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Prosecutors Drop Remaining Charges in Jawbone-Fitbit Trade Secret Fight

The move provides closure to the five-year dispute between defunct fitness tracking company Jawbone and Fitbit and four workers who faced looming trials.

By Alaina Lancaster | February 14, 2020



Jawbone UP24 fitness tracker/courtesy photo

The U.S. Attorney's Office for the Northern District of California has dropped the remaining charges against former employees of defunct fitness tracking company Jawbone over allegations they brought trade secrets to rival Fitbit, closing the loop on an embattled legal spat that began in 2015.

"It is a serious step for the United States to move to dismiss criminal charges at any time, and more so without a presentation to a trier of fact and, as occurred here, after the pendency of charges for more than a year," said David Anderson, the U.S. attorney for the Northern District of California, in a statement.

"However, it is the solemn duty of the United States to seek justice in all its cases, and to evaluate the

appropriateness of charges at all times, not just at the point of indictment or trial. Our assessment of these cases led us to the firm conclusion that only an immediate dismissal of the criminal charges against all defendants would be in the interests of justice.”

Back in June 2018, federal prosecutors indicted (<https://www.law.com/therecorder/2018/06/15/for-third-time-fitbit-employees-face-legal-action-over-jawbone-trade-secrets/>) six former Jawbone employees on allegations they took technical and financial data, marketing plans and pricing information to Fitbit. The U.S. International Trade Commission found the employees did not steal trade secrets following proceedings in 2016, and a civil case (https://cdn0.vox-cdn.com/uploads/chorus_asset/file/3732950/Jawbone_Complaint.0.pdf) filed in San Francisco Superior Court in May 2015 also fell apart after Jawbone shuttered operations.



David Anderson, U.S. attorney for the Northern District of California, announces the indictment of Anthony Levandowski. (Photo: Jason Doiy/ALM)

Last week, a jury acquitted Katherine Mogal, Jawbone’s former director of market and customer experience insights, who was the first former employee to go to trial in the group of cases. The verdict followed a prosecutor’s decision to drop charges against design and user researcher Ana Rosario in December. After the office’s move Friday, Jawbone alums Patrick Narron, Patricio Romano, Rong Zhang and Jing Qui Weiden are also free of charges.

Law firms took center stage in the dispute after prosecutors attempted to boot (<https://www.law.com/therecorder/2018/08/06/feds-ask-to-dq-orrick-from-repping-former-jawbone-employee-in-trade-secret-case/>) Orrick, Herrington & Sutcliffe and partner Randy Luskey from defending Mogal. The government claimed Orrick had a conflict of interest after representing Fitbit and Mogal’s co-defendants in prior proceedings surrounding the cases. U.S. District Judge Beth Labson Freeman of the Northern District of California denied prosecutor’s request to disqualify the firm, finding Mogal’s co-defendants (<https://www.law.com/therecorder/2018/07/18/former-fitbit-employees-plead-not-guilty-to-trade-secret-possession/>) had “knowingly, voluntarily, and intelligently” signed waivers allowing Orrick to represent her.

Orrick partner Melinda Haag, a member of Mogal's defense team and former U.S. attorney for the Northern District, said Mogal was and is innocent, as they demonstrated at trial. "We are gratified that the outcome caused the U.S. Attorney's Office to reexamine its case and do the right thing," Haag said. "These charges should never have been brought, and now these people can thankfully move on with their lives."

Miranda Kane of Kane + Kimball in Berkeley, California, who was also part of Mogal's trial team, applauded the U.S. Attorney's Office. "It's never too late to do the right thing," she said. "It went on for two years and that's too long." She said her client's nightmare ended a week ago, but the four other defendants were waiting for their nightmare to end. "I'm just glad it's over for them as well."

Kane said she thought some of the issues inherent to the case came from the fact that Jawbone brought their allegations directly to an investigative unit of the Department of Homeland Security, and the case required an objective and probing look. "In this case, I don't think they performed their gatekeeper role, and when the agency doesn't do their role, it has this ripple effect."

In a statement, Swanson & McNamara's Ed Swanson and August Gugelmann, who served as counsel to Rosario, said they are grateful the government dismissed the charges against their client, but said they never should have charged her in the first place. "This case was deeply flawed, and none of these individuals should have been put through this ordeal. The government must vet allegations brought to it by a company claiming trade secret theft before it seeks indictments. We appreciate that management at the U.S. Attorney's Office has made the right decision here."

Narron's counsel, Miles Ehrlich and Amy Craig of Ramsey & Ehrlich, said in a statement that anyone could have found that the documents were not confidential trade secrets "with a two-minute Google search."

"Before launching a criminal case against anyone, the government must make absolutely certain that it isn't being manipulated into doing one tech company's bidding against a competitor," they said.

Anderson said the office remains committed to bringing the criminal intellectual property cases that protect innovation in the district and the country.

Read more:

Former Jawbone Employee Wins Not Guilty Verdict in Federal Trade Secrets Trial

(<https://www.law.com/therecorder/2018/07/18/former-fitbit-employees-plead-not-guilty-to-trade-secret-possession/>)

Feds Ask to DQ Orrick From Repping Former Jawbone Employee in Trade Secret Case

(<https://www.law.com/therecorder/2018/08/06/feds-ask-to-dq-orrick-from-repping-former-jawbone-employee-in-trade-secret-case/>)

Former Fitbit Employees Plead Not Guilty to Trade Secret Possession

(<https://www.law.com/therecorder/2020/02/03/former-jawbone-employee-wins-not-guilty-verdict-in-federal-trade-secrets-trial/>)

For Third Time, Fitbit Employees Caught Up in Legal Action Over Jawbone Trade Secrets

(<https://www.law.com/therecorder/2018/06/15/for-third-time-fitbit-employees-face-legal-action-over-jawbone-trade-secrets/>)

