IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

OUTLAW BEVERAGE, INC.,	:	
	:	
Plaintiff,	:	
	:	
v	:	C. A. No.
	:	2019-0342-AGB
LANCE COLLINS and A SHOC BEVERAGE, LLC,	:	
	:	
	:	
Defendants.	:	

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Chancery Court Chambers
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Tuesday, June 18, 2019
1:33 p.m.

- - -

BEFORE HON. ANDRE G. BOUCHARD, Chancellor

- - -

TELEPHONIC RULINGS OF THE COURT ON PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

CHANCERY COURT REPORTERS
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THE COURT: Good afternoon. This is the Chancellor on the line. Could I please have appearances for the record.

MR. KELLY: Good afternoon, Your Honor. This is Chris Kelly from Potter Anderson for plaintiff, Outlaw Beverage, Inc. And I have with me Alan Silverstein and Callan Jackson from my office, and I also have on the line Paul Beckwith and Andrew O'Connor from Goulston & Storrs.

THE COURT: Thank you.

And who do we have on the line for the defendants?

MR. MORITZ: Good afternoon, Your Honor. This is Garrett Moritz from Ross Aronstam on behalf of defendants Lance Collins and A Shoc Beverage, LLC. I'm joined by my colleague Anne Steadman. I'm also joined on the line by co-counsel from Gibson Dunn, Marshall King, Rob Walters, and Howard Hogan.

THE COURT: Is that the entire lineup?

MR. KELLY: Yes, Your Honor. For plaintiff.

THE COURT: All right. Thank you.

Just give me one second.

All right. Thank you, Counsel. Sorry for the interruption. This is going to take a little time, so I would ask you to please be patient.

Before the Court is the motion of plaintiff, Outlaw Beverage, Inc., for a preliminary injunction to enjoin defendants, Lance Collins and A Shoc Beverage, LLC, from launching the sale of a new energy drink known as "Adrenaline Shoc." The Court heard argument on this motion last Wednesday, June 12th. I'm providing this ruling now in the form of a transcript ruling because it was made clear to the Court that time is of the essence in this case. That is because A Shoc Beverage, LLC -- which I will refer to as "A Shoc" -- is ready to introduce Adrenaline Shoc into the market, and but for the pending motion, would do so immediately.

I'm going to give you the bottom line first, so you know the outcome and can listen to my reasoning without having to worry about taking notes, since a transcript of this ruling will be available later. For the reasons I'm now going to explain, the motion for a preliminary injunction will be denied.

I'm going to dispense with providing a recitation of the factual background, which was

covered thoroughly in the parties' briefs, and will turn directly to my analysis of the issues, during which I will refer, where appropriate, to relevant parts of the record. For simplicity, when I refer to documents that were submitted by the parties, I will use the abbreviations "PX" for Outlaw and "DX" for the defendants.

The standard for deciding a motion for a preliminary injunction is well settled. "To obtain a preliminary injunction, a plaintiff must establish that there is a reasonable probability of success on the merits, that irreparable harm will result if an injunction is not granted, and that the balance of equities favors the issuance of the injunction."

Before turning to those elements, I'm going to address a threshold issue. The defendants argue that Outlaw should be barred from obtaining injunctive relief under the doctrines of laches and acquiescence on the theory that Outlaw knew that Collins had no intention of putting Adrenaline Shoc into Outlaw as of October 2018, yet waited for seven months -- until May 2019 -- to file this action and its application for a preliminary injunction.

I will not address the issue of

acquiescence, but in my opinion, defendants' assertion of laches is meritorious. Although there is no bright-line test, there are three generally accepted elements that the defendant must prove to show laches: First, knowledge by the plaintiff of the basis for a legal claim; second, the plaintiff's unreasonable delay in bringing the claim; and, third, resulting prejudice to the defendant.

Our Supreme Court has explained that under the doctrine of laches, "an unreasonable delay can range from as long as several years to as little as one month," and that "the temporal aspect of the delay is less critical than the reasons for it." This Court has found a delay of just two weeks to be unreasonable under certain circumstances and has applied the doctrine of laches and the concept of untimeliness underlying that doctrine specifically in the context of denying requests for a preliminary injunction.

