# THE NATIONAL **LAW JOURNAL**





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



April 2017

### An **ALM** Publication

# 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 PoeLLP, San Francisco, CAMark Poe (co-lead), Gaw I Poe LLP,<br/>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.

## TRENDSETTAH

	USA, INC.	\$9,062,679 breach of contract/	
		covenant	
		<u>\$14,815,494 monopoly damages</u>	
		\$23,878,173	
2		\$23,070,173	
,	TRIAL DETAILS	Trial Length: 8 days	
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		Trial Deliberations: 2.5 hours	
		Jury Vote: Unanimous	
		Jury Composition: 4 male, 3 female	
	PLAINTIFF		
	EXPERT(S)	DeForest McDuff, Ph.D.,	
		economics, Boston, MA	
		conomics, boston, with	
	DEFENSE		
-			
	EXPERT(S)	Alan Cox, Ph.D., economics,	
		San Francisco, CA	
	EDITOR'S NOTE This report is based on informa-		
	tion that was provided by plaintiff's and defense		
		provided by plaintiff 5 and defense	
	counsel.		

-Max Robinson

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