Island Intellectual Prop. LLC v TD Ameritrade, Inc.
2026 NY Slip Op 31391(U)
April 8, 2026
Supreme Court, New York County
Docket Number: Index No. 152548/2025
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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ISLAND INTELLECTUAL PROPERTY LLC,

Plaintiff,

- v -

TD AMERITRADE, INC. (N/K/A AMERITRADE OF NEW YORK, INC.), TD AMERITRADE CLEARING, INC.,TD AMERITRADE TRUST COMPANY, TD AMERITRADE HOLDING CORP., THE CHARLES SCHWAB CORPORATION

Defendant.

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INDEX NO. 152548/2025

MOTION DATE 08/22/2025, 08/22/2025

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44
were read on this motion to/for STAY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58
were read on this motion to/for DISMISSAL.

The Defendants in this case are not entitled to a stay of this lawsuit (Mtn. Seq. No. 001) pursuant to CPLR § 2201 pending determination of the limited proceeding in the Eastern District of Texas (the **Texas Federal Court**) seeking to enjoin the Plaintiff from pursuing its misappropriation of trade secrets claims in the Commercial Division in New York because the Texas Federal Court has already considered their application for an injunction and denied it in its entirety (*see Ameritrade of New York, Inc. v Island Intellectual Prop. LLC*, 2025 WL 3543629 [ED Tex, Dec. 10, 2025, No. 2:25-CV-00849-JRG-RSP]).

The Defendants are also not entitled to dismissal of this lawsuit (Mtn. Seq. No. 002) in its entirety because the Plaintiff adequately pleads a claim for the misappropriation of trade secrets

during the three year SOL period which accrued at the very latest as of April 27, 2022.[1] As discussed below, to the extent that the Defendants argue that the SOL period accrued earlier because the Plaintiff was on record notice of its claims, this argument raises factual issues not properly decided on a CPLR 3211 motion. To wit, according to the Plaintiff, it was not until it obtained the source code in the Patent Action (hereinafter defined) that it came to understand that its intellectual property was being misappropriated. By letter dated April 27, 2022, from Vimal M. Kapadia to Judith Shwartz (NYSCEF Doc. No. 67), the restricted source code bearing BATES TD-SCHWAB-SC0000579 - TD-SCHWAB-SC0000703 was delivered on April 27, 2022. As such, this is the latest time that the claims accrued and claims which fall outside of the applicable statute of limitations from this date must be dismissed as untimely.

The Defendants are however entitled to dismissal of the unfair competition, unjust enrichment, and conversion claims on this motion because at bottom these claims are duplicative of the misappropriation of trade secrets claim (*see Fada Intl. Corp. v Cheung*, 57 AD3d 406, 406 [1st Dept 2008]).

THE RELEVANT FACTS AND CIRCUMSTANCES

On October 7, 2009, the Plaintiff, pursuant to an Assignment and License Agreement, acquired all of the rights, title, and interest to the intellectual property of Double Rock Corporation (**Double Rock**), its corporate affiliate (NYSCEF Doc. No. 4 ¶ 2). In exchange, the Plaintiff

[1] According to the Defendants, the source code was available for inspection prior to this time period (*i.e.,* as of March 1, 2022 [NYSCEF Doc. No. 62 ¶ 2). According to a letter, dated April 27, 2022, from Vimal M. Kapadia to Judith Shwartz (NYSCEF Doc. No. 67), the restricted source code bearing BATES TD-SCHWAB-SC0000579 - TD-SCHWAB-SC0000703 was delivered on that date. For the purposes of this motion, the latest the claims could have accrued is April 27, 2022.

granted Double Rock a nonexclusive, fully paid-up, royalty free, worldwide, perpetual right and license in such intellectual property (*id.* ¶ 15). Double Rock and its affiliates and the Defendants entered into a Fund Administrative Services Agreement, effective as of January 1, 2006, pursuant to which the parties agreed not to disclose or misuse each other's proprietary or confidential information (*id.* ¶¶ 23-26).

Over the course of several decades, Bruce Bent Sr. and his son Bruce Bent II, on behalf of Double Rock, developed extensive technological inventions which have been repeatedly recognized by the U.S. Patent and Trademark Office, resulting in the issuance of more than 70 patents (*id.* ¶ 30). In July 2021, the Plaintiff sued the Defendants in the Texas Federal Court for patent infringement pursuant to 35 USC § 1 *et seq.* (the **Patent Action**), based on Patent Nos. 7,519,551, 7,933,821, 8,311,916, 7,509,286, and 7,680,734 (the **Island Patents**) (NYSCEF Doc. No. 14 ¶¶ 1, 18-22). In the Patent Action, the Plaintiff alleged that the Defendants infringed upon those patents by offering products and services that practiced the claimed inventions (*id.* ¶¶ 1, 142-286). Ultimately, the Texas Federal Court granted summary judgment in favor of the Defendants and dismissed the action because the subject matter of the '286, '551, and '821 Patents are not patent eligible pursuant to 35 USC § 101 (NYSCEF Doc. Nos. 18, 20).