Turning to the facts here, the record shows that Delgado-Jenkins, who became Outlaw's CEO as of October 5, 2018, and whose knowledge is therefore attributable to Outlaw, was aware of two critical facts as of mid-October 2018. First, Delgado-Jenkins

was aware as of this time that Collins had applied for trademarks in the name of Chez Isabelle, LLC for Adrenaline Rush, Adrenaline Shot, Adrenaline Shoc, and the "A" logo. That can be found in the record at DX 5 and PX 40, which are emails Delgado-Jenkins received on September 19, 2018, and October 1, 2018, and in his deposition at pages 182 and 188.

Second, on October 20th, 2018, Collins texted Delgado-Jenkins what we have been referring to as the "NFW message," which stated in categorical terms that there was "no way" Collins was "putting A Shoc in Outlaw." That can be found at PX 55.

In short, the record shows that as of October 20th, 2018, Outlaw knew that Collins had no intention of developing Adrenaline Shoc for Outlaw and, relatedly, that he had filed several Adrenaline-related trademarks in the name of a company that was not part of Outlaw. Given this knowledge, if Outlaw truly believed that the Adrenaline Shoc brand and labeling were its property and that Collins was usurping a corporate opportunity, it was incumbent on Outlaw to seek judicial relief promptly. It did not do so, but instead, waited nearly seven months before filing this action on May 7, 2019.

The only reason Outlaw has offered to justify this delay is that Collins allegedly lied to Delgado-Jenkins over the next six months by saying he ultimately would place the Adrenaline Shoc assets in Outlaw.

I am not convinced. Outlaw has not provided any corroborative testimony or documentary evidence to support this assertion. On the other hand, as I will discuss later, defendants have made a compelling case that Delgado-Jenkins could not have reasonably believed that Collins had any intention of putting Adrenaline Shoc in Outlaw by mid-October and that Delgado-Jenkins had an ulterior purpose in seeking to secure for himself an equity interest in A Shoc during this period.

In addition to being unreasonable, Outlaw's seven-month delay in seeking judicial relief has caused prejudice to Collins and A Shoc. The declaration of Scott DeLorme, who has been A Shoc's president since January 2019, explains that A Shoc, which was formed in or around December 2018, has spent over $6.6 million in preparing to launch Adrenaline Shoc; that over 300,000 cases of the product already have been produced and are being stored in warehouses;

and that A Shoc has hired eleven full-time employees, with a monthly payroll of approximately $124,000 and has agreed to rent office space.

DeLorme, who has extensive experience in the beverage industry, further explained that summer "is the high season for energy drinks," and therefore, that failing to launch Adrenaline Shoc soon would be particularly harmful to A Shoc's marketing efforts. Had Outlaw acted with dispatch and filed this case last fall, this Court would have had the opportunity to consider its arguments and to assess the merits of this case before many, if not all, of these expenditures had been incurred and before the launch of the Adrenaline Shoc product was imminent.

In sum, given the circumstances I've described, Outlaw's seven-month delay in filing this action and pursuing injunctive relief on the eve of A Shoc's product launch was unreasonable and prejudicial to the defendants, warranting denial of its application for that reason alone. In saying this, I'm expressing no opinion on the ultimate merits of a laches defense to Outlaw's claims, but simply making the point that Outlaw's motion for a preliminary injunction was untimely.

Notwithstanding this ruling, I'm now going to consider the merits of Outlaw's claims and the other necessary elements to obtain a preliminary injunction, my consideration of which provides additional grounds for denying Outlaw's application.

The complaint Outlaw filed on May 7, 2019, contains four claims. Count I asserts a claim for breach of fiduciary duty against Collins for usurping a corporate opportunity. Count II asserts an aiding and abetting claim against A Shoc. Count III asserts a claim for misappropriation of trade secrets under the Delaware Uniform Trade Secrets Act against both defendants. Count IV asserts a claim for unjust enrichment against both defendants.

