

Flow Traders Software Theft Case Headed For Trial

Law360, New York (July 28, 2014, 7:21 PM ET) -- A New York judge on Monday found grand jury proceedings against a former trader for a Flow Traders BV affiliate and an associate of his were legally sound, setting the stage for a trial on charges that they schemed to steal the Dutch trading house's proprietary software and set up their own shop.

During a hearing in a lower-Manhattan courtroom, New York Supreme Court Judge Laura Ward said she found the evidence presented to the grand jury to be sufficient and set an October trial date for Jason Vuu, a former trader for the company, and Simon Lu, who did not work for the company.

"The defendant has not supplied the court with any evidence of a defect in the grand jury proceedings nor do the grand jury proceedings reflect any such defect," Judge Ward said.

In August, Vance launched separate complaints charging Lu, Vuu and another trader, Glen Cressman, with unlawful duplication of computer-related material and unauthorized use of secret scientific material.

Vance claims that on seven occasions between August 2011 and August 2012, Vuu sent files from his work email account to his personal email account containing Flow Traders' trading strategies and valuation algorithms. Vuu is also accused of sending files containing portions of the firm's proprietary source code, which "allows the company to structure and execute its trades on the financial markets," prosecutors said.

Prosecutors said Lu, a friend of Vuu from their college days at the Massachusetts Institute of Technology, plotted with Vuu to "use the [source] code and knowledge learned from Flow Traders to create their own trading company."

The defense has argued that the statute penalizing unlawful use of secret scientific material doesn't apply in this instance since it was enacted in 1967, before there were such computer crimes, and is directed at industrial espionage and trade secret theft.

"No person reading this history could fairly conclude that [the statute] reaches the misappropriation of computer code," attorneys for Lu said in court documents.

Vance's office countered that the statute doesn't restrict the definition of trade secrets to those manifesting themselves in any particular format, instead including any "article, material or device" that embodies a trade secret.

Prosecutors have also said they've uncovered email and chat messages between Vuu and Lu regarding their plan to use the source code to create their own company.

But the defense claims that a key chat exchange between Vuu and Lu doesn't contain anything incriminating, as it shows that Lu told Vuu to get a look at Flow Traders' source code only if the trading house allowed him to openly see it. When Lu later began programming the back end of a trading platform for their planned venture, he didn't use the Flow Traders code, and instead employed a program he got for free on the Internet, he claimed in his pre-trial motions.

An attorney for Vuu, Jeremy Saland of Crotty Saland PC, noted that he also had challenged a search warrant executed against his client.

Lu's attorney, Paul Shechtman of Zuckerman Spaeder LLP, said after the hearing that he still doesn't think the government has enough evidence to sustain an indictment against Lu and Vuu.

A spokeswoman for Vance's office declined to comment.

Only July 7, Judge Ward similarly found that a grand jury had enough evidence to sustain the indictment of Cressman, who is accused of stealing proprietary strategy files and source code from Flow Traders.

Cressman's attorney, Charles Ross of Charles A. Ross & Associates LLC, had argued that none of the files Cressman is accused of taking was part of Flow Traders' proprietary software known as "Pit Bull" but instead they were only Excel spreadsheets relating to nonsensitive information.

Judge Ward said, however, that the grand jury relied on extensive exhibits and took its time in reaching a decision. She set a trial date for Cressman on Oct. 14.

Vuu is represented by Jeremy Saland of Crotty Saland PC. Lu is represented by Paul Shechtman of Zuckerman Spaeder LLP.

The government is represented by Robert Shaull.

The case is People v. Simon Lu et al., case number 03870/2013, in the Supreme Court of the State of New York, County of New York.

--Additional reporting by Max Stendahl. Editing by Richard McVay.