



FED:'Bad faith': Fortescue spars with rival over spying

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Body

Fortescue has pushed back against allegations it had "unclean hands" after spying on former staff sued over the alleged theft of green-iron technology.

The mining giant searched the Perth offices of Element Zero and the homes of the startup's directors Bartlomiej Kolodziejczyk and Bjorn Winther-Jensen, seizing a swathe of computers, devices and documents.

Fortescue's extensive surveillance of Dr Kolodziejczyk and Dr Winther-Jensen has been revealed in a Federal Court lawsuit launched over the alleged theft of trade secrets.

Before filing the case, the company engaged a private investigator to track the directors from their homes to a variety of places including shopping centres, cafes, restaurants, the beach and the airport.

Fortescue - founded by billionaire Andrew "Twiggy" Forrest - alleges that Dr Kolodziejczyk, Dr Winther-Jensen and Element Zero chief executive Michael Masterman used secrets picked up during their time at the mining giant to develop their own green-iron technology.

Mr Masterman, on behalf of Element Zero, has called the allegations "spurious".

During a hearing on Thursday, Element Zero, Dr Kolodziejczyk and Mr Masterman's barrister Chris McMeniman slammed **Fortescue** for the spying.

"The level of surveillance conducted on the respondents was highly invasive and not necessary," he told Justice Brigitte Markovic.

Because **Fortescue** did not divulge crucial information to the judge who signed off the proposed order, this raised the question of whether **Fortescue** had gone to the court with "clean hands" or made the request for the search order in bad faith, he said.

But Justice Markovic criticised the allegations, saying they did not appear in an affidavit that simply mentioned an invasion of privacy.

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In material filed with the court, **Fortescue** has claimed Element Zero raised questions about the investigator for a collateral purpose to attract media attention.

This was rejected by barrister David Studdy SC, who was also representing the start-up and its two directors.

"The only collateral purpose ... is the extraordinary conduct of **Fortescue** which is now understandably causing it some concern and wanting to shut all of this down," he said.

Fortescue's barrister Julian Cooke SC criticised the attack, saying the search orders were typical and that **Fortescue** would only be given relevant material from the trove of documents seized after it was sorted through by independent lawyers.

"I mean my goodness, the submissions by the respondents in relation to this are just so far-fetched. It really defies logic," he said.

Mr Cooke said claims Dr Kolodziejczyk and Mr Masterman's privacy had been invaded were odd as they wanted the reports to be made public.

Mr Studdy rejected this.

"We're not trying to have our cake and eat it," he said.

Element Zero, Dr Kolodziejczyk and Mr Masterman will try to overturn the search orders during a two-day hearing from August 19.

On Thursday, the judge set aside a request by the startup and two executives seeking documents from **Fortescue** ahead of that hearing.

This material related to reports by the investigator and a computer expert who examined Dr Kolodziejczyk's work laptop.

Mr Cooke called the bid a "massive distraction", criticising his opponents as using an extraordinarily broad "scattergun" approach to try and build up their case.

The judge also rejected a request by Element Zero, Dr Kolodziejczyk and Mr Masterman to cross-examine **Fortescue**'s external lawyer Paul Dewar.

In the lawsuit, Element Zero and the executives have been accused of breach of contract, copyright infringement, breach of corporations and consumer law, and breach of their fiduciary duties.

Fortescue is seeking damages or compensation, which could include any profits gained by Element Zero from the allegedly stolen invention.

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