

FILED
APR 22 2003

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of Santa Clara
BY: *[Signature]* DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

AJAXO, INC., a Delaware corporation,
Plaintiff,

v.

E*TRADE GROUP, INC., a Delaware
corporation; and EVERYPATH, INC., a
California corporation,

Defendants.

CASE NO. CV 793529

SPECIAL VERDICT FORM

We, the jury in the above-entitled action, find the following special verdict on the following questions submitted to us:

Ajaxo's Claim for Breach of Non-Disclosure Agreement against E*TRADE

QUESTION NO. 1: Did Ajaxo prove by a preponderance of the evidence that E*TRADE breached the Non-Disclosure Agreement by disclosure to Everypath of information protected under the Non-Disclosure Agreement?

Answer "yes" or "no"

ANSWER: yes

If your answer to this question is "no," then skip Questions No. 2-4 and answer Question No. 5. If your answer to this question is "yes," then go on to Question No. 2.

QUESTION NO. 2: Did E*TRADE prove by a preponderance of the evidence that Ajaxo waived any breach by E*TRADE of the Non-Disclosure Agreement?

Answer "yes" or "no"

ANSWER: no

If your answer to this question is "yes," then skip Questions No. 3-4 and answer Question No. 5. If your answer to this question is "no," then go on to Question No. 3.

QUESTION NO. 3: Did Ajaxo prove by a preponderance of the evidence that it sustained damages as the proximate result of E*TRADE's breach of the Non-Disclosure Agreement?

Answer "yes" or "no"

ANSWER: yes

If your answer to this question is "no," then skip Question No. 4 and answer Question No. 5. If your answer to this question is "yes," then go on to Question No. 4.

QUESTION NO. 4: What is the amount of damages, if any, suffered by Ajaxo as the proximate result of E*TRADE's breach of the Non-Disclosure Agreement, not including any amount of damages, if any, that Ajaxo could have prevented in the exercise of reasonable care and diligence?

ANSWER: \$ 1.29 million

Go on to Question No. 5.

Ajaxo's Claim for Misappropriation against E*TRADE

QUESTION NO. 5: Did Ajaxo prove by a preponderance of the evidence that it is the owner or licensee of a trade secret?

Answer "yes" or "no"

ANSWER: yes

If your answer to this question is "no," then stop here and sign and return this verdict. If your answer to this question is "yes," then go on to Question No. 6.

QUESTION NO. 6: Did Ajaxo prove by a preponderance of the evidence that E*TRADE disclosed the trade secret of Ajaxo to Everypath without Ajaxo's express or implied consent?

Answer "yes" or "no"

ANSWER: yes

If your answer to this question is "no," then skip Questions No. 7-10 and answer Question No. 11. If your answer to this question is "yes," then go on to Question No. 7.

QUESTION NO. 7: Did Ajaxo prove by a preponderance of the evidence that E*TRADE knew or had reason to know that E*TRADE's knowledge of the trade secret was acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use?

Answer "yes" or "no"

ANSWER: yes

If your answer to this question is "no," then skip Question Nos. 8-10 and go on to Question No. 11. If your answer to this question is "yes," then go on to Question No. 8.

QUESTION NO. 8: Did E*TRADE prove by a preponderance of the evidence that Ajaxo acted with unclean hands as defined in the instructions?

Answer "yes" or "no"

ANSWER: ~~yes~~ no

If your answer to this question is "no," then go on to Question No. 9. If your answer to this question is "yes," then skip Questions No. 9-10 and answer Question No. 11.

QUESTION NO. 9: Did Ajaxo prove by clear and convincing evidence that E*TRADE acted willfully and maliciously in misappropriating the trade secret of Ajaxo?

Answer "yes" or "no"

ANSWER: yes

If your answer to this question is "no," then skip the next question and answer Question No. 11. If your answer to this question is "yes," then go on to Question No. 10.

QUESTION NO. 10: Did Ajaxo prove by a preponderance of the evidence that E*TRADE authorized or ratified the willful and malicious conduct referred to in your answer to Question No. 9?

Answer "yes" or "no"

ANSWER: yes

Go on to Question No. 11.

Ajaxo's Claim for Misappropriation against Everypath

QUESTION NO. 11: Did Ajaxo prove by a preponderance of the evidence that Everypath acquired and used the trade secret of Ajaxo without Ajaxo's express or implied consent?

Answer "yes" or "no"

ANSWER: ~~no~~ yes

If your answer to this question is "no," then stop here and sign and return this verdict. If your answer to this question is "yes," then go on to Question No. 12.

QUESTION NO. 12: Did Ajaxo prove by a preponderance of the evidence that Everypath knew or had reason to know that Everypath's knowledge of the trade secret was derived from or through a person who owed a duty to Ajaxo to maintain its secrecy or limit its use?

Answer "yes" or "no"

ANSWER: yes

If your answer to this question is "no," then stop here and sign and return this verdict. If your answer to this question is "yes," then go on to Question No. 13.

QUESTION NO. 13: Did Everypath prove by a preponderance of the evidence that Ajaxo acted with unclean hands as defined in the instructions?

Answer "yes" or "no"

ANSWER: ~~yes~~ no

If your answer to this question is "no," then go on to Question No. 14. If your answer to this question is "yes," then stop here and sign and return this verdict.

QUESTION NO. 14: Did Ajaxo prove by clear and convincing evidence that Everypath acted willfully and maliciously in misappropriating the trade secret of Ajaxo?

Answer "yes" or "no"

ANSWER: yes

If your answer to this question is "no," then stop here and sign and return this verdict. If your answer to this question is "yes," then go on to Question No. 15.

QUESTION NO. 15: Did Ajaxo prove by a preponderance of the evidence that Everypath authorized or ratified the willful and malicious conduct referred to in your answer to Question No. 14?

Answer "yes" or "no"

ANSWER: yes

DATED: 4/22/03

Camela Jaeger
Foreperson