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Medical Services Co. Seeks Arbitration In Trade Secret Fight

By **Caroline Simson**

Law360 (June 23, 2020, 7:29 PM EDT) -- The founder of a Chinese medical services provider is urging a California court to force a Palo Alto startup that developed a streamlined sleep apnea testing method to arbitrate in China its lawsuit over allegedly stolen trade secrets.

Jason Zhou, his company, New Century Healthcare Holding Co. Ltd., and a group of related companies and individuals told the court Monday that they can't be forced to adjudicate the claims filed by Serenium Inc. in the U.S. The startup accuses the defendants of backing out of a multimillion-dollar deal to roll out the company's proprietary sleep apnea diagnostics technology in China and other neighboring nations and then stealing its trade secrets.

But the defendants argue that the suit is improperly filed, saying the court lacks jurisdiction over them since they live or are located in China, and the defendant businesses have no U.S. operations. Moreover, the claims are subject to arbitration under a clause in a contract signed by Serenium and a New Century subsidiary that says disputes must be brought before the Beijing Arbitration Commission, where a proceeding is already pending.

They argue that the instant suit is therefore barred.

"Since Beijing Arbitration Rules grant the arbitrator authority to decide questions of arbitrability, this court is required to dismiss this case in favor of arbitration," according to the brief.

The defendants also told the court that Serenium failed to adequately identify the trade secrets that were allegedly stolen. They deny the allegations that they're using the trade secrets, saying that while New Century does provide pediatric sleep disorder diagnostic and treatment services, it uses "traditional methods" not developed by Serenium.

Counsel for Serenium, Hosie Rice LLP attorney Spencer Hosie, told Law360 on Tuesday that New Century can't force arbitration of the dispute since the underlying agreement was signed by its subsidiary. He argued that the dispute falls under a nondisclosure agreement signed by Zhou and David Rosen, Serenium's chairman, and that New Century already consented to jurisdiction in the U.S.

"On the merits, New Century and its executives spent over a year learning Serenium's technology," he said. "It then rolled that technology out in China without Serenium. There is an interesting side bar here: They spent months ducking service, and then the court allowed Serenium to serve the defendants by Wechat and email."

Counsel for the defendants declined to comment Tuesday.

The technology developed by Serenium streamlines the process for diagnosing sleep apnea, according to court records. Typically, such procedures would involve an overnight stay at a hospital or clinic. But this technology allows doctors to diagnose the disorder using a proprietary oximeter to measure blood oxygen levels in combination with neural network-based algorithms, eliminating the need for the inpatient test, the suit claims.

Serenium says that this technology makes the diagnostic process much more cost-effective.

In the litigation, the company claims that it was approached by Zhou in 2017 with a proposal to partner with a Chinese New Century subsidiary called Beijing Jiarun Yunzhong Health Technology Co. Ltd. That company does business as "Panda Pediatrics," which provides online health-related consultation and telemedicine in China.

Serenium refused to form a Chinese joint venture, but it agreed to form a jointly owned company in Hong Kong with a New Century subsidiary to bring Serenium's technology to China and certain other Asian nations.

New Century later proposed two royalty licensing agreements — one that included a flat \$75 million royalty licensing agreement, and one that proposed a rolling royalty licensing agreement — but the project never got off the ground. Zhou allegedly terminated the contract and then refused to return Serenium's trade secrets.

Serenium alleges that Beijing Jiarun is now offering sleep apnea testing using its proprietary diagnostic technology.

The defendants, meanwhile, argued Monday that at some point in their deal, it became apparent that Serenium wouldn't be able to deliver its promised technology.

New Century initiated the arbitration in China to recover hundreds of thousands of dollars it provided to Serenium, for which it says it got "nothing of value in return." It denies stealing any trade secrets, arguing that oximeter kits Serenium provided to New Century were put in storage and not used again following some "anecdotal testing."

Serenium is represented by Spencer Hosie, Diane S. Rice, Brandon C. Martin, Darrell R. Atkinson and Francesca M.S. Germinario of Hosie Rice LLP.

Jason Zhou, Jia Xiaofeng, New Century Healthcare Holding Co. Ltd., Beijing Jiarun Yunzhong Health Technology Co. Ltd. and Juan Zhao are represented by Sean Pak and Michelle A. Clark of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Serenium Inc. v. Zhou et al., case number 5:20-cv-02132, in the U.S. District Court for the Northern District of California, San Jose Division.

--Editing by Orlando Lorenzo.