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115 F.Supp.3d 1184
United States District Court, W.D. Washington, at Seattle.

T–MOBILE USA, INC., Plaintiff,
v.
HUAWEI DEVICE USA, INC., et al., Defendants.

No. C14–1351RAJ
|
Signed July 14, 2015.

Synopsis
Background: Mobile phone network provider brought action against its handsets supplier and supplier's Chinese parent company, for misappropriation of trade secrets, breach of contracts protecting provider's confidential information, for violating the Washington Consumer Protection Act, and for interfering with contractual relationships and business expectancies. Supplier and parent company moved to dismiss.

ORDER

RICHARD A. JONES, District Judge.

I. INTRODUCTION

This matter comes before the court on a motion to dismiss from Defendant Huawei ***1189** Device USA, Inc. ("Huawei USA") and a motion to dismiss from its Chinese parent company, Defendant Huawei Technologies Co., Ltd. ("Huawei China"). Although the parties have requested oral argument, the court finds oral argument unnecessary in light of the six extensive briefs before it. For the reasons stated herein, the court GRANTS both motions to dismiss in part and DENIES them in part. Dkt. ## 32, 54.

II. BACKGROUND

The court describes the facts as Plaintiff T–Mobile USA, Inc. ("T–Mobile") alleges them in its complaint, suggesting no opinion on whether its allegations will prove true. The court cites the numbered paragraphs of the complaint using bare "¶ " symbols

T–Mobile, a national mobile phone network provider, contends that Huawei,[1] one of many entities that supplies it with mobile phone handsets, has stolen robot technology that T–Mobile uses to test handsets.

T–Mobile maintains a handset testing facility at its offices in Bellevue, Washington offices. ¶ 34. That facility houses "Tappy," a robot that T–Mobile designed to test mobile phone handsets. According to T–Mobile, it begin developing Tappy in 2006 and placed Tappy in service in 2007. ¶¶ 8–10. Patents protect some aspects of Tappy's technology; other aspects are T–Mobile's closely-guarded trade secrets. ¶ 10.

T–Mobile first granted Huawei access to the "clean room" that contains Tappy in 2012, so that Huawei could assist with testing its own handsets. ¶¶ 15, 42. Huawei USA (or its corporate predecessor) has been a T–Mobile handset supplier since it signed a supplier agreement in June 2010. ¶¶ 24, 35, 36. Before granting Huawei USA access to the clean room, T–Mobile required it to sign both a July 2012 testing non-disclosure agreement and, shortly thereafter, a separate "Clean Room Letter" with additional security provisions. ¶¶ 37–39. T–Mobile contends that the July 2012 non-disclosure agreement binds Huawei China as well. ¶ 38. In addition to contractual confidentiality provisions, T–Mobile limited Huawei's access to the clean room. It limited the number of Huawei employees who could enter the clean room and required all of those employees to obtain security clearances. ¶ 14.

Despite these confidentiality agreements and security measures, Huawei stole confidential information about Tappy so that it could develop a competing testing robot. It could not have doubted that T–Mobile considered that information confidential, because T–Mobile frequently refused to answer Huawei's detailed questions about Tappy's specifications. ¶¶ 43–44. Those questions often focused on a conductive tip at the end of Tappy's "end effector," which is a metal plate that attaches to the bottom of Tappy's arm. ¶ 43.

In May 2013, Huawei China employee Yu Wang arrived in Bellevue from China on a mission to acquire confidential information about Tappy. ¶¶ 45, 101. He came to T–Mobile's

testing facilities with two other Huawei employees, lead engineer Xinfu Xiong and Helen Lijingru. ¶ 46. Although Mr. Xiong and Ms. Lijingru had permission to be in the clean room, Mr. Wang did not. T–Mobile told them to remove Mr. Wang from the clean room. ¶ 46. Mr. Xiong and Ms. Lijingru nonetheless brought him back the following day, and secretly escorted him into the clean room. ¶ 48. Mr. Wang used his own ***1190** phone to take at least 7 photos of Tappy. ¶ 48. T–Mobile discovered Mr. Wang's presence and forced him to leave the facility. ¶ 49. Mr. Wang nonetheless forwarded the photographs to the Huawei China research and development team. ¶ 50, *see also* ¶ 17 (alleging that Huawei's research and development team was part of Huawei China). Huawei later surrendered 4 of the photos to T–Mobile, claiming that the remainder were too blurry to be of use. ¶ 52. Mr. Wang admitted in a June 2013 interview that he took the photos to assist Huawei's testing robot development team. ¶ 71.

