

Daily Journal

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TOP TRADE SECRETS LAWYERS 2020

Douglas E. Lumish

Lumish, the global vice chair of Latham & Watkins' litigation and trial department, is widely regarded as one of the nation's top intellectual property litigators. He regularly represents major technology industry players in market-shaping disputes, including trade secrets cases, that impact the California economy and often involve cutting-edge issues of law.

In early September, as wildfires ravaged woodland near his home on the San Francisco Peninsula, the air briefly cleared enough for him to exercise outdoors for a change. "I got on my bike for the first time in weeks," he said. "It's the first time I won't be inhaling the equivalent of a pack of cigarettes when I take a ride."

Lumish is close-mouthed about his work, declining to be quoted directly about his cases. In one new matter, Facebook Inc. hired him and his Latham team to defend against a lawsuit filed by artificial intelligence applications start-up Neural Magic Inc. over alleged trade secrets possessed by NMI's chief technology officer, Aleksandar Zlateski, before he joined Facebook. *Neural Magic Inc. v. Facebook Inc.*, 1:20-cv-10444 (D. Mass., filed March 4, 2020).

The complaint accuses Facebook of using trade secrets that Zlateski brought with him from Neural Magic when he joined the social networking company in 2019. It added that Facebook wrongly published some of the secret A.I. software at issue on the developer service GitHub. In response, Facebook took down the accused code from GitHub and refrained from using it internally. Even

so, Neural Magic sought a preliminary injunction.

In the span of two weeks, Latham said, Lumish and his team prepared a comprehensive opposition that included a source code expert declaration, a damages expert declaration and multiple fact witness declarations.

In that early skirmishing, Lumish then obtained a strong win for Facebook when U.S. District Judge Denise J. Casper of Boston—following oral arguments via Zoom—denied Neural Magic's preliminary injunction motion, finding that it had failed to show it will likely prevail on its claim that the work Zlateski allegedly brought to Facebook is a trade secret under federal law.

Casper wrote that "the approaches and concepts that Neural Magic purport to be trade secrets are matters that are widely known by people of skill in the industry, that they were known and used by Zlateski before joining Neural Magic and that Neural Magic does not derive any economic value from them."

In earlier interviews Lumish discussed the importance and the difficulty of translating arcane technologies into arguments that are readily understandable by judges and juries. "In the crucible of trial, when you have all of this chaos of witnesses and documents and things that are happening, to keep control of that, to bring that down to a story with a central theme that carries through, that you can start with and end with, is really, really hard work," he said.

— John Roemer



FIRM:
Latham & Watkins LLP

CITY:
Menlo Park

PRACTICE TYPE:
Intellectual property litigation

