



## **Fortescue accused of keeping key meeting a secret in intellectual property case**

The Age (Melbourne, Australia) - Online

July 12, 2024 Friday 9:30 AM UTC

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**Length:** 939 words

**Highlight:** Billionaire Andrew Forrest's **Fortescue** has been accused of failing to disclose "material" information when it secured a warrant to raid the homes and offices of ex-**Fortescue** staff, who have been accused of stealing the iron ore group's intellectual property.

### **Body**

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Billionaire Andrew Forrest's **Fortescue** has been accused of failing to disclose "material" information when it secured a warrant to raid the homes and offices of ex-**Fortescue** staff, who have been accused of stealing the iron ore group's intellectual property, according to court documents.

**Fortescue** has taken legal action in the Federal Court against three former employees: Michael Masterman, Bart Kolodziejczyk and Bjorn Winther-Jensen. It has accused the men of copying and taking the company's intellectual property when they left to start a rival green iron project, called Element Zero.

Element Zero has rejected the allegations, and its chief executive, Masterman, has described the claims as "spurious". **Fortescue**'s executive chairman, Forrest, has argued that protecting the company's intellectual property remains "critical to its success".

A warrant was secured to conduct raids on Element Zero's offices and the homes of Kolodziejczyk and Winther-Jensen. It is estimated that three terabits of data was gathered from personal computers, mobile phones and cloud storage accounts.

Included in the trove of data were the entire business records of Element Zero, including payroll data, budgets and forecasts, and all the personal emails sent and received by Kolodziejczyk since 2008. However, Kolodziejczyk only started at **Fortescue** Future Industries on July 1, 2020, and ceased working there on November 5, 2021, in his roles as chief scientist (energy) and later chief scientist.

Kolodziejczyk is now chief technology officer of Element Zero, a company he and Masterman founded at the end of 2022.

In affidavits filed to the court, Gilbert + Tobin partner Michael Williams, who is representing Element Zero, said he had "serious concerns" about the material that was relied on by **Fortescue** to secure the warrant from the Federal Court.

He said the material "omitted key information" about the relationship between **Fortescue** and Element Zero, particularly in the six months before the orders were executed.

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Williams said the material relied on for the orders, which included affidavits, did not disclose a meeting that occurred on December 19 between Masterman, **Fortescue's** chief legal counsel, Phil McKeiver, and Paul Dewar of law firm Davies Collison Cave. Dewar is representing **Fortescue** in its case against Element Zero.

Williams said that in that meeting Masterman advised the men that Element Zero's technology was very different from **Fortescue's** green iron technology. He said this was because the technology did not use a membrane, operated at a different temperature range and used a non-aqueous alkaline solution.

[Link to Image](#)

Alex Ellinghausen

Masterman told the men that Element Zero had completed freedom-to-operate searches, which cleared its technology and found no overlap with **Fortescue**.

A freedom-to-operate search is undertaken when trying to establish that a new product or service offering will not infringe on a third party's patents.

In January, there was a meeting as well as emails exchanged between the two companies that discussed the testing of **Fortescue's** iron ore, sharing of information, and future commercial opportunities, Williams said. A non-disclosure agreement between the companies was also signed.

In 2023, Element Zero received iron ore samples from **Fortescue**, which allowed it to test its technology. It had provided **Fortescue** with information about the results. Element Zero was also testing iron ore samples from other companies such as BHP and Rio Tinto.

Many companies are researching and developing ways to produce green iron ore. Green iron technology is a technology for processing iron ore into metallic iron without burning fossil fuels that produce carbon dioxide.

This court case focuses on the technology that uses electrochemical reduction of the iron oxides found in iron ore to produce metallic iron.

In his affidavits, Williams also argued that the warrant secured by **Fortescue** allowed for the collection of "highly confidential and privileged material" and "the indiscriminate capture of material entirely unrelated to **Fortescue's** pleaded claim".

He said the volume of material taken was an "extraordinary invasion of the privacy", which exceeded what is "usually contemplated" in civil proceedings. He said the invasion of privacy also extended to spying on Element Zero staff that had occurred before the warrant was issued.

The Federal Court has heard how **Fortescue** [hired a private investigation firm](#) to trail the three men, their family members and other Element Zero staff, for 19 days.

A 600-page report was compiled. **Fortescue** lawyers said the investigation and report was required so that it could secure the warrant.

Forrest has since said he was "surprised" to learn of the spying.

**Fortescue** is seeking loss and damages in the case. In its submission to the court, it claims that green iron could sell for as much as \$900 a tonne, "which means hundreds of millions in revenue per year for **Fortescue**". Last financial year, **Fortescue** said it produced 190 million tonnes of iron ore.

**Fortescue** alleges that through forensic searching of its computer systems that the men took with them information that was developed for **Fortescue**, which they used to create their own green iron technology. A claim that Element Zero founders have denied.

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The Federal Court's Justice Brigitte Markovic is presiding over the case, which she has deemed to be in the public interest. The court has made a series of documents regarding the case available on its website.

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## Graphic

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Billionaire Andrew Forrest's **Fortescue** hired private investigators to spy on ex-staff, including following family members and their children.

**Load-Date:** July 12, 2024

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