The Bents also developed significant confidential and proprietary information and know-how relating to cash sweep and other deposit investment products and services, including FDIC-insured deposit sweep programs (the **Island Trade Secrets**) (NYSCEF Doc. No. 4 ¶ 31). Pursuant to the Assignment and License Agreement, the Plaintiff owns the Island Trade Secrets and has the exclusive right to assert claims relating to it (*id.* ¶ 32).

On February 26, 2025, the Plaintiff brought this lawsuit asserting claims for trade secret misappropriation, unfair competition, unjust enrichment, and conversion (*id.* ¶¶ 58-96). The Plaintiff alleges that the Defendants obtained the Plaintiff's confidential and proprietary information in connection with a long-standing business relationship, subject to confidentiality obligations, and thereafter misused that information to develop and operate competing financial products without authorization (*id.* ¶¶ 42-57).

In response, on August 22, 2025, the Defendants (i) commenced a new proceeding in the Texas Federal Court, seeking a preliminary and permanent injunction to enjoin this Court from hearing the Plaintiff's claims based on its argument that this lawsuit was barred by the doctrine of res judicata, and (ii) filed a motion in this Court (Mtn. Seq. No. 001) to stay this action pending determination of their application seeking an injunction in the Texas Federal Court. In addition, the Defendants moved to dismiss this lawsuit (Mtn. Seq. No. 002) arguing that, among other things, the Plaintiff's claims are barred by res judicata, the statute of limitations, and otherwise fail to state a claim.

On December 10, 2025, the Texas Federal Court (Gilstrap, J.) denied the Defendants' motion for an injunction because res judicata does not bar the misappropriation of trade secrets claim from being litigated in New York as (i) the Plaintiff's trade secret claims were not "actually litigated and decided" in the Patent Action, and (ii) the Court dismissed all non-invalidity claims without prejudice:

> … [T]he only matter decided in the original patent infringement suit, and expressed in the judgment therein, was the invalidity of Island's patent. Island did

> not assert a trade secret claim in the first action. Perhaps such a claim could have been raised. However, in the Fifth Circuit at least, res judicata in the context of the relitigation exception only applies to claims that were actually decided in a first action. *See Deere*, 67 F. App'x at 253 ("While the doctrine of res judicata might encompass claims which could have been brought in the federal action, the relitigation exception only applies to claims that were actually litigated and decided in the federal action." (citing *Tex. Commerce Bank*, 138 F.3d at 182)); *Hill*, 953 F.3d at 308 ("Hill III's argument [about the relitigation exception] . . . is a red herring. It is true that for the relitigation exception to apply, the enjoined litigation must involve an issue 'actually' decided by the federal court. But here, both the district court and the probate court did decide that [issue]." (citing *Chick Kam Choo*, 486 U.S. at 148)); *Alkek*, 2012 WL 11060, at *11–12 ("[T]he Blanchard court felt that '[a]s the claims unfold, the state court will be in a better position to consider . . . res judicata.'" (citing *Blanchard*, 553 F.3d at 408 n.12)). Even if the Court was convinced to apply the broader res judicata standard against all claims that could have been raised, it still would not save Plaintiffs here because the Court dismissed all non-invalidity claims in the previous action without prejudice. Moreover, the Court may only issue an antisuit injunction under the relitigation exception "if preclusion is *clear beyond peradventure*," *Smith*, 564 U.S. at 307 (emphasis added), and, after considering all arguments made in the briefing and at the hearing, the Court finds that Plaintiffs have failed to meet this burden. As such, in this instance, Plaintiffs have failed to prove either success or likelihood thereof.

(*Ameritrade of New York, Inc. v Island Intellectual Prop. LLC*, 2025 WL 3544656, at *4 [ED Tex, Nov. 19, 2025, No. 2:25-CV-00849-JRG-RSP], report and recommendation adopted, 2025 WL 3543629 [ED Tex, Dec. 10, 2025, No. 2:25-CV-00849-JRG-RSP]).

