

Gillette's Unfair Practices Suit Against Startup Unravels

By **Brian Amaral**

Law360, Boston (April 21, 2017, 5:13 PM EDT) -- Gillette lost yet another round in its legal rumble with a startup razor company Tuesday when a Massachusetts judge dismissed the rest of its claims against ShaveLogic over former employees allegedly taking confidential information there, but allowed ShaveLogic's counter-claims to move forward.

The dismissal on summary judgment means that Gillette, which launched the litigation, is currently left only defending itself for allegedly bringing a meritless lawsuit. It also lost on appeal earlier this year in a bid to get ShaveLogic's counter-claims tossed, lost its case against a former patent counsel, and dismissed its own trade secrets claim.

Given the facts at hand — Gillette had no evidence that its former employees actually used its confidential information for ShaveLogic, the judge found — a jury could decide that Gillette knew its lawsuit was without merit, Suffolk County Superior Court Judge Kenneth Salinger wrote.

“A reasonable fact-finder could conclude that Gillette had deliberately brought baseless claims in an attempt to bully ShaveLogic out of the market,” Judge Salinger said in an order Tuesday dismissing Gillette's claims and letting ShaveLogic's move forward.

The judge set a pretrial conference for May.

In a statement, Gillette said it was considering its options “to address this unfair decision.”

“We believe the real victims are the many Gillette researchers and engineers who lent their expertise, passion and careers to bring these inventions to life,” the statement continued. “The defendants literally walked away with confidential documents and prototypes, which were returned to Gillette only because of this litigation.”

ShaveLogic said: “We are pleased with the ruling of the Massachusetts Superior Court dismissing Gillette's claims against ShaveLogic and its employees. We have always contended that Gillette's claims were without merit and we did nothing wrong. We can now move forward and deliver ShaveLogic's innovations to the global shaving market.”

Gillette said in a January 2015 lawsuit that several former employees helped ShaveLogic develop a new disposable cartridge shaving razor, and did so with Gillette's confidential information. The suit, in Massachusetts state court, said ShaveLogic and Gillette's former employees violated chapter 93A, the

state's unfair competition law. It also alleged its ex-employees violated non-disclosure agreements when they went to work for ShaveLogic. The suit sought to have ShaveLogic's patents put in a trust.

It has not yet found success.

"Since Gillette has been unable to muster any evidence that defendants used Gillette's confidential information to develop razors for ShaveLogic, defendants are entitled to summary judgment on those claims," Judge Salinger wrote.

Gillette is part of conglomerate Procter & Gamble; ShaveLogic, based in Texas, has a website but no product on the market yet.

Judge Salinger found that everything Gillette said was pilfered from its confidential information — like the magnetic system attaching the razor handle to the cartridge — was already well known in the marketplace, and in some cases didn't belong to Gillette at all.

Even if the employees learned about the magnetic system to attach razor cartridge to handle while at Gillette, that doesn't make using the information an unfair practice, Judge Salinger found.

"Defendants committed no unfair trade practices by using well known design principles or obvious combinations of them," Judge Salinger wrote.

Gillette's arguments have sometimes been contradictory, Judge Salinger wrote. For example, even though it said some ideas for loading razor cartridges were Gillette's own secrets, it has also challenged a ShaveLogic razor patent at the U.S. Patent and Trademark Office by saying it is not novel at all.

And even though some of the employees took razor prototypes, hard drives and other documents with them, Judge Salinger found, they weren't prohibited from doing just that.

"No contract barred defendants from retaining or looking at Gillette materials; their only obligation on this score was not to use or disclose Gillette confidential information," Judge Salinger wrote. "Merely possessing or even accessing arguably confidential information does not violate the parties' contracts."

Gillette had argued that ShaveLogic's early designs for a razor, drawn by ShaveLogic's founder, were remarkably similar to a sketch of a prototype that one of its former employees had in his possession. Yet ShaveLogic contends its founder had drawn the sketches well before he even met the ShaveLogic employees.

ShaveLogic counter-sued for intentional interference with advantageous relations and for violations of the unfair practices law. Those will go forward, because ShaveLogic doesn't have to show that Gillette knew of particular relationships it was interfering with, nor does it have to show Gillette knew its lawsuit was baseless, Judge Salinger said.

A jury, Judge Salinger said, could find "Gillette asserted but then dismissed trade secret claims; is unable to present any evidence that defendants misused Gillette's confidential information; claimed in this litigation that Gillette owns the concept of magnetic attachments, but argued to the United States Patent and Trademark Office that this concept was publicly known; claimed that widely known design concepts belong to Gillette, but then conceded that was incorrect."

ShaveLogic is represented by Mark Levine, Brian Swanson and Tulsi Gaonkar of Bartlit Beck Herman Palenchar & Scott LLP and Nicholas Stellakis of Manion Gaynor & Manning LLP.

Gillette is represented by Christopher Morrison, Wendy Ballard, Robert P. Ducatman and Angela Gott of Jones Day.

The case is The Gillette Co. v. Craig Provost et al., case number 1584CV00149, in the Suffolk County, Massachusetts Superior Court.

--Editing by Philip Shea.

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