I'm going to address the claims in that order, starting with the corporate opportunity claim, which is the heart of this case. In *Broz v. Cellular Information Systems*, our Supreme Court summarized the corporate opportunity doctrine as follows:

"The corporate opportunity doctrine, as delineated by *Guth* and its progeny, holds that a corporate officer or director may not take a business opportunity for his own if: (1) the corporation is

financially able to exploit the opportunity; (2) the opportunity is within the corporation's line of business; (3) the corporation has an interest or expectancy in the opportunity; and (4) by taking the opportunity for his own, the corporate fiduciary will thereby be placed in a position inimical to his duties to the corporation. The Court in *Guth* also derived a corollary which states that a director or officer may take a corporate opportunity if: (1) the opportunity is presented to the director or officer in his individual and not his corporate capacity; (2) the opportunity is not essential to the corporation; (3) the corporation holds no interest or expectancy in the opportunity; and (4) the director or officer has not wrongfully employed the resources of the corporation in pursuing or exploiting the opportunity."

The ultimate question to be determined in applying these standards is whether or not a director has appropriated for himself something that in fairness should belong to the corporation. The corporate opportunity doctrine is, therefore, rightly considered a subspecies of the fiduciary duty of loyalty.

A significant wrinkle in this case,

which makes it unlike any of the authorities the parties have cited, is that Outlaw's certificate of incorporation includes a corporate opportunity renunciation provision, as is permissible under Section 122(17) of the Delaware General Corporation Law. Specifically, Article XII of Outlaw's certificate of incorporation expressly "renounces any interest or expectancy ... in, or in being offered an opportunity to participate in, an Excluded Opportunity."

An "Excluded Opportunity" is defined in relevant part as "any matter, transaction, or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of this corporation who is not an employee of this corporation ... unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of [the director] expressly and solely in such [person's] capacity as a director of this corporation."

The phrase beginning with "unless such matter" is a carve-out to the general renunciation of any interest or expectancy in a corporate opportunity

laid out earlier in Article XII. Article XII indisputably applies to Collins, because he was a director of Outlaw at the times relevant to this case, until he resigned from that position on November 9, 2018. But he never was an employee of Outlaw.

As the passage from *Broz* I just quoted makes clear, under either formulation of the corporate opportunity doctrine that our Supreme Court has recognized, the plaintiff must show that the company had an interest or expectancy in the opportunity. That raises the question concerning the interplay between the corporate opportunity doctrine at common law and Article XII of Outlaw's certificate of incorporation.

As I discussed during last week's hearing, in my opinion, reading those two standards together, the only way Outlaw can get out of the gate to prove a claim for usurpation of a corporate opportunity against Collins is to show that the opportunity falls within the carve-out in Article XII, which means that the opportunity must have been "presented to, or acquired, created or developed by, or otherwise [come] into the possession of" Collins "expressly and solely in [his] capacity as a

director." Otherwise, Collins is free to pursue the opportunity and, by necessary implication, to compete against Outlaw in doing so.

Turning to the issue here, the precipitating event of Outlaw's case is that Collins attended a meeting that Delgado-Jenkins arranged with representatives of 7-Eleven on August 29, 2018, during which 7-Eleven expressed an interest in having Outlaw produce a private-label energy drink to compete with another manufacturer known as Bang. Collins admitted in his deposition that he was not aware of 7-Eleven's interest in developing a "Bang-like product" before the August 29 meeting, and in my view, it is reasonable to infer that Collins participated in that meeting in his capacity as a director of Outlaw.

Thus the threshold question is whether Outlaw has demonstrated a reasonable probability of succeeding on a claim that the opportunity to produce what has become the Adrenaline Shoc product was "presented to, or acquired, created or developed by, or otherwise [came] into the possession of" Collins "expressly and solely" in his capacity as a director of Outlaw as a result of the August 29 meeting with 7-Eleven.

Significantly, the opportunity that arose as a result of that meeting did not concern a tangible product, an actual business, or anything concrete in form. Rather, the opportunity that was presented was little more than a general idea or concept -- that is, the idea of creating a Bang-like product for 7-Eleven's use as a private-label product. Given this context, the aspects of the carve-out in Article XII that concern the opportunity being "acquired" or coming into Collins' "possession" expressly and solely as a director of Outlaw appear to be irrelevant to this case.

