

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

TELLURIDE ASSET MANAGEMENT, LLC,

Plaintiff,

vs.

BRIDGEWATER ASSOCIATES, INC.,

Defendant.

Civil Action No. 04-4862 (JMR/FLN)

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF TELLURIDE ASSET  
MANAGEMENT LLC'S MOTION TO REQUIRE DEFENDANT BRIDGEWATER  
ASSOCIATES, INC TO PROVIDE A LIST OF ITS ALLEGED TRADE SECRETS**

Plaintiff Telluride Asset Management, LLC ("Telluride") has moved this Court for an Order requiring Defendant Bridgewater Associates, Inc. ("Bridgewater") to provide a specific and detailed list of its alleged trade secrets at the outset of this case. Mandating early disclosure of Bridgewater's alleged trade secrets will allow Telluride and this Court to assess whether Bridgewater is entitled to the trade-secret protection it claims and whether Telluride or its employee Vivin Oberoi ("Oberoi") possess or are using any of Bridgewater's trade secrets. This disclosure is also necessary to force Bridgewater to take a concrete position on what its trade secrets actually are instead of building its alleged trade secrets around whatever Telluride and Oberoi disclose during discovery.

insights” were developed, or the weights to be assigned to the results of its formulas. In short, Bridgewater provided nothing by which its claims of trade secrets could be assessed.

The documents also do not reveal what Bridgewater was thinking or doing with any of the charts or data it produced, or has since done, with this research. Much of the rest of Bridgewater’s production includes email correspondence, showing precious little evidence of any actions ever taken, any formulas ever created, any “unique insights” ever uncovered, any processes ever developed, or any weights ever assigned to the results of its formulas. To add insult to injury, Bridgewater marked nearly its entire production as “attorney’s eyes only,” despite the uselessness of the information to Telluride or anyone else and to prevent Oberoi from reviewing documents that he himself authored or received while at Bridgewater.

Though the Connecticut case lasted nearly 11 months before Telluride’s motion to dismiss was granted, Telluride learned nothing about Bridgewater’s alleged trade secrets. Bridgewater’s discovery tactics provided considerable heft, but no meaningful answers.

### III. ARGUMENT

Fairness requires Bridgewater to identify the alleged trade secrets that it claims Telluride and Oberoi misappropriated and not create them *post hoc* using Telluride’s discovery responses as a guide. Before filing its complaint in the Connecticut case and throughout that litigation, Bridgewater repeatedly refused to provide any details on its alleged trade secrets. This is either because Bridgewater simply had no evidence of misappropriation or because it hoped to craft its alleged trade secrets to cover whatever it learned from Telluride in discovery. Bridgewater’s reliance on conclusory allegations in the Connecticut case was a plain attempt to improperly place the burden on Telluride to prove a negative: that

it did not misappropriate Bridgewater's trade secrets, whatever Bridgewater later decides those trade secrets were.

This is an old tactic by trade-secret plaintiffs, which this District specifically rejects. See Porous Media Corp. v. Midland Brake, Inc., 187 F.R.D. 598 (D. Minn. 1999). In Porous Media, the Court ordered the plaintiff to identify its trade secrets allegedly misappropriated with specificity, noting that "the listing of trade secrets at the outset of the litigation is a common requirement" and that "the orderly disposition of cases involving claims of misappropriation of trade secrets cannot permit a situation where the details concerning the claimed trade secrets are not disclosed at an early date in the litigation." Id. at 600 (emphasis added); see also Zila Swab Tech., Inc. v. Van Dyke, 2002 U.S. Dist. LEXIS 15073 (N.D. Ill. Aug. 5, 2002) (denying plaintiff discovery that implicated competitor-defendant's trade secrets until plaintiff had disclosed its allegedly misappropriated trade secrets with specificity) (a copy of this decision is included as Rigby Decl. Ex. 14).

Other jurisdictions explicitly forbid by court rule all discovery in trade-secret cases until the plaintiff specifically identifies its trade secrets at issue. See, e.g., Computer Economics, Inc. v. Gartner Group, Inc., 50 F. Supp. 2d 980 (S.D. Cal. 1999) (explaining the purposes behind California Civil Procedure Code § 2019(d), which requires identification of the trade secret with reasonable particularity before allowing any discovery). The Gartner court explained that mandatory, early disclosure of trade secrets upholds four important policies: (1) dissuading the filing of meritless complaints; (2) preventing plaintiffs from abusing the discovery process to obtain defendant's trade secrets; (3) framing the appropriate scope of discovery for both the parties and Court's benefit; and (4) ensuring that defendants will be able to form complete defenses without being unduly surprised on the eve of trial with

new alleged secrets. Id. at 985. This District and others have also required early disclosure based on these sound policy considerations. See, e.g., Porous Media, 187 F.R.D. at 600; Del Monte Fresh Produce Co. v. Dole Food Co., 148 F. Supp. 2d 1322 (S.D. Fla. 2001) (citing California's rule and this District's Porous Media decision to support its Order requiring disclosure of the specific trade secrets at issue).

The present case implicates each of the four considerations discussed by the Gartner court and those identified by this Court in Porous Media. Bridgewater has affirmatively represented to this Court (in its counterclaim) and the Connecticut District Court (in its complaint) that Telluride misappropriated its trade secrets. Telluride should be allowed to test both the good faith and veracity of this accusation. If Bridgewater acted in good faith and its lawyers complied with Fed. R. Civ. P. 11, it should be able to provide a detailed description of all of the trade secrets it believes Telluride misappropriated. Telluride and this Court can only test whether Bridgewater's alleged trade secrets qualify for protection once it specifically identifies and describes its alleged trade secrets.

Forcing Bridgewater to give substance to its nebulous claims will provide numerous benefits in this case. First, it will help focus discovery efforts, conserving both the parties' and the Court's resources. It will also ensure the continued secrecy of Telluride's valuable trade secrets that are not relevant to Bridgewater's appropriately defined claims. Further, it will prevent Bridgewater from using Telluride's discovery responses to create its trade secrets *post hoc* from Telluride's discovery responses. Finally, and most significantly, this disclosure is essential for Telluride to form its defense. Telluride cannot be expected to mount a defense until Bridgewater identifies what it claims Telluride has done that is wrong.

III. CONCLUSION

Bridgewater's alleged trade secrets have been legally set in stone at least since September 2003 when Oberoi left Bridgewater. Bridgewater suffers no prejudice in being forced to disclose these trade secrets, which can neither legally nor ethically change. Not requiring this disclosure, however, allows Bridgewater to create its trade secrets *post hoc*, using Telluride's discovery responses as a guide. This is an abuse of the discovery process and unfairly prejudices Telluride. Therefore, the Court should Order Bridgewater to disclose with specificity any alleged trade secrets that it contends Telluride or Oberoi have misappropriated and the dates that Bridgewater claims Oberoi had access to these alleged secrets.

Plaintiff TELLURIDE ASSET  
MANAGEMENT, LLC

By its attorneys,

Dated: February 18, 2005

s/ Russell J. Rigby  
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