In the wake of Mr. Wang's unauthorized actions, T–Mobile racheted up security restrictions on Huawei. It barred all Huawei personnel except Mr. Xiong from the clean room. ¶ 51. It required that he be escorted to the room, and that his activities in the room be recorded on video. ¶ 51.

In late May 2013, T–Mobile gave Mr. Xiong four end effectors in the clean room for testing. ¶ 54. He hid one of them from the view of the security camera, then placed it in his laptop bag and took it out of the clean room. ¶ 55. T–Mobile quickly discovered that it was missing, then confronted Mr. Xiong, who denied intentionally taking it. ¶ 56. Mr. Xiong took the stolen end effector to Huawei USA's local offices, took measurements and conducted other analyses, and sent the results to Huawei's research and development team in China. ¶¶ 57–59. Mr. Xiong admitted in a June 2013 interview that both Mr. Wang's photographs and his analyses of the end effector were appropriated to assist in Huawei's development of a testing robot. ¶¶ 69–70. He admitted that he had been inquiring with third parties about developing a testing robot since early 2013. ¶ 66. A Huawei USA executive vice president admitted that Mr. Wang and Mr. Xiong acted to assist Huawei with developing a testing robot. ¶ 68.

I

A. Personal Jurisdiction Basics

[20] [21] In a case like this one, where no federal statute governs personal jurisdiction, the court's jurisdictional analysis starts with the "long-arm" statute of the state in which the court sits. *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir.2002). Washington's long-arm statute (RCW 4.28.185) extends personal jurisdiction to the broadest reach that the Due Process Clause of the federal Constitution permits. *Shute v. Carnival Cruise Lines*, 113 Wash.2d 763, 783 P.2d 78, 82 (1989).

[22] [23] [24] [25] There are two species of personal jurisdiction: specific and general. ***1201** *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir.2000). Both species depend on the defendant's contacts with the forum. "[S]pecific jurisdiction is tethered to a relationship between the forum and the claim," whereas general jurisdiction is not. *Holland Am. Line, Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 460 (9th Cir.2007). A defendant with "substantial" or "continuous and systematic" contacts with the forum state is subject to general jurisdiction, and can be haled into court on any action, even one unrelated to its contacts in the state. *Bancroft & Masters*, 223 F.3d at 1086. A defendant not subject to general jurisdiction may be subject to specific jurisdiction if the suit against it arises from its contacts with the forum state. *Id.* T–Mobile does not assert that Huawei China is subject to general jurisdiction in Washington; the court therefore considers only whether Huawei China is subject to specific jurisdiction.

B. Evidence Relevant to Personal Jurisdiction Over Huawei China

As the court has noted, Huawei China's invocation of Rule 12(b)(2), unlike its invocation of Rule 12(b)(6), permits it to go beyond the allegations of T–Mobile's complaint to introduce evidence relevant to the court's jurisdictional analysis. Huawei took advantage of that opportunity to submit a single declaration from a representative who declares that Huawei China has no physical presence in Washington and has not transacted business here. Xu Decl. (Dkt. # 55) ¶¶ 5–11. She also asserts that none of the Huawei employees identified in T–Mobile's complaint, including Mr. Wang and Mr. Xiong, were employed by Huawei China at any relevant time. *Id.* ¶¶ 11–13. The latter evidence, however, is contradicted by Huawei's admission that the decision to discipline Mr. Wang and Mr. Xiong was made in part by Huawei China executives. Stipulation (Dkt. # 60–1) ¶ 2. The same stipulation admits that Huawei China took "corrective

and disciplinary actions" against the people who supervised Mr. Wang and Mr. Xiong, including demoting personnel at both Huawei USA and Huawei China. *Id.* ¶ 5. From these admissions, the court can take the reasonable inference that Huawei China exercised control over the Huawei personnel who actually committed misconduct in T–Mobile's Bellevue facilities. Other inferences are possible, but the court is required at this stage to take only the inferences that favor T–Mobile.

What is missing from Huawei China's evidence is anything to contradict T–Mobile's allegation that it "directed both its own employees and Huawei USA employees to steal ... information from T–Mobile." ¶ 17. The closest Huawei China comes to contradicting that evidence is a generic assertion that it "did not engage in any activities in the State of Washington as alleged in the complaint." Xu Decl. (Dkt. # 55) ¶ 14.[7] But T–Mobile's claims do not depend on the allegation that Huawei China took actions in Washington, they depend on the allegation that Huawei China directed from afar the Bellevue misconduct of Mr. Xiong, Mr. Wang, and others. That uncontradicted allegation, as the court will now discuss, is a sufficient basis for the court's exercise of **personal jurisdiction** over Huawei **China**.