Furthermore, the aspect of the carve-out concerning the opportunity being presented to those present at the August 29 meeting also seems to be a moot issue, given that 7-Eleven pulled the plug on creating a private-label Bang-like product with Outlaw. That occurred on or about October 11, 2018, when Jack Stout of 7-Eleven told Delgado-Jenkins that 7-Eleven was going to put a pause on pursuing a private-label product with Outlaw, and there is no evidence in the record that 7-Eleven ever indicated any further interest in pursuing such a product with Outlaw at any time since.

Thus, as I see it, the question that remains for purposes of the carve-out in Article XII is whether Outlaw has demonstrated a reasonable probability of succeeding on a claim that Collins "created" or "developed" the Adrenaline Shoc product expressly and solely as a director of Outlaw after the August 29 meeting, notwithstanding the fact that 7-Eleven later abandoned its initial interest in having Outlaw develop a private label brand for a Bang-like product.

In my opinion, Outlaw has not made that showing. To the contrary, the substantial weight of the evidence in the record supports the conclusion that Collins created and developed Adrenaline Shoc in a manner independent of his capacity as a director of Outlaw, and not "solely and expressly" in that capacity.

I'm going to review that evidence in four parts, the first three of which concern the branding, labeling, and formula of the Adrenaline Shoc product, and the final one of which focuses on events that transpired after mid-October 2018, including Delgado-Jenkins' own conduct during that period.

First, with respect to the brand,

there does not appear to be any dispute that Collins was the person who came up with the Adrenaline Shoc name, as he has done on many occasions for other energy drink products he has created in other ventures as a leading figure in the industry.

More importantly, as I already mentioned, the record shows that Collins' company, Chez Isabelle, applied for a trademark for the Adrenaline Shoc name and other Adrenaline-related names and that Collins paid for that work either personally or through his entity. In either event, no funds or resources of Outlaw were used for that purpose.

Outlaw highlights the September 8, 2018 email that Collins sent to Adam Mandell, a trademark lawyer who had worked for Collins in the past, in which he wrote, "Bill to OUTLAW" after listing some proposed names, including "OUTLAW LIEN" and "Adrenaline Rush." Notably, a later email from Collins in that email chain, which is at PX 22, lists "Outlaw Adrenaline Shoc" as a proposed name.

Viewing the September email in the context of the other evidence of record, it appears that Collins may have considered using an

Adrenaline-related name to pitch to 7-Eleven, presumably on Outlaw's behalf, but then changed his mind and decided to keep the name for himself at some point before the September 26 meeting scheduled with 7-Eleven.

This inference is supported by the trademark applications for Adrenaline-related names that were filed in the name of Chez Isabelle beginning around September 20th and by the fact that the billing for any work associated with Adrenaline-related trademarks was switched to Chez Isabelle by the end of September. Collins testified to the latter point -- this is at pages 109 to 110 of his deposition -- and his testimony is corroborated by the declaration submitted by Adam Mandell, the attorney who handled the trademark applications.

Significantly, as previously discussed, Delgado-Jenkins was aware in real time that these trademark filings were being made in the name of Chez Isabelle, and he did not object to them, which is strong evidence that would undermine Outlaw being able to prove at trial that the Adrenaline Shoc brand was created or developed by Collins expressly and solely in his capacity as a director of Outlaw.

Second, with respect to the labeling, the record shows that John Malloy, a freelance graphic designer, developed the can design and logo for Adrenaline Rush and Adrenaline Shoc. According to his declaration, Malloy did this work with the understanding that he was working for Collins, not Outlaw. Consistent with this understanding, Malloy billed and was paid by Collins for this work. No contrary evidence has been provided on this point.

The record also shows that Paula Grant, the owner of Flood Creative, a boutique design company, prepared a presentation of new brand ideas for the September 26, 2018 meeting with 7-Eleven, which included the Adrenaline Shoc can design that Malloy created. Significantly, the presentation that was shown to 7-Eleven at that meeting -- which is in the record as PX 37 -- stated on the first page that it was prepared by Flood Creative without mentioning Outlaw.

