

Hallmark Cards Awarded \$47 Million for Misappropriation of Four-Year-Old Market Research

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The number of data theft/trade secret cases that go to trial is growing, as are the size of the verdicts. For example, the Eighth Circuit Court of Appeals recently upheld a \$47 million total recovery for Hallmark Cards for the misappropriation of the greeting card manufacturer's four-year-old market research. In *Hallmark Cards, Inc. v. Monitor Clipper Partners, LLC*, Hallmark brought an action against private equity firm Monitor Clipper Partners, LLC. (Clipper) alleging that Clipper obtained Hallmark's confidential information from Hallmark's research consultant, Monitor Company Group, L.P. (Monitor), to facilitate Clipper's acquisition of greeting card competitor RPG. Prior to trial, Hallmark won a \$3.2 million arbitration claim against Monitor based on breach of contract confidentiality requirements. Monitor had disclosed Hallmark's proprietary market research to Clipper. A final portion of the arbitration award against Monitor required additional electronic discovery searches. After e-mails revealed the intentional disclosure of information by Monitor to Clipper and the destruction of evidence by Clipper and Monitor, the arbitration was reopened. Hallmark eventually settled with Monitor for \$16.6 million on the arbitration claims. Hallmark was later awarded \$21.3 million in compensatory damages and \$10 million in punitive damages in a jury trial against Clipper. On appeal, Clipper argued 1) the information disclosed did not qualify as a trade secret, 2) the award against Clipper constituted a "double recovery" for Hallmark, and 3) punitive damages were unwarranted. The appellate court affirmed, finding the market research qualified as trade secrets. It concluded there was no double recovery because Monitor's disclosure of the information constituted a breach of contract and a separate "misappropriation" from Clipper's subsequent "use" of the trade secrets. The court characterized the acts of Monitor and Clipper as two distinct injuries, and found Hallmark was entitled to compensation for each. The appellate court also concluded that the e-discovery destruction provided evidence of "reprehensible" conduct by Clipper warranting the finding of punitive damages.

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