that is identical to that of UTSA, commonly referred to as "STUTSA." See S.G.L. c. 96, § 27 (1993). Plaintiff brings no claims under STUTSA.

report and recommendation adopted, No. 8:18-CV-2608-SDM-AAS, 2021 WL 4926752 (M.D. Fla. July 22, 2021) (listing methods of calculating damages). Most common tends to be the plaintiff's lost profits, calculated as sales the defendant made when it entered the market with the item created by or from the trade secret which it had misappropriated, because those customers would have otherwise purchased from plaintiff. See Fin. Info. Techs., LLC v. iControl Sys., USA, LLC, 21 F.4th 1267, 1275 (11th Cir. 2021).[10] When measuring loss, most courts require a reasonable degree of certainty in the amount plaintiff's claimed loss. PPG Indus. Inc v. Jiangsu Tie Mao Glass Co. Ltd, 47 F.4th 156, 162 (3d Cir. 2022). Some courts note, however, that calculating a plaintiff's actual losses can be difficult. See Greenberg v. Croydon Plastics Co., 378 F. Supp. 806, 817 (E.D. Pa. 1974). Here, Plaintiff concedes that because Defendant EMW did not in fact make any sales of its Thought Hero action figure, Plaintiff cannot show actual loss.

Unjust enrichment damages are also available under the DTSA. 18 U.S.C. § 1836(b)(3)(B)(i)(II). These are usually calculated as a portion of the benefit received by the defendant, as opposed to the loss suffered by the plaintiff. PPG Indus., 47 F.4th at 162 (citing Bohnsack v. Varco, L.P., 668 F.3d 262, 280 (5th Cir. 2012)); see also Restatement (Third) of Unfair Competition § 45 (A.L.I. 1995). The particular type of unjust enrichment damages Plaintiff is seeking in this case are termed "avoided cost damages," or the expenses the defendant company or misappropriator would have incurred to develop its product but for its use of the plaintiff's trade secret. See PPG Indus., 47 F.4th at 161. Defendant EMW concedes that avoided

[10] Other common measurements include diminution in the value of the trade secret or the money the plaintiff spent developing the trade secret. See Syntel Sterling Best Shores Mauritius Ltd. v. The TriZetto Grp., Inc., 68 F.4th 792, 811 (2d Cir.) (discussing diminution), cert. denied, 144 S. Ct. 352 (2023); Macquarie Bank Ltd. v. Knickel, 793 F.3d 926, 939 (8th Cir. 2015) (discussing money spent developing a trade secret).

costs can be awarded as damages for unjust enrichment under the DTSA. The parties dispute, however, whether avoided costs are available in this case.[11]

Here, Plaintiff contends that Defendant EMW avoided significant research and development costs and therefore was unjustly enriched.

3. Avoided Cost Damages

Currently, courts of appeal disagree as to whether unjust enrichment damages may include the cost of developing the trade secret that the misappropriator avoided by misappropriating the trade secret rather than developing it, commonly referred to as avoided cost damages. Compare Syntel, 68 F.4th at 812 (finding no unjust enrichment damages where the plaintiff suffered no actual loss) and Motorola Sols., Inc. v. Hytera Commc'ns Corp. Ltd., 108 F.4th 458, 490 (7th Cir. 2024) (finding no unjust enrichment damages where plaintiff did not suffer harm beyond its actual loss), cert. denied, 145 S. Ct. 1182 (2025), with PPG Indus., 47 F.4th at 162 (awarding unjust enrichment damages despite no actual loss to plaintiffs) and Epic Sys. Corp. v. Tata Consultancy Servs. Ltd., 980 F.3d 1117, 1130 (7th Cir. 2020) (same). Avoided costs are defined as the amount of money that a defendant would have had to spend on research and development to independently develop the trade secret that they misappropriated from a plaintiff. See Epic Sys., 980 F.3d at 1130. This is an issue of first impression in this Court, and neither the Fourteenth Circuit nor any other district court in this jurisdiction has taken a position on the availability of avoided cost damages in a case where a plaintiff cannot show actual loss.

[11] Another remedy under the DTSA can be an injunction "to prevent any actual or threatened misappropriation." 18 U.S.C. § 1836(b)(3)(A)(i). Here, when this Court entered a grant of summary judgment for Plaintiff, this Court also awarded Plaintiff a permanent injunction to prevent Defendants from "using, possessing, or retaining any of" Plaintiff's trade secrets.

No other circuit courts of appeal have ruled on this particular issue, but several district courts have. The District of Massachusetts is the most recent federal court to rule on this issue, and it followed the Third Circuit's ruling in PPG Indus., although the case has appeals currently pending. Insulet Corp. v. EOFlow Co., 779 F. Supp. 3d 124, 138 (D. Mass. 2025). The court did not rule on whether unjust enrichment damages are available or unavailable when a plaintiff cannot show actual loss, but did hold that in a DTSA case, a court may fashion a damages award that includes an injunction and avoided cost unjust enrichment damages even in the absence of actual loss. Id. at 137. The Middle District of Florida landed on the side of the Third Circuit as well in its ruling in HealthPlan Services, Inc. v. Dixit, when it stated that a plaintiff could recover unjust enrichment damages in the form of the developmental costs the defendants avoided by using the plaintiff's trade secret. HealthPlan Servs., 2021 WL 4927434 at *5-6.