Grant explained in her declaration that she refused Delgado-Jenkins' request to insert a disclaimer in the presentation after the September 26 meeting that would have implied that the materials in the presentation were the intellectual property of

Outlaw rather than Flood Creative. According to Delgado-Jenkins, Grant later agreed to permit the disclaimer to be included for the purpose of sending a copy of the presentation to 7-Eleven, but significantly, that disclaimer stated that the information in the presentation was the property of Outlaw and Flood Creative. What it did not say is that Outlaw owned all of the intellectual property in the presentation. That document can be found at PX 45.

Grant attests that she did not bill Outlaw for her work in preparing the presentation deck for the September 26 meeting and that she did that work as a favor to Collins. This seems credible to me, considering that Grant has done work for Collins for over 30 years and benefits from her relationship with Collins by obtaining equity in his ventures. This comes from Grant's declaration at paragraphs 3, 5, and 30 and is corroborated by Grant's contemporaneous email to Doug Weekes and Delgado-Jenkins at DX 11, which was sent on September 26.

Outlaw questions the veracity of Grant's explanation based on bills for design services

it received from Flood Creative in the September 2018 time frame and the fact that Outlaw reimbursed Grant for her travel expenses to attend the September 26 meeting. This billing evidence is not inconsistent, however, with Grant's declaration, which explains that those billings were attributable to other work she performed for the relaunch of Outlaw, which she indisputably did, and there does not seem to be anything untoward about Grant obtaining reimbursement for her travel expenses from Outlaw, given that a key focus of the September 26 meeting was on promoting the relaunch of Outlaw.

In sum, the evidence shows fairly clearly that the Adrenaline Shoc design work and presentation materials that were created before the September 26 meeting with 7-Eleven were prepared by outside consultants who were working for Collins and that Outlaw did not pay for any of that work. As with the branding evidence, this evidence is inconsistent with the notion that Collins was acting expressly and solely as a director of Outlaw as part of an "Outlaw team" with respect to Adrenaline Shoc.

Third, with respect to the formula, Outlaw does not contend that any of its employees were

used to create the formula for Adrenaline Shoc or that it paid for any of that work. Rather, Nancy Vorbach, who was employed by a division of Archer Daniels Midland known as Wild Flavors, oversaw the creation of the formula for Adrenaline Shoc, which she testified did not begin until mid to late October, after 7-Eleven put the private-label project on pause.

Although Outlaw has suggested that some samples of a formula were shown to 7-Eleven at the September meeting, Vorbach explained in her deposition -- at pages 15 to 17 -- that that was not the case and that what was displayed at the meeting were flavors from her company's flavor library. Outlaw has not submitted any evidence contradicting this specific testimony.

Outlaw's key point of contention concerning the formula for Adrenaline Shoc is its assertion that Collins misappropriated the base of the Outlaw product. For support, it points to an October 30, 2018 text message from Collins to Vorbach that says, "Use Outlaw as our base" in the context of a request for information for the "nutritionals on A shoc!" But Outlaw's reliance on this text message is uncorroborated and directly contradicted by other

compelling evidence in the record.

Vorbach testified unequivocally that the Adrenaline Shoc formula was not "based off of the formula for Outlaw" and that the formulas are "very different." With respect to the October 30 text message specifically, Vorbach testified that the message had nothing to do with the formula for Adrenaline Shoc, but instead, concerned the nutritional panels that are displayed on the cans, which makes sense given the reference to nutritionals in that message. Vorbach's testimony is corroborated by Scott DeLorme, A Shoc's president, who stated in his declaration that Wild Flavors made Adrenaline Shoc's formula "entirely independent of Outlaw."

Fourth, turning to other events that transpired after mid-October when the private-label project for 7-Eleven had ended, the record is overwhelming that Collins was developing Adrenaline Shoc as an independent brand outside of Outlaw. To start, Collins sent Delgado-Jenkins the "NFW message" on October 20, stating categorically his intentions to develop Adrenaline Shoc outside of Outlaw, and he resigned from the Outlaw board on November 9.

There also is no evidence to suggest

that from mid-October until April 2019, when the release of Adrenaline Shoc was publicly announced, that any employee of Outlaw worked on any aspect of Adrenaline Shoc, that any of Outlaw's resources were used to develop that product for its benefit, or that Delgado-Jenkins ever took issue with Collins' actions during this period to develop Adrenaline Shoc as an independent brand.

