

Pharmacy Loyalty Card Co. Escapes \$250M IP Suit

By **Kelcee Griffis**

Law360, New York (February 13, 2017, 7:43 PM EST) -- A New York state court judge on Friday freed health-care technology company McKesson Specialty Arizona Inc. from a \$250 million trade-secrets suit launched by a competitor accusing the company of stealing its method for processing prescription discounts with loyalty card programs.

Following a bench trial, New York Supreme Court Judge Saliann Scarpulla found that PSKW LLC and its predecessor TouchTone Media Inc. had not proved that their method for splitting co-pay costs and assigning discounts at the register was novel or only held by them.

The suit, originally filed in 2007, stemmed from a failed business partnership between McKesson and PSKW. According to the opinion, PSKW had claimed McKesson violated a nondisclosure agreement after the companies tried to collaborate on a multipayer coordination of benefits prescription drug loyalty card, and the talks broke down.

PSKW said its program included linking co-pay cards to a pharmacy's system and calculating a patient's co-pay with discounts through a loyalty card program. It claimed it told McKesson about the program in 2004, when the companies were considering a partnership that would specifically target Pfizer Inc. as a client.

After the partnership fell through, McKesson filed a patent application for a product that PSKW thought was suspiciously similar to the designs it disclosed during the partnership talks, according to the opinion. Citing McKesson's LoyaltyScript benefits system, PSKW sued in August 2007 for breach of nondisclosure agreement, misappropriation of trade secrets and unfair competition, among other claims.

The suit asked for nearly \$250 million in damages and an assignment of McKesson's patents, according to a statement from Covington & Burling LLP, which represented McKesson at trial.

McKesson contended that the elements that comprised PSKW's program were industry standard at the time, saying other companies were already developing and launching similar services. McKesson had already been developing its own multi-payer coordination system prior to the PSKW talks, the opinion said.

At trial, McKesson employees testified that the catalyst for developing the program was actually an instance when the company lost out on business from AstraZeneca PLC because it didn't have a benefits-coordination feature, according to the opinion.

Judge Scarpulla said McKesson convincingly presented testimony that other companies in the pharmaceutical industry were indeed developing similar programs and that PSKW didn't own the method.

In dismissing the complaint, the court said McKesson has a "wealth of internal marketing and pricing information on prescription drug loyalty cards," so it's unlikely that it would need to steal PSKW's information for product development. The opinion also said PSKW had not been able to show that McKesson wrongly used its information in developing LoyaltyScript.

Clara J. Shin, of Covington & Burling LLP, told Law360 on Monday that McKesson is pleased with the decision.

"We're gratified by the court's judgement, which confirms McKesson independently developed its LoyaltyScript product," she said.

Counsel for PSKW could not be reached for comment late Monday.

McKesson is represented by Clara J. Shin, Nathan Shafroth, Robert T. Haslam and Christopher Y. L. Yeung of Covington & Burling LLP.

PSKW is represented by Robert J. Lane Jr., Jodyann Galvin, Robert J. Fluskey Jr. and Melissa N. Subject of Hodgson Russ LLP.

The case is PSKW LLC v. McKesson, index number 602921/2007, in the Supreme Court of the State of New York, New York County.

--Editing by Pamela Wilkinson