DISCUSSION

I. The Motion Seeking a Stay is Denied as Moot

Pursuant to CPLR § 2201, a court has broad discretion to grant a stay to prevent inconsistent adjudications, duplicative proof, and the unnecessary expenditure of resources (*215 W. 84th St.*

Owner LLC v Ozsu, 209 AD3d 401, 401 [1st Dept 2022]). However, a court may not exercise its discretion to enable a party to gain a tactical advantage by steering the dispute into a forum it perceives as more favorable (*Ackert v Ausman*, 29 Misc 2d 974, 979 [Sup Ct, NY County 1961]).

As discussed above, the Texas Federal Court has already denied the Defendants' motion for an injunction in its entirety. Thus, the principal basis for the requested stay (that the federal proceeding may enjoin this action or otherwise be dispositive of it) has been rendered moot. As such, the Defendants' motion to stay this action is DENIED.

II. The Misappropriation (first cause of action) claims which accrued prior to April 27, 2022, and the Unfair Competition (second cause of action) claim , the unjust enrichment (third cause of action) claim, and the conversion (fourth cause of action) claims are dismissed

A party may move to dismiss one or more causes of action pursuant to CPLR §§ 3211(a)(5) and (7). Pursuant to CPLR § 3211(a)(5), an action may be dismissed due to res judicata or on the grounds that the action is time-barred by the statute of limitations. On a motion to dismiss pursuant to CPLR § 3211(a)(7), the court must afford the pleadings a liberal construction and accept the facts alleged in the complaint as true, according the plaintiff the benefit of every favorable inference (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994]). The court's inquiry on a motion to dismiss is whether the facts alleged fit within any cognizable legal theory (*id.*). Bare legal conclusions are not accorded favorable inferences, however, and need not be accepted as true (*Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999]).

Res Judicata does not bar this lawsuit

The doctrine of res judicata bars future actions between the same parties on the same cause of action following the entry of a valid final judgment based on all claims arising out of the same transaction or series of transactions, even if based on different theories or seeking a different remedy (*Landau v LaRossa, Mitchell & Ross*, 11 NY3d 8, 12 [2008]).

As discussed above, the Texas Federal Court did not involve the misappropriation of trade secrets claims asserted in this lawsuit. Indeed, according to the Plaintiffs, they did not learn that the intellectual property which was allegedly misappropriated had in fact been misappropriated until they received the source code in discovery (*see* NYSCEF Doc. No. 64 at 1). Among other things, as the Texas Federal Court held, this is a different claim than the claim levelled for patent infringement (*Ameritrade of New York, Inc.*, 2025 WL 3544656, at *4 ["[T]he only matter decided in the original patent infringement suit, and expressed in the judgment therein, was the invalidity of Island's patent. Island did not assert a trade secret claim in the first action."]; *see also DivX, LLC v Harman International Industries, Inc.*, 237 AD3d 466, 467-468 [1st Dept 2025] [providing that contractual claims arising from a technology license agreement are separate from prior patent claims and are not precluded by their adjudication]).[2] Thus, the Defendants' argument that the Complaint should be dismissed based on res judicata fails.

The Claims are Subject to a Three Year Statute of Limitations

Claims sounding in misappropriation of trade secrets, unfair competition, conversion and unjust enrichment are all subject to a three year statute of limitations (*see CDx Labs., Inc. v Zila, Inc.*, 162 AD3d 970, 971 [2d Dept 2018]; *Vigilant Ins. Co. of Am. v Hous. Auth. of City of El Paso,*

[2] This case involves the breach of a license agreement. However, the point remains the same that federal patent claims are different than other state law claims.

Tex., 87 NY2d 36, 44 [1995]; *Bandler v DeYonker*, 174 AD3d 461, 462 [1st Dept 2019]. Under the continuing tort doctrine, each successive use or misappropriation may constitute a new actionable wrong with its own limitation *(CWCapital Cobalt VR Ltd. v CWCapital Invs. LLC*, 195 AD3d 12, 18 [1st Dept 2021]; *Andrew Greenberg, Inc. v Svane, Inc.*, 36 AD3d 1094, 1098-1099 [3d Dept 2007]). The continuing tort doctrine does not however apply where the plaintiff had knowledge of the misappropriation and use of its trade secrets (*Voiceone Communications, LLC v Google Inc.*, 2014 WL 10936546, at *10 [SD NY, Mar. 31, 2014]).