***1202 C. T–Mobile Passes The Three–Part Test for the Court's Exercise of Specific Jurisdiction Over Huawei China.**

[26] [27] A three-part test determines whether the assertion of specific jurisdiction over a defendant comports with the Due Process Clause:

> 1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or [a] resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
>
> 2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
>
> 3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir.2004) (quoting *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir.1987)). The plaintiff bears the burden as to the first two parts of the test. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1228 (9th Cir.2011). If the plaintiff meets that burden, the burden shifts to the defendant to make a "compelling case" that the exercise of jurisdiction is unreasonable. *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)).

[28] [29] [30] [31] [32] In the first part of the specific jurisdiction test, purposeful availment and purposeful direction are "two distinct concepts." *Schwarzenegger*, 374 F.3d at 802. In the Ninth Circuit, tort cases typically require a purposeful direction analysis, whereas contract cases typically require a purposeful availment analysis. *Washington Shoe Co. v. A–Z Sporting Goods, Inc.*, 704 F.3d 668, 672–73 (9th Cir.2012). Much of Huawei China's evidence tends to show that it did not purposefully avail itself of the privilege of conducting activity in Washington. T–Mobile's allegations, however, are allegations of tortious activity (*e.g.*, the misappropriation of trade secrets) *directed* at Washington.[8] The court thus considers whether Huawei China purposefully directed conduct at Washington. That requires consideration of the "effects" test for purposeful direction from *Calder v. Jones*, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984). *Washington Shoe Co. v. A–Z Sporting Goods, Inc.*, 704 F.3d 668, 673–79 (9th Cir.2012). That test is as follows:

> The defendant allegedly [must] have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.

Yahoo! Inc. v. La Ligue Contre Le Racisme, 433 F.3d 1199, 1206 (9th Cir.2006) (quoting *Schwarzenegger*, 374 F.3d at 803). Where a plaintiff passes the effects test, a court "may exercise personal jurisdiction over a defendant who engages in an intentional act that causes harm in the forum state, even if that act takes place outside of the forum state." *Washington Shoe*, 704 F.3d at 673.

[33] T–Mobile's allegations satisfy the effects test as to Huawei China. T–Mobile has adequately alleged that Huawei China acted intentionally. Its allegations plausibly ***1203** state that Huawei China intended to misappropriate its technology so that it could build its own testing robot. To accomplish that plan, T–Mobile asserts Huawei China directed others (like Mr. Wang and Mr. Xiong) to misappropriate information from T–Mobile's Bellevue testing facility. That is activity expressly aimed at Washington. To the extent that Huawei China

believes that its evidence that it disciplined Mr. Xiong, Mr. Wang and others is sufficient to demonstrate that it did not direct their misconduct, it is mistaken. One could plausibly infer that Huawei China disciplined them because they acted, independently, in a wrongful manner. But one could also plausibly infer that Huawei China disciplined them only to give the appearance that it had not directed their activities. Again, the court is compelled at this stage to accept the inferences that favor T–Mobile. As to the last element of the effects test, T–Mobile has adequately alleged that Huawei China knew that the Washington activity it directed from China would harm T–Mobile in Washington.

As to the second part of the **personal jurisdiction** analysis, there is no question that the claims against Huawei **China** arise out of the activity that it directed at Washington.

That brings the court to the third part of the jurisdictional analysis, where it is Huawei **China's** burden to show that the exercise of **personal jurisdiction** over it would be unreasonable. Huawei China did not attempt to discharge that burden. The court is aware of no reason that its exercise of jurisdiction over Huawei China would be unreasonable. *See Core–Vent Corp. v. Nobel Indus. AB,* 11 F.3d 1482, 1487–88 (9th Cir.1993) (listing seven factors relevant to reasonableness of exercise of personal jurisdiction); *see also Bancroft & Masters,* 223 F.3d at 1088 (noting that it is defendant's burden to make a "compelling case" of unreasonableness).

V. CONCLUSION

The court GRANTS HUAWEI China's motion to dismiss (Dkt. # 54) in part and denies it in part, dismissing only T–Mobile's tortious interference claim without prejudice.

All Citations

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