



Fortescue 'spied on' wives, kids

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Body

Fortescue detectives spied on family shopping trips to Kmart, rummaged through mail and watched the wives and children of former executives for 19 days, the Federal Court has been told.

Further details about the iron ore giant's efforts to monitor its green steel rival, Element Zero, and its executives Bart Kolodziejczyk and Bjorn Winther-Jensen before launching raids on their homes and offices over allegations they stole intellectual property were revealed on Wednesday.

Federal Court judge Brigitte Markovic also told **Fortescue**'s lawyers they should revise the "ambit" of their broad suppression order requests, which included a bid to keep secret the entire 600 pages of a report produced by private investigators.

In a statement on Wednesday, **Fortescue** executive chairman Andrew Forrest effectively conceded that the company's lawyers had overstepped the mark in their pursuit of the three men, saying the engagement of Davies Collison Cave Law was under review.

"I was surprised to learn of the investigations and have been advised by **Fortescue**'s legal team that they were necessary in order to be granted search orders from the Federal Court," Dr Forrest said.

"**Fortescue**'s external legal team have been reminded that they also have an obligation to comply with the company's values and their engagement is now under review.

"**Fortescue** is a first mover which invests significant time and resources into its intellectual -property." A report was provided to independent lawyers who carried out the raids - which is required under Federal Court rules authorising privately obtained search warrants - and showed pictures had been taken of Dr Winther-Jensen's wife and 16-year-old daughter, who, the report noted, had been watched as she left for school and returned home on one day.

As well, there were photographs of Dr Kolodziejczyk's wife and five-year-old son in the report. Private investigators identified -Element Zero's principal and likely secondary place of businesses at two locations close by in Malaga, in Perth's northern suburbs.

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Former **Fortescue** executives Dr Kolodziejczyk and Dr Winther-Jensen and their company Element Zero along with long-term Forrest lieutenant Michael Masterman are parties to the court fight. All three quit the would-be green energy giant to start their own green metal firm in 2022.

After **Fortescue** accused them of stealing intellectual property relating to its carbon dioxide-free iron technology, it successfully obtained orders from the Federal Court in May to search the offices and homes of Element Zero and its staff. Computers and electronic devices were seized in those raids.

Element Zero denies the allegations and says its technology was developed independently to that of **Fortescue's**.

Such has been the veil of secrecy cast over the case that its existence was not revealed until two weeks after the search orders were granted (on May 14), and elements of the matter are still suppressed.

During a brief case management hearing on Wednesday, Chris McMeniman, the barrister appearing for Element Zero, Dr Kolodziejczyk and Mr Masterman, told the court that for 19 days **Fortescue's** private investigators pursued his clients, their families and Element Zero staff.

He said **Fortescue** claimed it was "too difficult" to redact residential addresses and photos of minors included in a 600-page report completed for them, and therefore wanted the whole thing kept secret.

That report contains details about the extraordinary surveillance conducted by **Fortescue**, including that private investigators followed "wives to Kmart", sifted through mail "and the like" and that Element Zero staff beyond those listed in the court filings were followed.

"They want the entirety of that redacted," he said.

Fortescue barrister Wen Wu told the court that since an interim suppression order was granted on May 9, the company had since lodged a further two applications.

"The reason why a further suppression application was brought is because the initial suppression was to suppress material that was confidential to **Fortescue** and not known to the individual respondents," Mr Wu said.

"The second suppression application made covers confidential information which is known to individual persons but not to the world at large." Mr Wu agreed that **Fortescue's** bid for a suppression order covering the 600 pages of private investigator reports was "broader" than Element Zero's.

Justice Markovic described Element Zero's application as "more nuanced or selective".

She said she would need to "sift through" the vast amounts of material filed and examine what was sought to be redacted.

In relation to one of Mr Wu's suppression applications, Justice Markovic said: "I would like your side to consider narrow applications".

Hall and Wilcox were hired by **Fortescue's** external lawyers Davies Collison Cave Law to act as independent solicitors and carry out the raids in May.

According to a letter sent from Davies Collison Cave Law to Hall and Wilcox that summarised **Fortescue's** allegations against Element Zero, Dr Winther-Jensen sent emails to his personal email address attaching confidential **Fortescue** technical documents.

As well, **Fortescue** claimed Dr Kolodziejczyk accessed confidential technical documents on his work-issued laptop using a USB and deleted a file shortly before he left.

"**Fortescue** are unable to locate a substantial number of documents recording the research and development of the ER (electrochemical reduction) process in the green iron project on its internal file systems," the letter read.

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Lawyers for Element Zero have previously flagged they would move to have **Fortescue**'s case struck out, saying the accusations had caused "ongoing reputational damage" to all three men, and the orders were improperly obtained by **Fortescue**.

At a hearing late last month, Dr Kolodziejczyk suggested he planned to introduce evidence he was allowed by **Fortescue** to take some documents with him when he resigned. The matter will return to court next month.

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