To the contrary, the record shows that Delgado-Jenkins at times facilitated Collins' efforts to develop Adrenaline Shoc outside of Outlaw. For example, Collins explained in a December 4, 2018 email to Delgado-Jenkins and Mandell that he intended to acquire a trademark for "Adrenaline Spritz" to be put in a "stronger position" to use the Adrenaline Shoc name, and that Chez Isabelle, LLC would purchase it.

A few months later, Delgado-Jenkins used a company he owned -- Figital Ventures, LLC -- to purchase that trademark in order to assign it to Chez Isabelle, which he did in March 2019. In other words, Delgado-Jenkins affirmatively assisted Collins' efforts to remove a potential obstacle to his use of the Adrenaline Shoc brand, separate and apart from Outlaw.

Tellingly, Delgado-Jenkins also never suggested to Keurig Dr Pepper that Outlaw had any interest or role in Adrenaline Shoc when Keurig Dr Pepper expressed interest in exploring a joint venture to bring the product to market outside of Outlaw in Delgado-Jenkins' presence in November 2018. Delgado-Jenkins also failed to mention A Shoc both at an Outlaw board meeting on January 28, 2019, and in a letter to Outlaw investors on February 15, 2019. And Outlaw has presented no planning documents, sales forecasts, or any other internal papers after mid-October reflecting that Adrenaline Shoc was its product.

The record further reflects that rather than taking issue with Collins developing Adrenaline Shoc outside of Outlaw, Delgado-Jenkins affirmatively sought to obtain a personal interest in A Shoc. In a private placement memorandum dated December 20, 2018, Delgado-Jenkins is listed as the chief strategy officer of A Shoc. On December 27, 2018, Delgado-Jenkins provided feedback on, and signed, a draft LLC agreement for A Shoc, which provided that he would receive equity in the company.

On February 23, 2019, after

Delgado-Jenkins was notified of the planned timeline for the launch of Adrenaline Shoc, he sought to obtain 50,000 shares in A Shoc. And on March 24, 2019, Delgado-Jenkins gave Collins information regarding his LLC -- called "Jesus LLC" -- for the ostensible purpose of obtaining equity in A Shoc.

Indeed, it was only after Delgado-Jenkins appeared to realize in April 2019 that he would not be an investor in A Shoc that the claims in this case were asserted. I do not believe that was a coincidence, and in my view, based on all of the objective evidence that Collins was pursuing Adrenaline Shoc as an independent brand outside of Outlaw using his own resources from mid-October forward, Delgado-Jenkins' uncorroborated assertion that Collins had been assuring him for many months that he would place the product in Outlaw simply strains credibility.

To sum up, it is my opinion that Outlaw is not reasonably likely to succeed on its corporate opportunity claim because the substantial weight of the evidence I have discussed, considered collectively, shows that Collins did not create or develop Adrenaline Shoc expressly and solely in his

capacity as a director of Outlaw, and thus Outlaw cannot be said to have had an interest or an expectancy in Adrenaline Shoc. Given this conclusion, the remainder of Outlaw's claims necessarily fail to provide a basis for preliminary injunctive relief and can be addressed quickly.

Starting with Count II, Outlaw is not reasonably likely to succeed on its aiding and abetting claim since the underlying alleged breach of fiduciary duty is its corporate opportunity claim.

Turning to Count III, in order "to prove trade secret misappropriation, the plaintiff must demonstrate that a trade secret exists, the plaintiff communicated the secret to the defendant, there was an express or implied understanding that the secrecy of the matter would be respected, and the secret information was improperly used or disclosed to the injury of the plaintiff."

Outlaw contends that Collins misappropriated its brand, labeling, and formula for Adrenaline Shoc, and that those features of Adrenaline Shoc were trade secrets of Outlaw. The fundamental problem with this claim is that, as I've already discussed, Outlaw has not shown a reasonable

probability of demonstrating that it created, owned, or otherwise had an interest or expectancy in the brand, labeling, or formula of Adrenaline Shoc, and thus it is not reasonably probable that Outlaw has any trade secrets concerning those matters to protect.

