



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

BREAKING: Jury Clears Ex-Jawbone Exec Of IP Theft Charges

By **Dorothy Atkins**

Law360 (February 3, 2020, 3:06 PM EST) -- A California federal jury on Monday cleared a former Jawbone executive of criminal charges alleging she defected to rival wearable fitness device maker Fitbit Inc. with the now-defunct Jawbone's trade secrets.

After less than two hours of deliberating, a unanimous 12-member jury in San Jose handed down a verdict that cleared Katherine Mogal, who now works at Google, on all six counts of trade secret theft, her attorneys told Law360.

Mogal is the first defendant to stand trial out of six former Jawbone employees facing trade secret theft charges over their career moves to Fitbit. Each defendant is accused of possessing Jawbone's trade secrets with the intent of sharing the proprietary information with Fitbit, and each has pled not guilty to the charges, which were initially lobbed in a **June 2018 indictment**.

Mogal's trial began Jan. 22, with prosecutor Susan Knight telling the jury during **opening arguments** that Mogal stole studies that were Jawbone's "crown jewels" before resigning as its consumer experience director to take a job at Fitbit.

Knight said that Mogal began working at Jawbone in 2013 when the startup was considered an innovator in wearable Bluetooth technology and compact speakers. At the time, Knight said, Jawbone had a "culture of secrecy" in which managers repeatedly reminded employees that they were working on highly confidential technology that was subject to nondisclosure agreements, or NDAs.

But in December 2014, Knight said Mogal installed on her work computer an application called CrashPlan, which automatically backed up her data by storing it on a personal cloud account.

When Mogal left Jawbone to join Fitbit in March 2015, Knight said Mogal didn't tell Jawbone about her cloud account with CrashPlan, even though it contained work data, including the six highly confidential user and consumer experience studies.

The government asked the jury to find her guilty of six counts of trade secret theft, one count for each of the six allegedly stolen studies.

But Mogal's attorney, Walter Brown of Orrick Herrington & Sutcliffe LLP, painted a starkly different picture of Mogal's motives and argued that Mogal never had a "master plan" to steal Jawbone's information. He said Mogal had installed CrashPlan on her laptop as a preventative measure, after her husband's computer crashed and he lost all of his data.

He also argued that Mogal never accessed her cloud account or looked at data stored on it after she left Jawbone. He said his client actually forgot she had even installed an application backing up data onto her cloud account when she resigned to work at Fitbit.

Brown told the jury that Mogal chose to leave Jawbone when she realized vendors weren't getting paid and its inventory was building up, and after its president resigned after only nine months on the job.

When Mogal told Jawbone she was leaving, the company's co-founder, Hosain Rahman, tried to talk her out of it, and when that didn't work, Jawbone's head of human resources and its general counsel threatened her with civil and criminal litigation, Brown said.

Brown said their threats made Mogal more confident in her decision to leave Jawbone, and she didn't think she was at risk of being sued, since she didn't work on patents or research and development. But within months, Brown said, Jawbone had filed a civil suit against her over alleged trade secret theft, which eventually led to the criminal charges.

During trial, prosecutors called former Jawbone and CrashPlan executives and a special agent testified that he discovered 51 copies of Jawbone's trade secrets on Mogal's cloud backup account. However, the agent conceded that he couldn't tell if Mogal ever accessed the CrashPlan account. Meanwhile, Mogal's counsel called her husband to testify, while she declined to take the stand.

The jury began deliberations late Friday afternoon and after less than an hour of deliberating Monday, the jury came back with a verdict clearing Mogal of all of the charges, according to her attorneys.

Brown and Randall Luskey, his co-counsel at Orrick, told Law360 on Monday their client is and always has been innocent of all of these charges and the case should have never been brought.

"We are grateful that the jury system worked," Brown said.

Representatives for the government didn't immediately respond Monday to requests for comment.

The government is represented by Amie D. Rooney and Susan Knight of the U.S. Attorney's Office for the Northern District of California.

Mogal is represented by Walter Brown, Randall Luskey and Melinda Haag of Orrick Herrington & Sutcliffe LLP and Miranda Kane of Kane & Kimball LLP.

The case is U.S. v. Mogal, case number 5:18-cr-00259, in the U.S. District Court for the Northern District of California.

--Editing by Orlando Lorenzo.