

THE TOP 100 VERDICTS OF 2016

RANK	AMOUNT	TYPE	NAME/COURT/DATE	LEAD PLAINTIFFS' ATTORNEY(S)/FIRM(S)	LEAD DEFENSE ATTORNEY(S)/FIRM(S)
37	\$44,446,482	Breach of Contract	Trendsetta USA Inc. v. Swisher International Inc., C.D. Calif., 8:14-CV-016640-JVS-DFM, 3/30/2016	Randolph Gaw and Mark Poe, Gaw I Poe LLP, San Francisco	Michael C. Marsh and Ryan Roman, Akerman LLP, Miami

THIRTY-SEVEN

ANTITRUST

Monopolies — Breach of Contract

Suit: Cigar manufacturing giant interfered with contract

VERDICT **\$44,446,482**

CASE Trendsettah USA, Inc. and Trend
Settah, Inc. v. Swisher International,
Inc.,
No. 8:14-CV-01664-JVS-DFM

COURT United States District Court, Central
District, Santa Ana, CA

JUDGE James V. Selna

DATE 3/30/2016

PLAINTIFF

ATTORNEY(S) **Randolph Gaw** (co-lead), Gaw I Poe
LLP, San Francisco, CA
Mark Poe (co-lead), Gaw I Poe LLP,
San Francisco, CA

DEFENSE

ATTORNEY(S) **Michael C. Marsh**, Akerman LLP,
Miami, FL
Ryan Roman, Akerman LLP,
Miami, FL

FACTS & ALLEGATIONS On Jan. 20, 2011, plaintiff Trendsettah USA Inc., a cigar company, entered into agreements with cigar manufacturer Swisher International Inc. Under the terms of the agreement, Swisher would manufacture a small cigar known as a “cigarillo,” which Trendsettah would sell under the brand name “Splitarillos.” Trendsettah

was required to purchase at least 2,500 cases of the product each month and was contractually prohibited from using another manufacturer for the product. However, Trendsettah claimed that due to the success of the “Splitarillo” product and its impact on Swisher’s market dominance, Swisher sabotaged Trendsettah’s attempts to sell the product.

Trendsettah USA and its subsidiary, Trend Settah Inc., sued Swisher International, alleging breach of contract, breach of covenant, and violations of Section 2 of the Sherman Act.

Trendsettah specifically claimed that Swisher breached the 2011 contract by refusing to fill orders for the product in an effort to limit sales. It also claimed that Swisher’s employees actively disparaged the Splitarillo product to other business entities and would physically remove the product, as well as marketing materials, from retail locations. Trendsettah maintained that Swisher’s actions violated Section 2 of the Sherman Act, which prohibits companies with market power from engaging in anticompetitive business practices.

Swisher denied any breach of contract or any attempt to enforce a monopoly.

Defense counsel maintained that Swisher provided a reasonable amount of product to Trendsettah and that Swisher was not liable for the alleged antitrust violations because it does not have significant market power.

INJURIES/DAMAGES Trendsettah claimed that it suffered lost profits worth between approximately \$15 million and \$30 million due to the alleged actions of Swisher. Trendsettah also claimed that its former 10-percent market share was reduced to less than 1 percent and that the reduction required it to seek a new manufacturer for its product.

The plaintiff's expert economist testified regarding two projection models depicting Trendsettah's lost profits. The projection models were based on different industry factors, with the first projecting \$14.8 million in lost profits and the second projecting \$30 million in lost profits.

Defense counsel disputed the extent of Trendsettah's alleged economic losses.

The defense's expert economist concluded that any alleged damages from lost profits would be worth approximately \$220,000.

RESULT The jury found that Swisher's actions constituted a breach of contract, a breach of covenant, and a violation of the Sherman Act through anticompetitive practices. The jury determined that Trendsettah's damages totaled \$23,878,173, which included over \$9 million in breach-of-contract and good-faith damages, and \$14.8 million in damages pertaining to the Sherman Act violation.

Prior to trial, the parties stipulated to damages so that if the awarded amount related to breach of

contract was smaller than the award for antitrust damages, the breach of contract award would not be issued. However, pursuant to federal law, Trendsettah's antitrust award was trebled to \$44,446,482.

TRENDETTAH

USA, INC. \$9,062,679 breach of contract/
covenant
\$14,815,494 monopoly damages
\$23,878,173

TRIAL DETAILS

Trial Length: 8 days
Trial Deliberations: 2.5 hours
Jury Vote: Unanimous
Jury Composition: 4 male, 3 female

PLAINTIFF

EXPERT(S) DeForest McDuff, Ph.D.,
economics, Boston, MA

DEFENSE

EXPERT(S) Alan Cox, Ph.D., economics,
San Francisco, CA

EDITOR'S NOTE This report is based on information that was provided by plaintiff's and defense counsel.

—Max Robinson