Finally, with respect to Count IV, Outlaw's unjust enrichment claim simply tracks its fiduciary duty and misappropriation of trade secrets claims. To be more specific, Outlaw's complaint contends that Collins and A Shoc "have been unlawfully enriched by the misappropriation and usurpation of" the opportunity to produce Adrenaline Shoc. That comes from paragraph 56 of the complaint. In its brief, Outlaw similarly focuses on the same underlying conduct: the alleged usurpation of a corporate opportunity and misappropriation of trade secrets.

Because Outlaw has not shown a reasonable probability of success on the merits of its fiduciary duty and misappropriation of trade secret claims, by definition, it cannot show a reasonable probability of success on the merits with respect to its parallel unjust enrichment claim, which completely depends on the same underlying allegations of wrongdoing.

Having concluded that Outlaw has failed to demonstrate a reasonable probability of success on the merits, I could skip over the elements concerning irreparable harm and the balance of the hardships, but I will touch on those points briefly nonetheless.

In a nutshell, based largely on a declaration submitted by Professor Peter N. Golder, Outlaw contends it will suffer imminent irreparable harm on the theory that it will forever lose the opportunity to establish or burgeon its reputation based on the success of Adrenaline Shoc, including opportunities to extend the brand, because industry stakeholders will view any success of the product to be attributable to the defendants. In making this argument, Outlaw propounds that it will take six to twelve months for Outlaw to relaunch the product in the manner it wishes to do so, which implicates a whole host of considerations summarized on pages 53 to 54 of its opening brief.

In my view, this showing of harm is far from imminent and depends on numerous assumptions that are highly speculative about what may or may not happen in the future. The reality is that Outlaw has

no new product it is ready to go to market with that relates to Adrenaline Shoc, it has none of the infrastructure in place to introduce such a new product, and its conception of what it will take to transition Adrenaline Shoc is riddled with guesswork.

On the other side of the ledger, A Shoc has made significant investments over the past six months in developing Adrenaline Shoc, which is its only product, and A Shoc is ready to bring the product immediately to a market which everyone seems to recognize is a highly competitive and rapidly changing energy drink market, and in the prime season for doing so; i.e., the summer season.

Under these circumstances, enjoining the introduction of Adrenaline Shoc is far more likely, in my view, to impose significant and tangible harm on A Shoc than declining to issue an injunction would impose on Outlaw. I'm also not convinced that damages would not afford full relief to Outlaw if it ultimately were to prevail at trial, notwithstanding the Court's preliminary assessment of the merits.

From my perspective, it would seem significantly less speculative for an expert to quantify an appropriate measure of damages if Outlaw

were to prevail at trial -- particularly if the Adrenaline Shoc product proves to be a commercial success -- than for the Court to accept on faith the many assumptions about the future built into Outlaw's theory of irreparable harm.

For the reasons I've just discussed, I find that the issues of irreparable harm and the balance of the hardships both favor the defendants. To summarize, for all the reasons I've explained today, Outlaw's motion for a preliminary injunction will be denied. After this call, I will enter a form of order in the system formally denying the motion.

Does anyone have any questions for me?

MR. KELLY: This is Chris Kelly, Your Honor, for plaintiff. No questions.

THE COURT: Anyone from the defendants?

MR. KING: None for defendants, Your Honor. It's Marshall King.

THE COURT: All right. Thank you very much again, Counsel. I know that was a rather lengthy ruling to have to make you sit through, but this was the most efficient way for me to give you a prompt answer under the circumstances.

Have a good day.

(Hearing concluded at 2:12 p.m.)

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CERTIFICATE

I, JULIANNE LABADIA, Official Court Reporter for the Court of Chancery for the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify that the foregoing pages numbered 3 through 32 contain a true and correct transcription of the rulings as stenographically reported by me at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated, except as revised by the Chancellor.

IN WITNESS WHEREOF I hereunto set my hand at Wilmington, this 19th day of June, 2019.

/s/ Julianne LaBadia

Julianne LaBadia
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
Delaware Notary Public