According to the Defendants and relying on, among other things, *Universal Instruments Corp. v Micro Sys. Eng'g, Inc.*, 924 F3d 32, 50 [2d Cir 2019], the Plaintiffs were on constructive notice of the alleged misappropriation before February 26, 2022 and inasmuch as the lawsuit was not filed until February 26, 2025, the Court should dismiss the case entirely based on the statute of limitations (*see Universal Instruments Corp. v Micro Sys. Eng'g, Inc.*, 924 F3d 32, 50 [2d Cir 2019] [providing that constructive or inquiry notice is sufficient to be put on notice of misappropriation]).

For their part, and based on the continuing tort doctrine, the Plaintiff alleges that the Defendants engaged in ongoing misappropriation of trade secrets through at least 2023 (NYSCEF Doc. No. 4 ¶¶ 64, 73, 86, 94). In fact, according to the Plaintiff, it was not until April 27, 2022, the date the Plaintiff received the source code, that it came to understand that its intellectual property was being misappropriated. Inasmuch as the lawsuit was filed on February 26, 2025 -- *i.e.*, within three years of April 27, 2022, they argue, that all of the claims are saved – even those that

accrued prior to February 26, 2022, such that none of the claims should be dismissed on statute of limitations grounds. They are not entirely correct.

To the extent that the Defendants argue that the Plaintiff was on constructive notice prior to February 26, 2022, the Plaintiff is correct that dismissal is not appropriate at this stage of the lawsuit because whether the Plaintiff was on constructive notice prior to receiving the source code on April 27, 2022, raises factual issues not properly resolved on a CPLR 3211 motion. However, the Plaintiff is not correct that the claims which accrued before April 27, 2022 are saved based on their "discovery" of the misappropriation. Unlike fraud, misappropriation and conversion are not subject to a discovery rule which serves to extend the statute of limitations (*see Zirvi v Flatley*, 838 Fed Appx 582, 586 [2d Cir 2020]; *Vigilant Ins. Co. of Am. v Hous. Auth. of City of El Paso, Tex.*, 87 NY2d 36, 44 [N.Y. 1995]). As such the branch of the motion seeking to have the claims dismissed based on statute of limitations grounds is GRANTED to the extent that the claims which accrued prior to April 27, 2022 are DISMISSED.

The Complaint States a Claim for Misappropriation of Trade Secrets (first cause of action)

To state a claim for trade secret misappropriation, a plaintiff must allege possession of a trade secret, and use of that trade secret by defendants in breach of an agreement, confidential relationship, or duty, or through improper means (*Schroeder v Pinterest Inc.*, 133 AD3d 12, 27 [1st Dept 2015]). As discussed above, the Complaint alleges that Plaintiff possessed proprietary, confidential information, disclosed it to Defendants pursuant to confidentiality obligations, and that the Defendants used that information without authorization to develop competing products

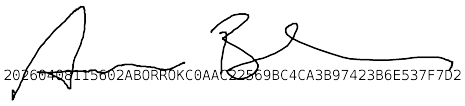
(NYSCEF Doc. No. 4 ¶¶ 42-57). Taking these allegations as true, the Plaintiff adequately pleads a claim for trade secret misappropriation.

The Unfair Competition, Unjust Enrichment and Conversion Claims are dismissed

The unfair competition, unjust enrichment, and conversion claim, however, are dismissed as duplicative of the misappropriation of trade secrets claim (*see Fada Intl. Corp. v Cheung*, 57 AD3d 406, 406 [1st Dept 2008]). Simply put, they arise from the same alleged misappropriation and seek the same relief (*compare* NYSCEF Doc. No 4. ¶¶ 70-74 [unfair competition], *and id.* ¶¶ 81-87 [unjust enrichment], *and id.* ¶¶ 90-95 [conversion], *with id.* ¶¶ 60-66 [trade secret misappropriation]). Additionally, the court notes that the conversion must also be dismissed because the Plaintiffs do not allege that the Defendants have the unauthorized dominion over their property to their complete exclusion (*Colavito v New York Organ Donor Network*, 8 NY3d 43, 49-50 [2006]; *see also Fischkoff v Iovance Biotherapeutics, Inc.*, 339 F Supp 3d 408, 415. As such, the branch of the motion seeking to dismiss the claims sounding in unfair competition, unjust enrichment, and conversion is GRANTED.

Accordingly, it is ORDERED that the Defendants' motion for a stay is DENIED; and it is further

ORDERED that the Defendants' motion to dismiss the Complaint is GRANTED solely to the extent that (i) the unfair competition, unjust enrichment, and conversion claims are dismissed in their entirety, and (ii) the misappropriation of trade secrets claims which accrued prior to April 27, 2022 are dismissed, but is otherwise denied.



4/8/2026
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE