

2009 WL 1225283 (Cal.Superior) (Trial Order)  
Superior Court of California.  
Santa Clara County

HANSEN MEDICAL, INC., Plaintiff,  
v.  
LUNA INNOVATIONS INCORPORATED, and Does 1- 10, Defendants,  
And Related Cross-Action.

No. 1-07-CV-088551.  
February 23, 2009.

**Order Re: Motions for Summary Adjudication; Motions to Seal**

Hon Joseph H. Huber, Judge of the Superior Court.

The motion by Plaintiff/Cross-Defendant Hansen Medical, Inc. (“Hansen”) for summary adjudication of the second, third, fourth, seventh, and eighth causes of action in the Third Amended Cross-Complaint (TACC) filed by Defendant/Cross-Complainant Luna Innovations Incorporated (“Luna”), Luna's two motions for summary adjudication of the first and (separately) of the second and seventh causes of action in Hansen's Third Amended Complaint (TAC), and various motions to seal portions of moving, opposing, and reply papers, came on for hearing before the Honorable Joseph H. Huber on February 20, 2009, at 9:00 a.m. in Department 8. The matter having been submitted, the Court orders as follows:

As an initial matter the various motions to seal portions of papers, Hansen's motions to seal portions of its moving papers and its opposing papers, and Luna's motions to seal portions of its moving papers, opposing papers and reply papers are GRANTED as unopposed.

The pleadings serve as the “outer measure of materiality” in a summary judgment motion, and the motion may not be granted or denied on issues not raised by the pleadings. *Government Employees Ins. Co. v. Sup. Ct.* (2000) 79 Cal App 4th 95, 98. The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. Summary adjudication is proper only if it disposes of an entire cause of action, defense or issue. CCP §437c(f)(1).

*Hansen's motion for summary adjudication:* The Court notes that in its opposition Luna concedes that the third, seventh and eighth causes of action in its TACC are preempted by the second cause of action for misappropriation of trade secrets under the California Uniform Trade Secrets Act (UTSA), Civ. Code §3426 et seq. Summary adjudication of the TACC's third, seventh and eighth causes of action is therefore GRANTED on preemption grounds.

Hansen's motion for summary adjudication of the TACC's second cause of action for trade secret misappropriation under the UTSA and fourth cause of action for breach of contract (the nondisclosure agreement, or NDA, between the parties) is DENIED.

While Hansen has submitted sufficient evidence to meet its initial burden, when the burden shifts Luna is able to demonstrate that triable issues of material fact remain as to both claims. “The presence of (reasonable) inferences supporting a judgment in favor of Plaintiff is sufficient to defeat a summary judgment in favor of defendant.” *Hulett v. Farmers Ins. Exchange* (1992) 10 Cal App 4th 1051, 1059, parentheses added.

The evidence submitted by Luna, such as the deposition testimony of Dr. Mark Froggatt (exhibit A to the declaration of Jimmy A. Nguyen), the deposition testimony of Roger Duncan (exhibit J to the Nguyen declaration), pages from Mr. Duncan's notebook (exhibit 10 to the declaration of Jana G. Gold submitted by Hansen), a December 13-14, 2006 email exchange between Mr. Duncan and Neal Tanner of Hansen (exhibit K to the Nguyen declaration), the Hansen/Luna Agreement of Sept. 28, 2006 (exhibit 29 to the Gold declaration), and Hansen's presentation to and email exchange with Luna competitor Micron Optics (exhibits N-Q to the Nguyen declaration), is evidence from which a reasonable finder of fact could infer that Hansen had acquired, used or disclosed all three of the remaining trade secrets on which Luna bases its claim and that all three qualified as trade secrets under [Civ. Code §3426](#). l(d). As a motion for summary adjudication must wholly dispose of a cause of action, triable issues as to any one of the three remaining trade secrets would require that the motion be denied as to the second cause of action.

As a use or disclosure by Hansen of any Luna trade secrets for any reason other than internal evaluation would also be a breach of the NDA, triable issues remain as to the fourth cause of action as well.

Luna's 64 objections to evidence presented by Hansen are overruled.

*Luna's first motion for summary adjudication:* Luna's motion for what amounts to partial adjudication of the first cause of action (trade secret misappropriation) in Hansen's TAC is DENIED for failure to meet the initial burden. Summary adjudication is proper only if it disposes of an entire cause of action, defense or issue. See [CCP §437c\(f\)\(1\)](#). Luna's reliance on federal court decisions granting partial summary judgment under federal rule of civil procedure is misplaced.

*Luna's second motion for summary adjudication:* Luna's motion for summary adjudication of the second and seventh causes of action in Hansen's TAC (for aiding and abetting the alleged breach of fiduciary duty by defendant Dr. Toby King, and for intentional interference with contract, respectively) is GRANTED as to both causes of action on the ground that both are preempted by Hansen's UTSA claim.

“The preemption inquiry for those causes of action not specifically exempted by [[Civil Code section](#)] [3426.7\(b\)](#) focuses on whether ‘other civil claims are no more than a restatement of the same operative facts’ supporting trade secret misappropriation. ‘In analyzing claims for the purpose of applying the displacement provision, the issue is not what label the plaintiff puts on their claims. Rather, the court is to look beyond the label to the facts being asserted in support of the claims.’ If there is no ‘material distinction’ between the wrongdoing alleged in a UTSA claim and that alleged in a different claim, the UTSA preempts the other claim.” *Convolve, Inc. v. Compaq Computer Corp.*, 2006 U.S. Dist. LEXIS 13848 [S.D.N.Y., applying California UTSA], internal citations omitted. The Court finds little if any “material distinction” between the TAC's allegations in support of the second and seventh causes of action and those in support of the UTSA claim (first cause of action).

Dated: 2-23-09

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Hon. Joseph H. Huber

Judge of the Superior Court