The Central and Southern District Courts in California have made careful note that a defendant needs to have "used" the trade secret (or disclosed it to another), as opposed to merely improperly obtaining it, to warrant a finding of unjust enrichment damages. Wixen Music UK Ltd. v. Transparence Ent. Grp. Inc., No. 221CV02663MEMFMRW, 2023 WL 9004931, at *10-11, *13, n.18 (C.D. Cal. Oct. 10, 2023); LBF Travel Mgmt. Corp. v. DeRosa, No. 20-CV-2404-MMA-SBC, 2024 WL 1298001, at *12 (S.D. Cal. Mar. 26, 2024), opinion clarified, No. 20-CV-2404-MMA-SBC, 2025 WL 1088200 (S.D. Cal. Apr. 11, 2025).[12] Here, Defendant EMW admits that it made use of Plaintiff's trade secrets when EMW and James created the Thought Hero action figure.

[12] Although these cases interpret the DTSA, California's CUTSA provides for an alternative measure of damages called royalties, which, in California, come with unique rules. As noted above, Plaintiff is not seeking royalties.

As stated above, Plaintiff cannot show actual loss but seeks compensatory unjust enrichment damages in the form of avoided cost damages. Defendant EMW concedes, as it must, that it was unjustly enriched. Defendant contends, however, that avoided cost unjust enrichment damages are not available in the absence of actual loss under the DTSA. Specifically, Defendant contends that under a proper reading of the DTSA, unjust enrichment damages are not available when the plaintiff has not suffered beyond the amount recouped as actual loss because the language of the damages provision expressly contemplates awarding damages for unjust enrichment "that is not addressed in computing damages for actual loss." Syntel, 68 F.4th at 809-10 (quoting 18 U.S.C. § 1836(b)(3)(B)(i)(II)). Defendant did not even ultimately sell a competing product. See Caudill Seed & Warehouse Co. v. Jarrow Formulas, Inc., 53 F.4th 368, 387 (6th Cir. 2022).

Plaintiff contends, however, and this Court agrees the harm Plaintiff suffered, specifically the use of its ill-gotten trade secret, was "not addressed" by a calculation of its actual loss at zero dollars. This Court finds the Third Circuit's reasoning in PPG Industries persuasive, and the facts align closely: both plaintiffs conceded no actual loss, while both defendants used the misappropriated trade secret to attempt to enter the market far more rapidly than they would have been able to on their own. PPG Indus., 47 F.4th at 161. Nothing in the DTSA suggests that when the actual loss is computed at zero that unjust enrichment damages become unavailable. Plaintiff has still suffered a harm "that is not addressed in computing damages for actual loss." 18 U.S.C. § 1836(b)(3)(B)(i)(II). That harm stems from the misappropriation itself, which gave Defendant EMW a significant head start into a market that Plaintiff spent years and millions of dollars to create through its novel product.

Next, Defendant contends that because this Court already permanently enjoined Defendant from making use of Plaintiff's trade secrets, the value of those secrets has not been diminished and awarding avoided cost damages is inappropriate. Defendant argues that the injunction prevents it from profiting from any avoided costs or from causing the value of Plaintiff's trade secrets to be diminished. Syntel, 68 F.4th at 811. The permanent injunction does more to make Plaintiff whole than a monetary award could. See Motorola, 104 F.4th at 503. This Court disagrees. The injunction prevents Defendants from utilizing the trade secrets in the future; it does not make Plaintiff whole for the past harm Defendants caused. PPG Indus., 47 F.4th at 163. The unjust enrichment damages Plaintiff seeks and the forward-looking injunction Plaintiff already has cover separate time frames, and do not constitute double recovery. Id.

Finally, Defendant argues that even if avoided cost damages are available here, under the common law, damages owed should be limited by the time frame in Plaintiff's product was on the market, after which Defendant could have successfully reverse-engineered the product. Defendant urges this Court to adopt the common law "head start doctrine," which would limit the period for which Defendant owes damages. The head start doctrine is different from the "significant head start" that the defendants in Epic Systems gained, which the Seventh Circuit cited in that case as reasoning to award avoided cost damages to the plaintiffs. Compare Epic Sys., 980 F.3d at 1130, with Jet Spray Cooler, Inc. v. Crampton, 385 N.E.2d 1349, 1364 n.11 (1979). This doctrine recognizes that when a plaintiff markets and sells a product, competitors gain a legitimate opportunity to study and reverse-engineer the trade secrets contained within. Jet Spray, 385 N.E. at 1364 n.11. This Court declines to adopt such a limitation on an award of damages under the DTSA, however, as there is no indication that Congress intended for such a common law doctrine to apply in this statutory framework.

Conclusion

For the reasons stated herein, Plaintiff shall be awarded compensatory damages in the form of avoided costs, a form of unjust enrichment damages. Defendant EMW shall pay Plaintiff the sum of $5,100,000 within 120 days of this Order.

SO ORDERED.

Dated: September 3, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

EMW SYSTEMS, LLC & Bridget JAMES, Appellants,	)	
v.	)	No. ST-25-01
HUGGABLE HELPER, LLC, Appellee.	)	

NOTICE OF APPEAL

Appellants EMW Systems, Inc. and Bridget James appeal the United States District Court for the District Court of Stone's order granting Huggable Helper's motion for summary judgment on the sole ground that Appellants' motion for a stay was improperly denied.[13] Appellant EMW also appeals from the district court's award of unjust enrichment damages in the form of avoided costs to Appellee Huggable Helper, LLC.[14] This Court has consolidated these appeals and will consider all issues raised in the court below.

Steven Hernando
Clerk

Dated: September 25, 2025

[13] At the time of this appeal, the criminal case against Appellants is ongoing, but has still not moved beyond the indictment stage.
[14] Appellants do not appeal the district court's order permanently enjoining them from using, possessing, or retaining Plaintiff's trade secrets.